THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3,597 of 10th May, 2007

B. 37/07

CRIMINAL PROCEDURE AND EVIDENCE ACT 2007

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THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE
No. 3,597 of 10th May 2007

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BILL

FOR

AN ACT to make provision in relation to the powers and duties of the police, persons in police detention and evidence in criminal cases and for connected purposes.

ENACTED by the Legislation of Gibraltar.

Title, commencement and interpretation.

1.(1) This Act may be cited as the Criminal Procedure and Evidence Act 2007 and comes into operation on the date appointed by the Government by notice in the Gazette and different days may be so appointed for different purposes.

(2) In this Act, unless the context otherwise requires–

"adult" means a person of the age of seventeen years and upwards;

"child" means a person under the age of fourteen years;

"clerk of the magistrates' court" means the person appointed to be the clerk of the magistrates' court under the provisions of the Magistrates' Court Act;

"counsel" means any barrister or solicitor;

"fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction save that in section 229 "fine" means a pecuniary penalty;

"guardian", in relation to any person, includes anybody who, in the opinion of the court or police officer having cognizance of any proceedings in which that person is concerned, has for the time being charge or control over that person;

"indictable offence" means an offence which if committed by an adult is triable on indictment, whether or not it is also triable by the magistrates' court, except an offence otherwise triable only by the magistrates' court which under section 160 or any other law is required to be tried on indictment at the instance of the defendant or the prosecution;

"juvenile court" means the magistrates' court when sitting as a juvenile court under the provisions of Part XXII;

"Minister" means the Minister with responsibility for Justice;

"order for conditional discharge" has the meaning assigned to it by section 244;

"period of conditional discharge" has the meaning assigned to it by section 244;

"preliminary inquiry" means an investigation of a criminal charge held by the magistrates' court with a view to the committal of the accused person for trial before the Supreme Court;

"prison" means any place appointed to be a prison under the Prison Act;

"probationer" means a person for the time being under supervision by virtue of a probation order;

"probation officer" means a person appointed to be a probation officer under Part XIX;

"probation order" has the meaning assigned to it by section 245;

"probation period" means the period for which a probationer is placed under supervision by a probation order;

"prosecutor" includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on;

"sentence" does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;

"summary offence" means an offence which if committed by an adult is triable by the magistrates' court, whether or not it is also triable on indictment, except an offence triable by the magistrates' court with the consent of the accused under section 157;

"Superintendent" means the person appointed under the Prison Act to be in charge of the prison;

"suspended sentence" means a sentence to which an order under section 219 relates;

"Upper Rock Area" means the whole of the Upper Rock above the unclimbable fence between Jew's Gate and Willis' Gate police posts;

"young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.

PART I
POWERS TO STOP AND SEARCH

Power of constable to stop and search persons, vehicles etc..

2.(1) A constable may exercise any power conferred by this section–

(a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or

(b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5), a constable–

(a) may search–

(i) any person or vehicle;

(ii) anything which is in or on a vehicle,

for stolen or prohibited articles; and

(b) may detain a person or vehicle for the purpose of such a search.

(3) This section does not give a constable power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search him in the exercise of the power conferred by this section unless the constable has reasonable grounds for believing–

(a) that he does not reside in the dwelling; and

(b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing–

(a) that the person in charge of the vehicle does not reside in the dwelling; and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of such a search a constable discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, he may seize it.

(7) An article is prohibited for the purposes of this Part of this Act if it is–

(a) an offensive weapon; or

(b) an article–

(i) made or adapted for the use in the course of or in connection with an offence to which this sub-paragraph applies; or

(ii) intended by the person having it with him for such use by him or by some other person.

(8) The offences to which subsection (7)(b)(i) applies are–

(a) burglary;

(b) theft;

(c) offences under section 192 of the Criminal Offences Act (taking a vehicle without authority);

(d) offences under section 196 of the Criminal Offences Act (obtaining property by deception); and

(e) offences under section 159 of the Criminal Offences Act (destroying or damaging property).

(9) In this Part of this Act "offensive weapon" means any article–

(a) made or adapted for use for causing injury to persons; or

(b) intended by the person having it with him for such use by him or by some other person.

Provisions relating to search under section 2 and other powers.

3.(1) A constable who detains a person or vehicle in the exercise–

(a) of the power conferred by section 2, or

(b) of any other power–

(i) to search a person without first arresting him; or

(ii) to search a vehicle without making an arrest,

need not conduct a search if it appears to him subsequently–

(i) that no search is required; or

(ii) that a search is impracticable.

(2) If a constable contemplates a search, other than a search of an unattended vehicle, in the exercise–

(a) of the power conferred by section 2;

(b) of any other power–

(i) to search a person without first arresting him; or

(ii) to search a vehicle without making an arrest,

it shall be his duty, subject to subsection (5), to take reasonable steps before he commences the search to bring to the attention of the appropriate person–

(i) if the constable is not in uniform, documentary evidence that he is a constable; and

(ii) whether he is in uniform or not, the matters specified in subsection (3);

and the constable shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(ii) are–

(a) the constable's name;

(b) the object of the proposed search;

(c) the constable's grounds for proposing to make it; and

(d) the effect of section 4(7) or (8), as may be appropriate.

(4) A constable need not bring the effect of section 4(7) or (8) to the attention of the appropriate person if it appears to the constable that it will not be practicable to make the record in section 4(1).

(5) In this section "the appropriate person" means–

(a) if the constable proposes to search a person, that person; and

(b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

(6) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (1) above a constable shall leave a notice–

(a) stating that he has searched it;

(b) stating that an application for compensation for any damage caused by the search may be made to a police station; and

(c) stating the effect of section 4(8).

(7) The constable shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(8) The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(9) Neither the power conferred by section 2 nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed–

(a) as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves; or

(b) as authorizing a constable not in uniform to stop a vehicle.

(10) This section and section 2 apply to vessels, aircraft and hovercraft as they apply to vehicles.

Duty to make records concerning searches.

4.(1) Where a constable has carried out a search in the exercise of any such power as is mentioned in section 3(1), other than a search under section 7, he shall make a record of it in writing unless it is not practicable to do so.

(2) If–

(a) a constable is required by subsection (1) to make a record of a search; but

(b) it is not practicable to make the record on the spot,

he shall make it as soon as is practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the constable knows it, but a constable may not detain a person to find out his name.

(4) If a constable does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle–

(a) shall state–

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the constable to have resulted from the search; and

(b) shall identify the constable making it.

(7) If a constable who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9).

(8) If–

(a) the owner of the vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in subsection (9); and

(b) the constable who conducted the search made a record, the person who made the request shall be entitled to a copy.

(9) The period mentioned in subsections (7) and (8) is the period of 12 months beginning with the date on which the search was made.

(10) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels, aircraft and hovercraft.

Road checks.

5.(1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying–

(a) a person who has committed an offence other than a road traffic offence;

(b) a person who is a witness to such an offence;

(c) a person intending to commit such an offence; or

(d) a person who is unlawfully at large.

(2) For the purposes of this section a road check consists of the exercise in a locality of the power conferred by section 53(3) of the Traffic Act in such a way as to stop during the period for which its exercise in that way in that locality continues all vehicles or all vehicles selected by any criterion.

(3) Subject to subsection (5) there may only be such a road check if a police officer of the rank of Chief Inspector or above authorises it in writing.

(4) An officer may only authorise a road check under subsection (3)–

(a) for the purpose specified in subsection (1)(a), if he has reasonable grounds–

(i) for believing that the offence is a serious arrestable offence; and

(ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;

(b) for the purpose specified in subsection (1)(b), if he has reasonable grounds for believing that the offence is a serious arrestable offence;

(c) for the purpose specified in subsection (1)(c), if he has reasonable grounds–

(i) for believing that the offence would be a serious arrestable offence; and

(ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;

(d) for the purpose specified in subsection (1)(d), if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

(5) An officer below the rank of Chief Inspector may authorise such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in subsection (1).

(6) If an authorisation is given under subsection (5), it shall be the duty officer who gives it–

(a) to make a written record of the time at which he gives it; and

(b) to cause an officer of the rank of Chief Inspector or above to be informed that it has been given.

(7) The duties imposed by subsection (6) shall be performed as soon as is practicable to do so.

(8) An officer to whom a report is made under subsection (6) may, in writing, authorise the road check to continue.

(9) If such an officer considers that the road check should not continue, he shall record in writing–

(a) the fact that it took place; and

(b) the purpose for which it took place.

(10) An officer giving an authorisation under this section shall specify the locality in which vehicles are to be stopped.

(11) An officer giving an authorisation under this section, other than an authorisation under section (5)–

(a) shall specify a period, not exceeding seven days, during which the road check may continue; and

(b) may direct that the road check–

(i) shall be continuous; or

(ii) shall be conducted at specified times, during that period.

(12) If it appears to an officer of the rank of Chief Inspector or above that a road check ought to continue beyond the period for which it has been authorised he may, from time to time, in writing specify a further period, not exceeding seven days, during which it may continue.

(13) Every written authorisation shall specify–

(a) the name of the officer giving it;

(b) the purpose of the road check; and

(c) the locality in which vehicles are to be stopped.

(14) The duties to specify the purposes of a road check imposed by subsections (9) and (13) include duties to specify any relevant serious arrestable offence.

(15) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it stopped shall be entitled to obtain a written statement of the purpose of the road check if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(16) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1) above.

Reports of recorded searches and road checks.

6.(1) The Commissioner of Police shall make an annual report that contains information–

(a) about searches recorded under section 4 which have been carried out during the period to which it relates; and

(b) about road checks authorised during that period under section 5.

(2) The information about searches shall not include information about specific searches but shall include–

(a) the total numbers of searches in each month during the period to which the report relates–

(i) for stolen articles;

(ii) for offensive weapons; and

(iii) for other prohibited articles.

(b) the total number of persons arrested in each such month in consequence of searches of each of the descriptions specified in paragraph (a)(i) to (iii) above.

(3) The information about road checks shall include information–

(a) about the reason for authorising each road check; and

(b) about the result of each of them.

PART II
POWERS OF ENTRY, SEARCH AND SEIZURE

Search Warrants

Power of justice of the peace to authorise entry and search of premises.

7.(1) If on application made by a constable the stipendiary magistrate or a justice of the peace is satisfied that there are reasonable grounds for believing–

(a) that a serious arrestable offence has been committed; and

(b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and

(c) that the material is likely to be relevant evidence; and

(d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(e) that any of the conditions specified in subsection (3) 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).

(3) The conditions mentioned in subsection (1)(e) 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 evidence;

(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) In this Act "relevant evidence", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

Special provisions as to access.

8.(1) A constable may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application to the magistrates' court.

(2) Any Act passed before this Act under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a constable shall cease to have effect so far as it relates to the authorisation of searches–

(a) for items subject to legal privilege; or

(b) for excluded material; or

(c) for special procedure material consisting of documents or records other than documents.

Meaning of "items subject to legal privilege".

9.(1) Subject to subsection (2), in this Act "items subject to legal privilege" means–

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made–

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of "excluded material".

10.(1) Subject to the following provisions of this section, in this Act "excluded material" means–

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists–

(i) of documents; or

(ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject–

(a) to an express or implied undertaking to hold it in confidence; or

(b) to a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment contained in an Act passed after this Act.

(3) A person holds journalistic material in confidence for the purposes of this section if–

(a) he holds it subject to such an undertaking, restriction or obligation; and

(b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

Meaning of "personal records".

11. In this part of this Act "personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating–

(a) to his physical or mental health;

(b) to spiritual counseling or assistance given or to be given to him; or

(c) to counseling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who–

(i) by reason of his office or occupation has responsibilities for his personal welfare; or

(ii) by reason of an order of a court has responsibilities for his supervision.

Meaning of "journalistic material".

12.(1) Subject to subsection (2), in this Act "journalistic material" means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Act if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

Meaning of "special procedure material".

13.(1) In this Act "special procedure material" means–

(a) material to which subsection (2) applies; and

(b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this section, this subsection applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who–

(a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and

(b) holds it subject–

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction or obligation such as is mentioned in section 10(2)(b).

(3) Where material is acquired–

(a) by an employee from his employer and in the course of his employment; or

(b) by a company from an associated company as defined in the Companies (Consolidated Accounts) Act 1998,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

Search warrants – safeguards.

14.(1) This section and section 15 have effect in relation to the issue to constables under any enactment contained in an Act passed after this Act, of warrants to enter and search premises; and an entry on or search of premises

under a warrant is unlawful unless it complies with this section and section 15.

(2) Where a constable applies for any such warrant, it shall be his duty–

(a) to state–

(i) the ground on which he makes the application; and

(ii) the enactment under which the warrant would be issued;

(b) to specify the premises which it is desired to enter and search; and

(c) to identify, so far as is practicable, the articles or persons to be sought.

(3) An application for such a warrant shall be made ex parte and supported by an information in writing.

(4) The constable shall answer on oath any question that the stipendiary magistrate, justice of the peace or judge hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant–

(a) shall specify–

(i) the name of the person who applies for it;

(ii) the date on which it was issued;

(iii) the enactment under which it is issued;

(iv) the premises to be searched; and

(b) shall identify, so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant.

(8) The copies shall be clearly certified as copies.

Search Warrants.

15.(1) A warrant to enter and search premises may be executed by any constable.

(2) Such a warrant may authorise persons to accompany any constable who is executing it.

(3) A person so authorised has the same powers as the constable whom he accompanies in respect of–

(a) the execution of the warrant, and

(b) the seizure of anything which the warrant relates.

(4) But he may exercise those powers only in the company, and under the supervision, of a constable.

(5) Entry and search under a warrant must be within one month from the date of its issue.

(6) Entry and search under a warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(7) Where the occupier of premises which are to be entered and searched is present at the time when a constable seeks to execute a warrant to enter and search them, the constable–

(a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;

(b) shall produce the warrant to him; and

(c) shall supply him with a copy of it.

(8) Where–

(a) the occupier of such premises is not present at the time when a constable seeks to execute such a warrant; but

(b) some other person who appears to the constable to be in charge of the premises is present,

subsection (7) above shall have effect as if any reference to the occupier were a reference to that other person.

(9) If there is no person present who appears to the constable to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(10) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(11) A constable executing a warrant shall make an endorsement on it stating—

(a) whether the articles or persons sought were found; and

(b) whether any articles were seized, other than articles which were sought.

(12) A warrant which—

(a) has been executed; or

(b) has not been executed within the time authorised for its execution,

shall be returned—

(i) if it was issued by the stipendiary magistrate or a justice of the peace, to the Clerk to the Magistrates' Court; and

(ii) if it was issued by a judge, to the Registrar of the Supreme Court.

(13) A warrant which is returned under subsection (12) above shall be retained for 12 months from its return—

(a) by the Clerk to the Magistrates' Court if it was returned under paragraph (i) of that subsection; and

(b) by the Registrar of the Supreme Court, if it was returned under paragraph (ii).

(14) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

Entry for purpose of arrest etc..

16.(1) Subject to the following provisions of this section, and without prejudice to any other enactment, a constable may enter and search any premises for the purpose–

(a) of executing–

(i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or

(ii) a warrant of commitment;

(b) of arresting a person for an arrestable offence;

(c) of recapturing any person whatsoever who is unlawfully at large and whom he is pursuing; or

(d) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in paragraph (d) of subsection (1), the powers of entry and search conferred by this section–

(a) are only exercisable if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises; and

(b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search-

(i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and

(ii) any such dwelling in which the constable has reasonable grounds for believing that the person whom he is seeking may be.

(3) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.

(4) Subject to subsection (5), all the rules of common law under which a constable has power to enter premises without a warrant are hereby abolished.

(5) Nothing in subsection (4) affects any power of entry to deal with or prevent a breach of the peace.

Entry and search after arrest.

17.(1) Subject to the following provisions of this section, a constable may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates–

(a) to that offence; or

(b) to some other arrestable offence which is connected with or similar to that offence.

(2) A constable may seize and retain anything for which he may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5), the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has authorized them in writing.

(5) A constable may conduct a search under subsection (1)–

(a) before the person is taken to a police station or released on bail; and

(b) without obtaining an authorisation under subsection (4),

if the condition in subsection (6) is satisfied.

(6) The condition is that the presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.

(7) If a constable conducts a search by virtue of subsection (5), he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.

(8) An officer who–

(a) authorises a search; or

(b) is informed of a search under subsection (7), shall make a record in writing–

(i) of the grounds for the search; and

(ii) of the nature of the evidence that was sought.

(9) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

Seizure etc.

General power of seizure etc..

18.(1) The powers conferred by subsections (2),(3) and (4) are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing–

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing-

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The constable may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form if he has reasonable grounds for believing–

(a) that–

(i) it is evidence in relation to an offence which he is investigating or any other offence; or

(ii) it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be

taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

Extension of powers of seizure to computerised information.

19.(1) Every power of seizure which is conferred by an enactment to which this section applies on a constable who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information stored in any electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(2) This section applies–

(a) to any enactment contained in an Act passed before this Act;

(b) to sections 7 and 17; and

(c) to any enactment contained in an Act passed after this Act.

Access copying and retention.

20.(1) A constable who seizes anything in the exercise of power conferred by any enactment, including an enactment contained in an Act passed after this Act, shall, if so requested by a person showing himself–

(a) to be the occupier of premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8), if a request for permission to be granted access to anything which–

(a) has been seized by a constable; and

(b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a constable.

(4) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

(a) allow the person who made the request access to it under the supervision of a constable for the purpose of photographing or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) A constable may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4).

(6) Where anything is photographed or copied under subsection (4) (b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

(a) that investigation;

(b) the investigating of an offence other than the offence for the purposes of investigating which the thing was seized; or

(c) any criminal proceedings which may be brought as a result of–

(i) the investigation of which he is in charge; or

(ii) any such investigation as is mentioned in paragraph (b) above.

(9) The references to a constable in subsections (1), (2), (3)(a) and (5) include a person authorized under section 15 (2) to accompany a constable executing a warrant.

(10) Subject to subsection (4), anything which has been seized by a constable or taken away by a constable following a requirement made by virtue of sections 18 or 19 may be retained so long as is necessary in all the circumstances.

(11) Without prejudice to the generality of subsection (10)–

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (13)–

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(12) Nothing seized on the ground that it may be used–

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of the court or is in the custody of a court but has been released on bail.

(13) Nothing may be retained for either of the purposes mentioned in subsection (11)(a) if a photograph or copy would be sufficient for that purpose.

(14) The reference in subsection (10) to anything seized by a constable includes anything seized by a person authorized under section 15(2) to accompany a constable executing a warrant.

Meaning of "premises" etc..

21. In this Act–

"premises" includes any place and, in particular, includes–

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation;

(c) any tent or movable structure.

PART III
ARREST

Arrest without warrant for arrestable and other offences.

22.(1) The powers of summary arrest conferred by the following subsections shall apply–

(a) to offences for which the sentence is fixed by law;

(b) to offences for which a person of 18 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years; and

(c) the offences listed in Schedule 1,

and in this Act "arrestable offence" means any such offence.

(2) Schedule 1 (which lists the offences referred to in subsection (1)(c)) shall have effect.

(3) The powers of summary arrest conferred by the following subsections shall also apply to the offences of–

(a) conspiring to commit any of the offences to which subsection (1) applies;

(b) attempting to commit any such offence other than one which is a summary offence;

(c) inciting, aiding, abetting, counselling or procuring the commission of any such offence,

and such offences are also arrestable offences for the purposes of this Act.

(4) Any person may arrest without a warrant–

(a) anyone who is in the act of committing an arrestable offence;

(b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(5) Where an arrestable offence has been committed, any person may arrest without a warrant–

(a) anyone who is guilty of the offence;

(b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(6) Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(7) A constable may arrest without a warrant–

(a) anyone who is about to commit an arrestable offence;

(b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

General arrest conditions.

23.(1) Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this section, "the relevant person" means any person whom the constable has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are–

(a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the constable;

(b) that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;

(c) that–

(i) the relevant person has failed to furnish a satisfactory address for service; or

(ii) the constable has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;

(d) that the constable has reasonable grounds for believing that arrest is necessary to prevent the relevant person–

(i) causing physical harm to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency; or

(v) causing an unlawful obstruction of the highway;

(e) that the constable has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

(4) For the purposes of subsection (3) an address is a satisfactory address for service if it appears to the constable–

(a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or

(b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.

(5) Nothing in subsection (3)(d) authorises the arrest of a person under sub-paragraph (iv) of that paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

(6) This section shall not prejudice any power of arrest conferred apart from this section.

Repeal of statutory powers of arrest without warrant or order.

24. So much of any Act passed before this Act as enables a constable–

(a) to arrest a person for an offence without a warrant; or

(b) to arrest a person otherwise than for an offence without a warrant or an order of a court,

shall cease to have effect.

Fingerprinting of certain offenders.

25.(1) If a person–

(a) has been convicted of a recordable offence;

(b) has not at any time been in police detention for the offence; and

(c) has not had his fingerprints taken–

(i) in the course of the investigation of the offence by the police; or

(ii) since the conviction;

any constable may at any time not later than one month after the date of the conviction require him to attend a police station in order that his fingerprints may be taken.

(2) Where a person convicted of a recordable offence has already had his fingerprints taken as mentioned in paragraph (c) of subsection (1), that fact (together with any time when he has been in police detention for the offence) shall be disregarded for the purposes of that subsection if–

(a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or

(b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(3) Subsections (1) and (2) apply, where a person has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted, as they apply where a person has been convicted of an offence, and references in this section to a conviction shall be construed accordingly.

(4) A requirement under subsection (1)–

(a) shall give the person a period of at least 7 days within which he must so attend; and

(b) may direct him to so attend at a specified time of day or between specified times of day.

(5) Any constable may arrest without warrant a person who has failed to comply with a requirement under subsection (1).

Information to be given on arrest.

26.(1) Subject to subsection (5), when a person is arrested otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.

(2) Where a person is arrested by a constable subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where a person is arrested by a constable, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing is this section is to be taken to require a person to be informed–

(a) that he is under arrest; or

(b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

Voluntary attendance at police station etc..

27. Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested–

(a) he shall be entitled to leave at will unless he is placed under arrest;

(b) he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will.

Arrest elsewhere than at police station.

28.(1) Subject to the following provisions of this section, where a person

(a) is arrested by a constable for an offence; or

(b) is taken into custody by a constable after being arrested for an offence by a person other than a constable;

at any place other than a police station he shall be taken to a police station by a constable as soon as practicable after the arrest.

(2) A person arrested by a constable at a place other than a police station shall be released if a constable is satisfied, before the person arrested reaches a police station, that there are no grounds for keeping him under arrest.

(3) A constable who releases a person under subsection (2) shall record the fact that he has done so.

(4) The constable shall make the record as soon as is practicable after the release.

(5) Nothing in subsection (1) shall prevent a constable delaying taking a person who has been arrested to a police station if the presence of that person elsewhere is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(6) Where there is a delay in taking a person who has been arrested to a police station after his arrest, the reasons for the delay shall be recorded when he first arrives at a police station.

Arrest for further offence.

29. Where—

(a) a person—

(i) has been arrested for an offence; and

(ii) is at a police station in consequence of that arrest; and

(b) it appears to a constable that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

Search upon arrest.

30.(1) A constable may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) Subject to subsections (3) to (5), a constable shall also have power in any such case–

(a) to search the arrested person for anything–

(i) which he might use to assist him to escape from lawful custody;

(ii) which might be evidence relating to an offence; and

(b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

(3) The power to search conferred by subsection (2) is only a power to search to the extent that it is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred by this section to search a person are not to be construed as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves, but they do authorise a search of a person's mouth.

(5) A constable may not search a person in the exercise of the power conferred by subsection (2)(a) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph.

(6) A constable may not search premises in the exercise of the power conferred by subsection (2)(b) unless he has reasonable grounds for

believing that there is evidence for which a search is permitted under that paragraph on premises.

(7) In so far as the power of search conferred by subsection (2)(b) relates to premises consisting of two or more separated dwellings,, it is limited to a power to search–

(a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) A constable searching a person in exercise of the power conferred by subsection (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(9) A constable searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing-

(a) that he might use it to assist him to escape from lawful custody; or

(b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

PART IV
DETENTION

Detention – conditions and duration

Limitations on police detention.

31.(1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Act.

(2) Subject to subsection (3), if at any time a custody officer–

(a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and

(b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part of this Act,

it shall be the duty of the custody officer, subject to subsection (4), to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at the police station where his detention was authorised or, if it was authorised at more than one station, a custody officer at the station where it was last authorised.

(4) A person who appears to the custody officer to have been unlawfully at large when he was arrested is not to be released under subsection (2).

(5) A person whose release is ordered under subsection (2) shall be released without bail unless it appears to the custody officer that there is a need for further investigation of any matter in connection with which he was detained at any time during the period of his detention and if it so appears, he shall be released on bail.

(6) For the purpose of this Part of this Act a person who returns to a police station to answer to bail or is arrested under section 44 shall be treated as arrested for an offence and the offence in connection with which he was granted bail shall be deemed to be that offence.

Police stations.

32. The Commissioner of Police shall designate the police stations which are to be the stations to be used for the purpose of detaining arrested persons.

Custody officers at police stations.

33.(1) One or more custody officers shall be appointed for each police station.

(2) A custody officer for a police station shall be appointed by the Commissioner of Police or by such other officer not below the rank of Chief Inspector as the Commissioner may direct.

(3) No officer may be appointed a custody officer unless he is of at least the rank of a sergeant.

(4) An officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(5) Subject to the following provisions of this section and to section 36(2), none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(6) Nothing in subsection (5) is to be taken to prevent a custody officer–

(a) performing any function assigned to custody officers–

(i) by this Act; or

(ii) by a code of practice issued under this Act;

(b) carrying out the duty imposed on custody officers by section 36;

(c) doing anything in connection with the identification of a suspect; or

(d) doing anything under sections 64 and 65 of the Traffic Act 2005.

(7) References to a custody officer in the following provisions of this Act include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (4).

Duties of custody officer before charge.

34.(1) Where a person is arrested for an offence–

(a) without a warrant; or

(b) under a warrant not endorsed for bail,

the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where a custody officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) shall not apply where the person arrested is, at the time when the written record is made–

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Subject to section 38(5), if the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested–

(a) shall be charged; or

(b) shall be released without charge, either on bail or without bail.

(8) Where–

(a) a person is released under subsection (7)(b); and

(b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the custody officer so to inform him.

(9) If the person arrested is not in a fit state to be dealt with under subsection (7), he may be kept in police detention until he is.

(10) The duty imposed on the custody officer under subsection (1) shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

Duties of custody officer after charge.

35.(1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall order his release from police detention, either on bail or without bail, unless–

(a) if the person arrested is not a juvenile–

(i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;

(ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer bail;

(iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested

is necessary to prevent him from committing an offence;

(iv) in the case of a person who has attained the age of 18, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under section 58.

(v) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of damage to property;

(vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences of a particular offence; or

(vii) the custody officer has reasonable grounds for believing that the detention of the person arrested is for his own protection;

(b) if he is a juvenile–

(i) any of the requirements of paragraph (a) is satisfied; or

(ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.

(2) If the release of a person arrested is not required by subsection (1) the custody officer may authorise him to be kept in police detention by virtue of subsection (1)(a)(iv) after the end of the period of six hours beginning when he was charged with the offence.

(3) The custody officer , in taking the decisions required by subsection (1)(a) and (b) (except (a)(i) and (v) and b(ii)), shall have regard to the same

considerations as those which a court is required to have regard to in taking the corresponding decisions.

(4) Where a custody officer authorises a person who has been charged to be kept in police detention he shall, as soon as practicable, make a written record of the grounds for detention.

(5) Subject to subsection (6) the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the ground for his detention.

(6) Subsection (5) shall not apply where the person charged is, at the time when the written record is made-

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Where a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1) the custody officer shall, unless he certifies–

(a) that, by reason of such circumstances as are specified in the certificates, it is impracticable for him to do so; or

(b) in the case of an arrested juvenile who has attained the age of 12 years that no secure accommodation is available and that keeping him in other accommodation would not be adequate to protect the public from serious harm from him,

secure that the arrested juvenile is moved to segregated accommodation in the prison.

(8) In this section any reference, in relation to an arrested juvenile charged with a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.

(9) A certificate made under subsection (7) in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter.

Responsibilities in relation to persons detained.

36.(1) Subject to subsections (2) and (4), it shall be the duty of the custody officer at a police station to ensure–

(a) that all persons in police detention at that station are treated in accordance with this Act and any code of practice issued under it and relating to the treatment of persons in police detention; and

(b) that all matters relating to such persons which are required by this Act or by such codes of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the custody officer, in accordance with any code of practice issued under this Act transfers or permits the transfer of a person in police detention–

(a) to the custody of a police officer investigating an offence for which that person is in police detention;

(b) to the custody of an officer who has charge of that person outside the police station,

the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1)(a); and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Act and of any such codes of practice as are mentioned in subsection (1).

(3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this section and the codes of practice have been complied with while that person was in his custody.

(4) If an arrested juvenile is moved to the prison under section 35 (7), the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1).

(5) Where–

(a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and

(b) the directions are at variance–

(i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Act; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to an officer of the rank of Chief Inspector or above who is responsible for the police station for which the custody officer is acting as custody officer.

Review of police detention.

37.(1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section–

(a) in the case of a person who has been arrested and charged, by the custody officer; and

(b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.

(2) The officer to whom it falls to carry out a review is referred to in this section as "review officer".

(3) Subject to subsection (4)–

(a) the first review shall not be later than six hours after the detention was first authorised;

(b) the second review shall not be later than nine hours after the first;

(c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed–

(a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3), it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of paragraph (a)–

(i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or

(ii) if at that time no review officer is readily available.

(5) If a review is postponed under subsection (4) it shall be carried out as soon as practicable after the latest time specified for it in subsection (3).

(6) If a review is carried out after postponement under subsection (4), the fact that it was carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(7) The review officer shall record the reasons for any postponement of a review in the custody record.

(8) Subject to subsection (9), where the person whose detention is under review has not been charged before the time of the review, section 34 (1) to (6) shall have effect in relation to him, but with the modifications specified in subsection (9).

(9) The modifications are–

(a) the substitution of references to the person whose detention is under review for references to the person arrested;

(b) the substitution of references to the review officer for references to the custody officer; and

(c) in subsection (6), the insertion of the following paragraph after paragraph (a)–

"(aa) asleep;"

(10) Where a person has been kept in police detention by virtue of section 34(9), section 34(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(11) Where the person whose detention is under review has been charged before the time of the review, section 35(1) to (7) shall have effect in relation to him, but with the modification specified in subsection (12).

(12) The modifications are–

(a) the substitution of a reference to the person whose detention is under review for any reference to the person arrested or to the person charged; and

(b) in subsection (6), the insertion of the following paragraph after paragraph (a)–

"(aa) asleep;"

(13) Where–

(a) an officer of higher rank than the custody officer gives directions relating to a person in police detention;

(b) the directions are at variance–

(i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part of this Act; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(14) Before determining whether to authorise a person's continued detention the review officer shall give–

(a) that person (unless he is asleep); or

(b) any solicitor representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(15) Subject to subsection (16), the person whose detention is under review or his solicitor may make representations under sub-section (14) either orally or in writing.

(16) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

Limits on period of detention without charge.

38.(1) Subject to the following provisions of this section and to sections 39 and 40, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Act referred to as "relevant time")–

(a) in the case of a person to whom this section applies, shall be–

(i) the time at which that person arrives at the relevant police station, or

(ii) the time 24 hours after the time of that person's arrest, whichever is the earlier;

(b) in the case of a person arrested outside Gibraltar, shall be–

(i) the time at which that person arrives at the first police station in Gibraltar; or

(ii) the time 24 hours after the time of that person's entry into Gibraltar, whichever is the earlier;

(c) in the case of a person who–

(i) attends voluntarily at a police station; or

(ii) accompanies a constable to a police station without having been arrested, and is arrested at the police station,

the time of his arrest;

(d) in any other case shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Subsection (2) shall have effect in relation to a person arrested under section 29 as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(4) When a person who is in a police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part of this Act but any other time while he is in hospital or on his way there or back shall not be so included.

(5) Subject to subsection (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(6) Subsection (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with section 39 or 40.

(7) A person released under subsection (5) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 44.

Authorisation of continued detention.

39.(1) Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that–

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is a serious arrestable offence;

(c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer such as is mentioned in subsection (1) has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 36 hours after that time if the conditions specified in subsection (1) are still satisfied when he gives the authorisation.

(3) If it is proposed to transfer a person in police detention to another police station, the officer determining whether or not to authorise keeping him in detention under section (1) shall have regard to the distance and the time the journey would take.

(4) No authorisation under subsection (1) shall be given in respect of any person–

(a) more than 24 hours after the relevant time; or

(b) before the second review of his detention under section 37 has been carried out.

(5) Where an officer authorises the keeping of a person in police detention under subsection (1), it shall be his duty–

(a) to inform that person of the grounds of his continued detention; and

(b) to record the grounds in that person's custody record.

(6) Before determining whether to authorise the keeping of a person in detention under subsection (1) or (2), an officer shall give–

(a) that person; or

(b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(7) Subject to subsection (8), the person in detention or his solicitor may make representations under subsection (6) above either orally or in writing.

(8) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(9) Where–

(a) an officer authorises the keeping of a person in detention under sub-section (1); and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by section 53 or 54,

the officer–

(i) shall inform him of that right;

(ii) shall decide whether he should be permitted to exercise it;

(iii) shall record the decision in his custody record; and

(iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(10) Where an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2), he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless–

(a) he has been charged with an offence; or

(b) his continued detention is authorised or otherwise permitted in accordance with section 40.

(11) A person released under subsection (10) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 44.

Warrants of further detention.

40.(1) Where on an application on oath made by a constable and supported by a fiat of the Attorney General, the magistrates' court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court may not hear an application for a warrant of further detention unless the person to whom the application relates–

(a) has been furnished with a copy of the fiat; and

(b) has been brought before the court for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented, but wishes to be so represented–

(a) the court shall adjourn the hearing to enable him to obtain representation; and

(b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this section or section 41 if–

(a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is a serious arrestable offence; and

(c) the investigation is being conducted diligently and expeditiously.

(5) Subject to subsection (7), an application for a warrant of further detention may be made–

(a) at any time before the expiry of 36 hours after the relevant time; or

(b) in a case where–

(i) it is not practicable for the magistrates' court to which the application will be made to sit at the expiry of 36 hours after the relevant time; but

(ii) the court will sit during the 6 hours following the end of that period,

at any time before the expiry of the said 6 hours.

(6) In a case to which subsection (5)(b) applies–

(a) the person to whom the application relates may be kept in police detention until the application is heard; and

(b) the custody officer shall make a note in that person's custody record—

(i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and

(ii) of the reason why he was so kept.

(7) If—

(a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and

(b) it appears to the magistrates' court that it would have been reasonable for the police to make it before the expiry of that period,

the court shall dismiss the application.

(8) Where on an application such as is mentioned in subsection (1) a magistrates' court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it shall be its duty—

(a) to refuse the application; or

(b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(9) The person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention shall—

(a) state the time at which it is issued—

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to subsection (12), the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it.

(12) The period shall not be longer than 36 hours.

(13) If it is proposed to transfer a person in police detention to a police station other than that in which he is detained when the application for a warrant of further detention is made, the court hearing the application shall have regard to the distance and the time the journey would take.

(14) Any fiat submitted in support of an application under this section shall state–

(a) the nature of the offence for which the person to whom the application relates has been arrested;

(b) the general nature of the evidence on which that person was arrested;

(c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;

(d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

(15) Where an application under this section is refused the person to whom the application relates shall forthwith be charged or, subject to subsection (16) released, either on bail or without bail.

(16) A person need not be released under subsection (15)–

(a) before the expiry of 24 hours after the relevant time; or

(b) before the expiry of any longer period for which his continued detention is or has been authorised under section 39.

(17) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

(18) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(19) A person released under subsection (18) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release: but this subsection does not prevent an arrest under section 44.

Extension of warrants of further detention.

41.(1) On an application on oath made by a constable and supported by a fiat a magistrates' court may extend a warrant of further detention issued under section 40 if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3), the period for which a warrant of further detention may be extended shall be such a period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not–

(a) be longer than 36 hours; or

(b) end later than 96 hours after the relevant time.

(4) Where a warrant of further detention has been extended under subsection (1), or further extended under this subsection, for a period ending before 96 hours after the relevant time, on an application such as is mentioned in that subsection the magistrates' court may further extend the warrant if it is satisfied as there mentioned; and subsection (2) and (3) apply to such further extensions as they apply to extensions under subsection (1).

(5) A warrant of further detention shall, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2), (3) and (14) of section 40 shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8), released, either on bail or without bail.

(8) A person need not be released under subsection (7) before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier application made under this section.

Detention before charge – supplementary.

42.(1) In sections 40 and 41of this Act "magistrates court" means a court consisting of the stipendiary magistrate or two or more justices of the peace sitting otherwise than in open court.

(2) Any reference in this Part of this Act to a period of time or a time of day is to be treated as approximate only.

Detention after charge.

43.(1) Where a person–

(a) is charged with an offence; and

(b) after being charged–

(i) is kept in police detention; or

(ii) is in the prison in pursuance of arrangements made under section 35(7),

he shall be brought before the magistrates' court in accordance with the provisions of this section.

(2) He shall be brought before the court as soon as practicable and in any event not later than the first sitting after he is charged with the offence.

(3) If no magistrates' court is due to sit either on the day on which he is charged or on the next day, the custody officer for the police station at which he was charged shall inform the clerk to the justices that there is a person to whom subsection (2) applies.

(4) Where the day next following the day on which he was charged is a public holiday or a Sunday the duty of the clerk under subsection (3)is a duty to arrange for a magistrates' court to sit not later than the first day after the relevant day which is not one of those days.

(5) Nothing in this section requires a person who is in hospital to be brought before a court if he is not well enough.

Power of arrest for failure to answer to police bail.

44.(1) A constable may arrest without a warrant any person who, having been released on bail under this Part of this Act subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.

(2) A person who is arrested under this section shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(3) For the purpose of–

(a) section 28 (subject to the obligation in subsection (2)); and

(b) section 29,

an arrest under this section shall be treated as an arrest for an offence.

Bail after arrest.

45.(1) Nothing in this Act shall prevent the re-arrest without warrant of a person released on bail subject to a duty to attend at a police station if new evidence justifying a further arrest has come to light since his release.

(2) Subject to subsection (4), in this Part of this Act references to "bail" are references to bail subject to a duty–

(a) to appear before the magistrates' court at such time and such place; or

(b) to attend at such police station at such time,

as the custody officer may appoint.

(3) Where a custody officer grants bail to a person subject to a duty to appear before the magistrates' court, he shall appoint for the appearance-

(a) a date which is not later than the first sitting of the court after the person is charged with the offence; or

(b) where he is informed by the justices' clerk that the appearance cannot be accommodated until a later date, that later date.

(4) Where a custody officer has granted bail to a person subject to a duty to appear at a police station, the custody officer may give notice in writing to that person that his attendance at the police station is not required.

Time of bail and re-arrest.

46.(1) Where a person who has been granted bail and either has attended at the police station in accordance with the grant of bail or has been arrested under section 44 is detained at a police station any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part of this Act.

(2) Where a person who was released on bail subject to a duty to attend at a police station is re-arrested, the provisions of this Part of this Act shall apply to him as they apply to a person arrested for the first time; but this subsection does not apply to a person who is arrested under section 44 or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by section 31(6) to have been arrested for an offence).

Records of detention.

47.(1) The Police shall keep written records showing on an annual basis–

(a) the number of persons kept in police detention for more than 24 hours and subsequently released without charge;

(b) the number of applications for warrants of further detention and the results of the applications; and

(c) in relation to each warrant of further detention–

(i) the period of further detention authorised by it;

(ii) the period which the person named in it spent in police detention on its authority; and

(iii) whether he was charged or released without charge.

(2) Every annual report made by the Commissioner of Police shall contain information about the matters mentioned in subsection (1) in respect of the period to which the report relates.

Savings.

48. Nothing in this Part of this Act shall affect any right of a person in police detention to apply for a writ of habeas corpus or other prerogative remedy.

PART V
QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Abolition of certain powers of constables to search persons.

49. There shall cease to have effect any Act passed before this Act in so far as it authorises–

(a) any search by a constable of a person in police detention at a police station; or

(b) an intimate search of a person by a constable,

and any rule of common law which authorises a search such as is mentioned in paragraph (a) or (b) above is abolished.

Searches of detained persons.

50.(1) The custody officer at a police station shall ascertain and record or cause to be recorded everything which a person has with him when he is-

(a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or

(b) arrested at the station or detained there, as a person falling within section 31(6), under section 34.

(2) Subject to subsection (3), a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.

(3) Clothes and personal effects may only be seized if the custody officer-

(a) believes that the person from whom they are seized may use them–

(i) to cause physical injury to himself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist him to escape; or

(b) has reasonable grounds for believing that they may be evidence relating to an offence.

(4) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is-

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him.

(5) Subject to subsection (9), a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under subsection (1) and to the extent that the custody officer considers necessary for that purpose.

(6) 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 (3)(a).

(7) Subject to subsection (8), a constable may seize and retain, or cause to be seized and retained, anything found on such a search.

(8) A constable may only seize clothes and personal effects in the circumstances specified in subsection (3).

(9) An intimate search may not be conducted under this section.

(10) A search under this section shall be carried out by a constable.

(11) The constable carrying out a search shall be of the same sex as the person searched.

Searches and examinations to ascertain identity.

51.(1) If an officer of at least the rank of inspector authorises it, a person who is detained in a police station may be searched or examined, or both–

(a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or

(b) for the purpose of facilitating the ascertainment of his identity.

(2) An officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if–

(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or

(b) it is not practicable to obtain such consent.

(3) An officer may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if–

(a) the person in question has refused to identify himself; or

(b) the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(4) An officer may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Any identifying mark found on a search or examination under this section my be photographed–

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examinations, or to take the photograph, are–

(a) constables; and

(b) persons who (without being constables) are designated for the purposes of this section by an officer of the rank of Chief Inspector or above;

and section 83 (use of force) applies to the exercise by a person falling within paragraph (b) of the powers conferred by the preceding provisions of this section as it applies to the exercise of those powers by a constable.

(7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this section.

(9) A photograph taken under this section–

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In this section–

(a) the reference to crime includes a reference to any conduct which–

(i) constitutes one or more criminal offences (whether under the law of Gibraltar or of a country or territory outside Gibraltar; or

(ii) is, or corresponds to, any conduct which, if it all took place in Gibraltar, would constitute one or more criminal offences;

and

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Gibraltar of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Gibraltar.

(11) In this section–

(a) references to ascertaining a person's identity include references to showing that he is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this section "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

Intimate searches.

52.(1) Subject to the following provisions of this section if an officer of at least the rank of Chief Inspector has reasonable grounds for believing–

(a) that a person who has been arrested and is in police detention may have concealed on him anything which–

(i) he could use to cause physical injury to himself or others; and

(ii) he might so use while he is in police detention or in the custody of a court; or

(b) that such a person–

(i) may have a Class A drug concealed on him;

(ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) An officer may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) An officer may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4), an intimate search shall be by way of examination by a suitably qualified person unless an officer of at least the rank of inspector considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in subsection (5) shall be carried out by a constable.

(7) A constable may not carry out an intimate search of a person of the opposite sex.

(8) No intimate search may be carried out except–

(a) at a police station;

(b) at a hospital;

(c) at a registered medical practitioner's surgery; or

(d) at some other place used for medical purposes.

(9) An intimate search which is only a drug offence search may not be carried out at a police station.

(10) If an intimate search of a person is carried out, the custody record relating to him shall state–

(a) which parts of his body were searched; and

(b) why they were searched.

(11) The information required to be recorded by subsection (10) shall be recorded as soon as practicable after the completion of the search.

(12) The custody officer at a police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained–

(a) if he believes that the person from whom it is seized may use it–

(i) to cause physical injury to himself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist him to escape; or

(b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is–

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him.

(14) Every annual report made by the Commissioner of Police shall contain information about searches which have been carried out during the period to which it relates.

(15) The information about such searches shall include–

(a) the total number of searches;

(b) the number of searches conducted by way of examination by a suitably qualified person;

(c) the number of searches not so conducted but conducted in the presence of such a person; and

(d) the result of the searches carried out.

(16) The information shall also include, as separate items–

(a) the total number of drug offence searches; and

(b) the result of those searches.

Right to have someone informed when arrested.

53.(1) Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

(2) Delay is only permitted–

(a) in the case of a person who is in police detention for a serious arrestable offence; and

(b) if an officer of at least the rank of inspector authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) within 36 hours from the relevant time, as defined in section 38(2).

(4) An officer may give an authorisation under subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Subject to subsection (6), an officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest–

(a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or

(b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence.

(6) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence or an offence to which section 291 applies and the officer has reasonable grounds for believing–

(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 which section 291 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 from or in connection with it will be hindered by telling the named person of the arrest.

(7) If a delay is authorised–

(a) the detained person shall be told the reason for it; and

(b) the reason shall be noted on his custody record.

(8) The duties imposed by subsection (7) shall be performed as soon as is practicable.

(9) The rights conferred by this section on a person at a police station or other premises are exercisable whenever he is transferred from one place to another, and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(10) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay causes to subsist.

Access to legal advice.

54.(1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

(2) Subject to subsection (3), a request under subsection (1) and the time at which it was made shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he must be permitted to consult a solicitor within 36 hours from the relevant time, as defined in section 38(2).

(6) Delay in compliance with a request is only permitted–

(a) in the case of a person who is in police detention for a serious arrestable offence; and

(b) if an officer of at least the rank of superintendent authorises it.

(7) An officer may give an authorisation under subsection (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) Subject to subsection (9), an officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) at the time when the person in police detention desires to exercise it–

(a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or

(b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence.

(9) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence or an offence to which section 291 applies and the officer has reasonable grounds for believing–

(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 which section 291 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 from or in connection with it will be hindered by telling the named person of the arrest.

(10) If delay is authorised–

(a) the detained person shall be told the reason for it; and

(b) the reason shall be noted on his custody record.

(11) The duties imposed by subsection (10) shall be performed as soon as is practicable.

(12) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

Tape-recording of interviews.

55.(1) The Minister shall–

(a) issue a code of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and

(b) make an order requiring the tape-recording of interviews of persons suspected of the commissions of criminal offences, or of such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the code as it has effect for the time being.

(2) An order under subsection (1) shall be published in the Gazette.

Fingerprinting.

56.(1) Except as provided by this section no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a police station.

(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent–

(a) if an officer of at least the rank of Chief Inspector authorises them to be taken; or

(b) if–

(i) he has been charged with an imprisonable offence or informed that he will be reported for such an offence; and

(ii) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) Where a person charged with an imprisonable offence or informed that he will be reported for such an offence has already had his fingerprints taken as mentioned in paragraph (b)(ii) of subsection (3), that fact shall be disregarded for the purposes of that subsection if–

(a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or

(b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question generally).

(5) An officer may only give an authorisation under subsection (3)(a) if he has reasonable grounds–

(a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and

(b) for believing that his fingerprints will tend to confirm or disprove his involvement or will facilitate the ascertainment of his identity (within the meaning of section 51), or both;

but an authorisation shall not be given for the purpose only of facilitating the ascertainment of that person's identity except where he has refused to identify himself or the officer has reasonable grounds for suspecting that he is not who he claims to be.

(6) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or station if–

(a) the court; or

(b) an officer of at least the rank of Chief Inspector,

authorises them to be taken.

(7) A court or officer may only give an authorisation under subsection (6) if–

(a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he is not the same person; or

(b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.

(8) An officer may give an authorisation under subsection (3)(a) or (5) orally or in writing but , if he gives it orally, he shall confirm it in writing as soon as is practicable.

(9) Any person's fingerprints may be taken without the appropriate consent if–

(a) he has been convicted of an offence punishable by imprisonment;

(b) he has been given a caution in respect of such an offence which, at the time of the caution, he has admitted.

(10) In a case where by virtue of subsection (3), (6) or (9) a person's fingerprints are taken without the appropriate consent–

(a) he shall be told the reason before his fingerprints are taken; and

(b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(11) If a person's fingerprints are taken at a police station, whether with or without appropriate consent–

(a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.

(12) If he is detained at a police station when the fingerprints are taken, the reason for taking them and, in the case falling within subsection (11), the fact referred to in paragraph (b) of that subsection shall be recorded on his custody record.

(13) The power to take the fingerprints of a person detained at a police station without the appropriate consent shall be exercisable by any constable.

Intimate samples.

57.(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 Chief Inspector authorises it to be taken; and

(b) if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient–

(a) if a police officer of at least the rank of Chief Inspector authorises it to be taken; and

(b) if the appropriate consent is given.

(3) An officer may only give an authorisation under subsection (1) or (2) if he has reasonable grounds–

(a) for suspecting the involvement of the person from whom the sample is to be taken in an offence punishable by imprisonment; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(4) An officer may give an authorisation under subsection (1) or (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) The appropriate consent must be given in writing.

(6) 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.

(7) The duty imposed by subsection (6)(ii) 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 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 as soon as is practicable after the sample is taken.

(9) If an intimate sample is taken from a person at a police station–

(a) before the sample is taken, an officer shall inform him that it may be the subject of speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.

(10) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (8) or (9) shall be recorded in his custody record.

(11) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(12) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by–

(a) a registered medical practitioner; or

(b) a registered health care professional.

(13) Nothing in this section applies to the taking of a specimen for the purposes of any provisions of sections 64 and 65 of the Traffic Act 2005.

(14) Nothing in this section applies to a person arrested or detained under the Terrorism Act 2005.

Other samples.

58.(1) Except as provided by this section 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 Chief Inspector authorises it to be taken without the appropriate consent.

(4) A non-intimate sample may be taken from a person (whether or not he falls within subsection (3)(a)) without the appropriate consent if–

(a) he has been charged with an offence punishable by imprisonment or informed that he will be reported for such an offence; and

(b) either he has not had a non-intimate sample taken from him in the course of the investigation of the the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of an offence punishable by imprisonment.

(6) An officer may only give an authorisation under subsection (3) if he has reasonable grounds–

(a) for suspecting the involvement of the person from whom the sample is to be taken in an offence punishable by imprisonment; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(7) An officer may give an authorisation under subsection (3) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as it is practicable.

(8) An officer shall not give an authorisation under subsection (3) for the taking from any person of a non-intimate sample consisting of a skin impression if–

(a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and

(b) the impression previously taken is not one that has proved insufficient.

(9) 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–

(i) of the giving of the authorisation; and

(ii) of the grounds for giving it.

(10) The duty imposed by subsection (9)(ii) 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.

(11) If a non-intimate sample is taken from a person by virtue of subsection (3)–

(a) the authorisation by virtue of which it was taken; and

(b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

(12) In a case where by a virtue of subsection (3), (4) or (5) a sample is taken from a person without the appropriate consent–

(a) he shall be told the reason before the sample is taken; and

(b) the reason shall be recorded as soon as practicable after the sample is taken.

(13) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent–

(a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.

(14) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (12) or (13) shall be recorded in his custody record.

(15) The power to take a non-intimate sample from a person without the appropriate consent shall be exercisable by any constable.

(16) Nothing in this section applies to a person arrested or detained under the Terrorism Act 2005.

Fingerprints and samples – supplementary provisions.

59.(1) Where a person has been arrested on suspicion of being involved in an offence punishable by imprisonment or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints or samples or the information derived from samples taken under any power conferred by this Part of this Act from the person may be checked against–

(a) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;

(b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a).

(2) In subsection (1) "relevant law-enforcement authority" means–

(a) The Royal Gibraltar Police;

(b) Customs Department;

(c) the Gibraltar Services Police;

(d) a public authority (not falling within paragraphs (a) to (c)) with functions in Gibraltar which consist of or include the investigation of crimes or the charging of offenders;

(e) any person with functions in any country or territory outside Gibraltar which–

(i) correspond to those of a police force; or

(ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;

(f) any person with functions under any international agreement which consist of or include the investigation of conduct which is–

(i) unlawful under the law of one or more places,

(ii) prohibited by such an agreement, or

(iii) contrary to international law,

or the apprehension of persons guilty of such conduct.

(3) Where–

(a) fingerprints or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) applies; and

(b) that person has given his consent in writing to the use in a speculative search of the fingerprints or of the samples and of information derived from them,

the fingerprints or, as the case may be, those samples and that information may be checked against any of the fingerprints, samples or information mentioned in paragraph (a) or (b) of that subsection.

(4) A consent given for the purposes of subsection (3) above shall not be capable of being withdrawn.

(5) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs, with their roots so

long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(6) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution.

(7) Where–

(a) the power to take a non-intimate sample under section 58 (3) is exercisable in relation to any person who is detained under sections 213 and 214; or

(b) the power to take a non-intimate sample under section 58(4) is exercisable in relation to any person,

the sample may be taken in the place in which he is detained under those sections .

(8) Any constable may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where-

(a) the person has been charged with an offence punishable by imprisonment or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though suitable, the sample proved insufficient; or

(b) the person has been convicted of an offence punishable by imprisonment and either he has not had a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(9) The period allowed for requiring a person to attend a police station for the purpose specified in subsection (8) is–

(a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge (or of his being

informed as mentioned in that paragraph) or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;

(b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(10) A requirement under subsection (8)–

(a) shall give the person at least 7 days within which he must so attend; and

(b) may direct him to attend at a specified time of day or between specified times of day.

(11) Any constable may arrest without a warrant a person who has failed to comply with a requirement under subsection (8).

(12) In this section "the appropriate officer" is–

(a) in the case of a person falling within subsection (8)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;

(b) in the case of a person falling within subsection (8)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.

Destruction of fingerprints and samples.

60.(1) Where–

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) subsection (3) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(2) In subsection–

(a) the reference to using a fingerprint includes a reference to allowing any check to be made against it under section 59(1) or (3) and to disclosing it to any person;

(b) the reference to using a sample includes a reference to allowing any check to be made under section 59(1) or (3) against it or against information derived from it and to disclosing it or any such information to any person;

(c) the reference to crime includes a reference to any conduct which–

(i) constitutes one or more criminal offences (whether under the law of Gibraltar or a country or territory outside Gibraltar; or

(ii) is, or corresponds to, any conduct which, if it all took place in Gibraltar would constitute one or more criminal offences;

and

(d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Gibraltar of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Gibraltar.

(3) If–

(a) fingerprints or samples are taken from a person in connection with the investigation and offence; and

(b) that person is not suspected of having committed the offence,

they must, except as provided in the following provisions of this section, be destroyed as soon as they have fulfilled the purpose for which they were taken.

(4) Samples and fingerprints are not required to be destroyed under subsection (3) if–

(a) they were taken for the purposes of the investigation of an offence of which a person has been convicted ; and

(b) a sample or, as the case may be, fingerprint was also taken from the convicted person for the purposes of that investigation.

(5) Subject to subsection (6) where a person is entitled under subsection (3) to the destruction of any fingerprint or sample taken from him (or would be but for subsection (4)), neither the fingerprint not the sample, nor any information derived from the sample, shall be used–

(a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or

(b) for the purposes of the investigation of any offence;

and subsection (2) applies for the purposes of this subsection as it applies for the purposes of subsection (1).

(6) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention–

(a) that sample need not be destroyed under subsection (3);

(b) subsection (5) shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it; and

(c) that consent shall be treated as comprising a consent for the purposes of section 58;

and a consent given for the purpose of this subsection shall not be capable of being withdrawn.

(7) For the purposes of subsection (6) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.

(8) If fingerprints are destroyed—

(a) any copies of the fingerprints shall also be destroyed; and

(b) any police officer 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.

(9) A person who asks to be allowed to witness the destruction of his fingerprints or copies of then shall have a right to witness it.

(10) If–

(a) subsection (8)(b) 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 police officer or a person authorised by him or on his behalf for the purposes of this section.

(11) Nothing in this section applies to a person arrested or detained under the Terrorism Act 2005.

Photographing of suspects etc..

61.(1) A person who is detained at a police station may be photographed-

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(2) A person proposing to take a photograph of any person under this section–

(a) ay for the purpose of doing so, require the removal of any item or substance worn on or over the whole or part of the head or face of the person to be photographed; and

(b) f the requirement is not complied with, may remove the item or substance himself.

(3) Where a photograph may be taken under this section, the only persons entitled to take the photograph are–

(a) onstables; and

(b) ersons who (without being constables) are designated for the purposes of this section by the Commissioner of Police;

and section 83 (use of force) applies to the exercise by a person falling within paragraph (b) of the powers conferred by the preceding provisions of this section as it applies to the exercise of those powers by a constable.

(4) A photograph taken under this section–

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(5) In subsection (4)–

(a) the reference to crime includes a reference to any conduct which–

(i) constitutes one or more criminal offences (whether under the law of Gibraltar or of a country or territory outside); or

(ii) is, or corresponds to, any conduct which, if it all took place in Gibraltar, would constitute one or more criminal offences;

and

(b) the references to an investigation and to a prosecution include references respectively, to any investigation outside Gibraltar of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Gibraltar.

(6) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

Fingerprints and samples-supplementary.

62.(1) In this Part of this Act–

"analysis", in relation to a skin impression, includes comparison and matching;

"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;

"drug trafficking" and "drug trafficking offence" have the same meaning as in the Drug Trafficking Offences Act";

"fingerprints" in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of–

(a) any of that person's fingers; or

(b) either of his palms;

"intimate sample" means

(a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;

(b) a dental impression;

(c) a swab taken from a person's body orifice other than the mouth;

"intimate search" means a search which consists of the physical examination of a person's body orifices other than the mouth;

"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 swab taken from any part of a person's body including the mouth but not any other body orifice;

(d) saliva;

(e) a skin impression;

"skin impression", in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;

"speculative search", in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in section 58;

"sufficient" and "insufficient", in relation to a sample, means subject to subsection (2) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

(2) References in this Part of this Act to a sample's proving insufficient include references to where, as a consequence of–

(a) the loss, destruction or contamination of the whole or any part of the sample;

(b) any damage to the whole or part of the sample; or

(c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

PART VI
CODES OF PRACTICE – GENERAL

Codes of practice.

63. The Minister shall issue codes of practice in connection with–

(a) the exercise by police officers of statutory powers–

(i) to search a person without first arresting him;

(ii) to search a vehicle without making an arrest;or

(iii) to arrest a person;

(b) the detention, treatment, questioning and identification of persons by police officers;

(c) searches of premises by police officers; and

(d) the seizure of property found by police officers on persons or premises.

Codes of practice-supplementary.

64.(1) When the Minister proposes to issue a code of practice to which this section applies, he shall prepare and publish a draft of that code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(2) This section applies to a code of practice under section 55 or 63.

(3) Any code prepared under the provisions if this Act shall be laid before the Parliament.

(4) The Minister may from time to time revise the whole or any part of a code of practice to which this section applies and issue that revised code, and the foregoing provisions of this section shall apply (with appropriate modifications) to a revised code as they apply to the first issue of a code.

(5) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of a code.

(6) A failure on the part–

(a) of a police officer to comply with any provision of a code; or

(b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of a code in the discharge of that duty,

shall not of itself render him liable to any criminal or civil proceedings.

(7) In all criminal and civil proceedings any code shall be admissible in evidence, and if any provision of a code appears to the court conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

PART VII
DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

First-hand hearsay.

65.(1) Subject to subsection (4) 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) are satisfied; or

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

(2) The requirements mentioned in subsection (1)(i) are–

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

(b) that–

(i) the person who made the statement is outside Gibraltar; 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) 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) does not render admissible a confession made by an accused person that would not be admissible under section 73.

Business etc. documents.

66.(1) Subject to subsection (3) a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which 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) applies whether the information contained in the document was supplied directly 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) does not render admissible a confession made by an accused person that would not be admissible under section 73.

Principles to be followed by Court.

67.(1) If, having regard to all the circumstances–

(a) the Supreme Court–

(i) on a trial on indictment;

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

(b) in the 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 65 or 66 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), 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.

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

68. Where a statement which is admissible in criminal proceedings by virtue of section 65 or 66 appears to the court to have been prepared 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.

Proof of statements contained in documents.

69. 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.

Documentary evidence-supplementary.

70. 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;

(b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part of this Act.

Microfilm copies.

71. In any proceedings the contents of a document may (whether or not the document is still in existence) be proved by the production of an enlargement of a microfilm copy of that document or of the material part of it, authenticated in such a manner as the court may approve.

Part VII - supplementary.

72.(1) In this Part of this Act-

"copy", in relation to a document means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly, and

"statement" means any representation of fact, however made; and

"proceedings" means criminal proceedings.

(2) Schedule 2 shall have effect for the purpose of supplementing sections 65 to 70.

(3) Nothing in this Part of this Act shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

PART VIII
CONFESSIONS

Confessions.

73.(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained–

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies—

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if that fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part VII of this Act shall prejudice the admissibility of a confession made by an accused person.

(8) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(9) Where the proceedings mentioned in subsection (1) are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect with the omission of–

(a) in subsection (1) the words "and is not excluded by the court in pursuance of this section", and

(b) subsections (2) to (6) and (8).

Confessions by mentally handicapped persons.

74.(1) Without prejudice to the general duty of the court at a trial on indictment to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial–

(a) the case against the accused depends wholly or substantially on a confession by him; and

(b) the court is satisfied–

(i) that he is mentally handicapped; and

(ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) In any case where at the summary trial of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this section–

"independent person" does not include a police officer or a person employed for, or engaged on police purposes;

"mentally handicapped", in relation to a person, means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.

PART IX
MISCELLANEOUS

Exclusion of unfair evidence.

75.(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given it if appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

Time for taking accused's evidence.

76. If at the trial of any person for an offence–

(a) the defence intends to call two or more witnesses to the facts of the case; and

(b) those witnesses include the accused,

the accused shall be called before the other witnesses unless the court in its discretion otherwise directs.

Competence and compellability of accused's spouse.

77.(1) In any proceedings the wife or husband of the accused shall, subject to subsection (3) be compellable to give evidence on behalf of the accused.

(2) In any proceedings the wife or husband of the accused shall, subject to subsection (3), be compelled to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if–

(a) the offence charged involves an assault on, or injury or a threat of injury to, the wife or husband of the accused or a person who was at the material time under the age of sixteen; or

(b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or

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

(3) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of subsection (1) or (2) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(4) In any proceedings a person who has been but is no longer married to the accused shall be compellable to give evidence as if that person and the accused had never been married.

(5) Where in any proceedings the age of any person at any time is material for the purposes of subsection (2), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears that which appears to the court to be or to have been his age at that time.

Advance notice of expert evidence in court.

78.(1) Court Rules may make provision for–

(a) requiring any party to proceedings before any court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and

(b) prohibiting a party who fails to comply in respect of any evidence with any requirements imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.

(2) Court Rules made by virtue of this section may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the rules.

Interpretation of Parts VIII and IX.

79.(1) In Parts VIII and IX of this Act–

"confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

"proceedings" means criminal proceedings.

(2) Nothing in Parts VIII and IX of this Act shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

PART X
POLICE – GENERAL

Police officers performing duties of higher rank.

80.(1) For the purpose of any provision of this Act or any other Act under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of superintendent, an officer of the rank of chief inspector shall be treated as holding the rank of superintendent if–

(a) he has been authorised by an officer holding a rank above the rank of superintendent to exercise the power or, as the case may be, to give his authority for its exercise; or

(b) he is acting during the absence of an officer holding the rank of superintendent who has authorised him, for the duration of that absence, to exercise the power or, as the case may be, to give his authority for its exercise.

(2) For the purpose of any provision of this Act or any other Act under which such a power is exercisable only by or with the authority of an officer of at least the rank of inspector, an officer of the rank of sergeant shall be treated as holding the rank of inspector if he has been authorised by an officer of at least the rank of Chief Inspector to exercise the power or, as the case may be, to give his authority for its exercise.

PART XI
MISCELLANEOUS AND SUPPLEMENTARY

Application of Act to various bodies.

81. The provisions of this Act shall apply to any body, organisation or individual which may detain a person in its or his custody when carrying out investigations in Gibraltar which may result in prosecution for a criminal offence.

Meaning of "serious arrestable offence".

82.(1) This section has effect for determining whether an offence is a serious arrestable offence for the purposes of this Act.

(2) Subject to subsection (3), any arrestable offence is serious if its commission–

(a) has led to any of the consequences specified in subsection (4); or

(b) is intended or is likely to lead to any of those consequences.

(3) An arrestable offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in subsection (4).

(4) The consequences mentioned in subsection (2) and (3) are–

(a) serious harm to the security of Gibraltar 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.

(5) Loss is serious for the purposes of this section if, having regard to all the circumstances, it is serious for the person who suffers it.

(6) In this section "injury" includes any disease and any impairment of a person's physical or mental condition.

Power of a constable to use reasonable force.

83. Where any provision of this Act–

(a) confers a power on a constable; and

(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

Regulations.

84. The Government may make regulations for the implementation of any part of this Act and in particular in relation to–

(a) legal aid in respect of persons in custody;

(b) the operation of the custody system;

(c) Codes of Practice; and

(d) any other matter required for the proper operation of the Act.

PART XII
BAIL

Bail Following Arrest

Bail on arrest without warrant.

85.(1) Subject to Part IV on a person being taken into custody for an offence without a warrant, a police officer not below the rank of sergeant may, and, if it will not be practicable to bring him before the magistrates' court within twenty-four hours after his being taken into custody, shall, inquire into the case and, unless the offence appears to the officer to be a serious one, release him on his entering into a recognizance, with or without sureties, for a reasonable amount, conditioned for his appearance before the magistrates' court at the time and place named in the recognizance and the provisions of this subsection shall not affect the provisions of section 45 (which relates to the release on bail of persons under seventeen).

(2) Where, on a person being taken into custody for an offence without a warrant, it appears to any such police officer that the inquiry into the case cannot be completed forthwith, he may release that person on his entering into a recognizance, with or without sureties, for a reasonable amount, conditioned for his appearance at such a police station and at such a time as is named in the recognizance unless he previously receives a notice in writing from the officer in charge of that police station that his attendance is not required; and any such recognizance may be enforced as if it were conditioned for the appearance of that person before the magistrates' court.

(3) A recognizance conditioned for the appearance of a person at a police station as mentioned in subsection (2) may, where that person is apparently under seventeen years old, be taken from his parent or guardian with or without sureties.

(4) Where a person is taken into custody for an offence without a warrant and is retained in custody, he shall be brought before the magistrates' court as soon as practicable.

Recording of recognizance.

86. Every recognizance taken in accordance with the provisions of section 85 shall be without fee or reward, and the time and place for the appearance

shall be specified in the recognizance, and the police officer shall enter in a record to be kept for that purpose at the police station the name, residence and occupation of the party, and his surety, if any, entering into such recognizance together with the condition thereof and the sum thereby acknowledged.

Warrant endorsed for bail.

87.(1) A justice of the peace on issuing a warrant for the arrest of any person may endorse the warrant with a direction that that person shall on arrest be released on his entering into such a recognizance, with or without sureties, conditioned for his appearance before the magistrates' court, as may be specified in the endorsement; and the endorsement shall fix the amounts in which the principal and the sureties, if any, are to be bound.

(2) Where such an endorsement has been made, then, on that person being taken to a police station on arrest under the warrant, the officer in charge of the police station shall release him on his entering into a recognizance, with or without sureties approved by the officer, in accordance with the endorsement, conditioned for his appearance before the magistrates' court at the time and place named in the recognizance.

Bail where child or young person arrested.

88. Where a person apparently under the age of seventeen years is apprehended, with or without warrant, and cannot be brought forthwith before the magistrates' court, a police officer not below the rank of sergeant, or the officer in charge of the police station to which he is brought, shall inquire into the case, and may release him on a recognizance being entered into by him or his parent or guardian (with or without sureties) for such an amount as will, in the opinion of the officer, secure his attendance upon the hearing of the charge, and shall so release him unless–

(a) the charge is one of homicide or other grave crime; or

(b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or

(c) the officer has reason to believe that his release would defeat the ends of justice.

Release by officer in charge of station.

89. Notwithstanding any other provisions of this Act, the officer in charge of the police station to which a person arrested without a warrant is brought in accordance with the provisions of this Act or any other law may release such person when he is satisfied after due police inquiry that insufficient evidence to proceed with an information is disclosed.

Grant of Bail by Magistrates' Court

Bail in treason.

90. A person charged with treason shall not be admitted to bail except by order of the Chief Justice.

Remand in custody or on bail.

91.(1) Where the magistrates' court has power to remand any person, then, subject to any enactment modifying that power, the court may–

(a) remand him in custody, that is to say, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require; or

(b) remand him on bail, that is to say, take from him a recognizance, with or without sureties, conditioned as provided in subsection (3),

and may, instead of taking recognizances in accordance with paragraph (b), fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 104 and in the meantime commit him to custody in accordance with paragraph (a).

(2) Where a person is brought before the court after remand, the court may further remand him.

(3) A recognizance on which a person is remanded on bail may be conditioned–

(a) for his appearance before the court at the end of the period of remand; or

(b) for his appearance at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned,

and, where the recognizance is conditioned as provided in paragraph (b), the fixing at any time of the time for the next appearance shall be deemed to be a remand, but nothing in this subsection shall deprive the court of power at any subsequent hearing to remand him afresh.

(4) Subject to subsection (1), the magistrates' court shall not remand a person for a period exceeding eight clear days:

Provided that–

(a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent;

(b) where the court adjourns a trial under section 164 or 248, the court may remand him for the period of the adjournment;

(c) where a person is charged with an offence triable on indictment that is also triable summarily, then, if the court thinks the case proper to be tried summarily but is not at the time so constituted as will enable it to proceed with the trial, the court may remand him until the next occasion on which it will be practicable for the court to be so constituted, notwithstanding that the remand is for a period exceeding eight clear days.

(5) The magistrates' court, where it has power to remand a person in custody may, if the remand is for a period not exceeding three clear days, commit him to the custody of a police officer.

Restrictions on refusal of bail.

92.(1) Where a person who has attained the age of seventeen is charged before the magistrates' court with a summary offence which is not also an indictable offence and is punishable with not more than six months imprisonment, then, subject to the following provisions of this section, if the court adjourns the trial and remands him, it shall remand him on bail.

(2) Where by virtue of section 163 or section 164 the magistrates' court proceeds to try any such person summarily for an offence which is both a summary offence and an indictable offence and is punishable on summary conviction with not more than six months' imprisonment, or for an offence specified in Schedule 4, then, subject to the following provisions of this section, if after he has pleaded to the charge the court adjourns the trial and remands him, it shall remand him on bail.

(3) Where any such person is charged with a summary offence and he or the prosecutor claims that he shall be tried by jury, then, subject to the following provisions of this section, if the magistrates' court adjourns the inquiry as examining justices or commits him for trial, it shall remand or commit him on bail.

(4) The foregoing provisions of this section shall not require the magistrates' court to remand or commit a person on bail if he fails to give the court or a person prescribed for the purposes of section 104 a proper recognizance and to produce sufficient and satisfactory sureties if required to do so.

(5) The foregoing provisions of this section shall not require the magistrates' court to remand or commit a person on bail–

(a) where he is charged with an offence punishable by that court with imprisonment for a term of not less than six months and it appears to the court that he has been previously sentenced to imprisonment;

(b) where it appears to the court that, having been released on bail on any occasion, he has failed to comply with the conditions of any recognizance entered into by him on that occasion;

(c) where he is charged with an offence alleged to have been committed while he was released on bail;

(d) where it appears to the court that it is necessary to detain him to establish his identity or address;

(e) where it appears to the court that he has no fixed abode or that he is ordinarily resident outside Gibraltar;

(f) where the act or any of the acts constituting the offence with which he is charged consisted of an assault on or threat of violence to another person, or of having or possessing a firearm, an imitation firearm, an explosive or an offensive weapon, or of indecent conduct with or towards a person under the age of sixteen years;

(g) where it appears to the court that unless he is remanded or committed in custody, he is likely to commit an offence; or

(h) where it appears to the court necessary for his own protection to refuse to remand or commit him on bail.

(6) The requirements of subsections (1) and (2) shall not apply to the adjournment of a trial by the magistrates' court under section 248 for the purpose of enabling a medical examination and report to be made on the defendant if it appears to the court that it would be impracticable to obtain such a report without remanding the defendant in custody.

(7) Where the magistrates' court refuses to remand or commit on bail any person who has attained the age of seventeen, the court shall, if he is not represented by a barrister or solicitor, inform him that he may apply to the Supreme Court to be admitted to bail.

(8) Where the magistrates' court refuses under subsection (5) or otherwise to commit any such person for trial on bail, the court shall, if he is not so represented or, if he is so represented and his barrister or solicitor so requests, give him a written notice stating the reason for the refusal.

Committal on bail for sentence.

93. Where the magistrates' court has power to commit an offender to the Supreme Court under section 285 of the Criminal Offences Act, or section 166 of this Act, the court may instead of committing him in custody commit him on bail.

Further remand.

94.(1) If the magistrates' court is satisfied that any person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded,

the court may, in his absence, remand him for a further time, and subsection (4) of section 48 shall not apply.

(2) Notwithstanding anything in subsection (1) of section 91, the power of the court under subsection (1) of this section to remand a person on bail for a further time may be exercised by enlarging his recognizance and those of his sureties, if any, to a later time.

(3) Where a person remanded on bail is bound by the recognizance to appear before the magistrates' court at any time, and the court has no power to remand him under subsection (1) of this section, the court may in his absence enlarge the recognizance, and those of his sureties, if any, to a later time, and the enlargement of the recognizance shall be deemed to be a further remand.

Bail on appeal or case stated.

95.(1) Where a person has given notice of appeal to the Supreme Court against the decision of the magistrates' court or has applied to the magistrates' court to state a case for the opinion of the Supreme Court, then, if he is in custody, the magistrates' court may release him on his entering into a recognizance with or without sureties, conditioned–

(a) if he has given notice of appeal, for his appearance at the hearing of the appeal;

(b) if he has applied for the statement of a case, for his appearance before the magistrates' court within ten days after the judgment of the Supreme Court has been given, unless the determination in respect of which the case is stated is reversed by that judgment.

(2) Subsection (1) shall not apply to a person who has been committed to the Supreme Court for sentence under section 166.

Special conditions of bail.

96.(1) The conditions on which any person is admitted to bail may include conditions appearing to the court to be likely to result in his appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

(2) A court which admitting, or directing the admission of, any person to bail imposes a condition under subsection (1), shall not require him to find sureties in respect of that condition.

Prosecution appeal against the grant of bail.

97.(1) Where the magistrates' court grants bail to a person who is charged with or convicted of an offence punishable by a term of imprisonment of five years or more, the prosecution may appeal to the Supreme Court against the granting of bail.

(2) Subsection (1) applies only where the prosecution is conducted–

(a) by or on behalf of the Attorney General;

(b) by or on behalf of the Commissioner of Police; or

(c) by or on behalf of the Collector of Customs.

(3) Such an appeal may be made only if–

(a) the prosecution made representations that bail should not be granted; and

(b) the representations were made before it was granted.

(4) In the event of the prosecution wishing to exercise the right of appeal set out in subsection (1), oral notice of appeal shall be given to the magistrates' court at the conclusion of the proceedings in which such bail has been granted and before the release from custody of the person concerned.

(5) Written notice of appeal shall thereafter be served on the magistrates' court and the person concerned within two hours of the conclusion of such proceedings.

(6) Upon receipt from the prosecution of oral notice of appeal from its decision to grant bail, the magistrates' court shall remand in custody the person concerned until the appeal is determined or otherwise disposed of.

(7) Where the prosecution fails, within the period of two hours mentioned in subsection (5), to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.

(8) The hearing of an appeal under subsection (1) against the decision of the magistrates' court to grant bail shall be commenced within 48 hours excluding weekends and any public holiday, that is to say, Christmas Day, Good Friday or a Bank Holiday, from the date on which oral notice of appeal is given.

(9) At the hearing of any appeal by the prosecution under this section, any appeal shall be by way of rehearing and the Judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such condition, if any, as he thinks fit.

(10) In relation to a child or young person–

(a) the reference in subsection (1) to an offence punishable by a term of imprisonment is to be read as a reference to an offence which would be so punishable in the case of an adult; and

(b) the reference in subsection (6) to remand in custody is to be read subject to the provisions of this Act in respect of the detention of persons under the age of eighteen years.

(11) Rules of court may be made for the purpose of giving effect to this section.

Grant of Bail by Supreme Court

Extension of power of Supreme Court to grant bail or vary conditions.

98.(1) Where in connection with any criminal proceedings an inferior court has power to admit any person to bail, but either refuses to do so, or does so or offers to do so on terms unacceptable to him, the Supreme Court may admit him or direct his admission to bail or, where he has been admitted to bail, may vary any conditions on which he was so admitted or reduce the amount in which he or any surety is bound or discharge any of the sureties.

(2) The conditions as to the time and place of appearance of a person admitted to bail under this section which are to be included in a

recognizance entered into by him shall be such conditions as the inferior court had power to impose.

(3) In this section "inferior court" means the magistrates' court or the juvenile court or the coroner.

(4) The powers conferred on the Supreme Court by this section shall not prejudice any powers of the Supreme Court to admit or direct the admission of persons to bail.

(5) Subsections (2) and (3) of section 99 shall apply in relation to the powers conferred by this section.

Bail on appeal.

99.(1) Where the Supreme Court admits or directs the admission of a person to bail on his entering into a recognizance, such recognizance shall be in such reasonable sum as the court thinks necessary to fix, and the court may require the recognizance to be entered into with or without sureties and may, in lieu of requiring a person to enter into a recognizance, consent to his giving other security.

(2) The Supreme Court may, in exercising any power conferred upon it by this section to release a person from custody, direct that a recognizance shall be entered into or other security given before the magistrates' court or a justice.

(3) The time during which a person is admitted to bail under subsection (1) shall not count as part of any term of imprisonment under his sentence, and any term of imprisonment imposed by the magistrates' court after the imposition of which a person is so admitted to bail, shall be deemed to begin to run or to be resumed as from the day on which he is received into prison under the sentence.

Bail in All Courts

Continuous bail.

100. Where a person is remanded on bail the recognizance may be conditioned for his appearance at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned,

without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

Surrender of passport as condition of bail.

101. Where a person is remanded or released on bail by a court the recognizance may be conditioned to the effect that his passport shall be deposited with the court until the conclusion of the proceedings against him.

Cash bail.

102. Where a court is disposed to admit a person to bail with sureties but no suitable surety is available, the court may, in its discretion, allow a deposit of money in court by way of security for his due appearance, and any such sum shall be forfeited in default of appearance unless the court otherwise orders.

Duty to surrender, and offence of absconding.

103.(1) A person granted bail in criminal proceedings shall be under a duty to surrender to custody in accordance with the provisions of this Act.

(2) For the purposes of subsection (1) and sections 103 and 104, the expression "surrender to custody" means in relation to a person released on bail, surrendering himself in accordance with the requirements of that person's bail into the custody of either–

(a) the police; or

(b) the court,

at the time and place appointed for him so to do when he was granted bail.

(3) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody, he shall be guilty of an offence.

(4) If a person who–

(a) has been released on bail in criminal proceedings; and

(b) having reasonable cause therefor, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

(5) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody or, that having reasonable cause therefore, he surrendered to custody as soon as reasonably practicable.

(6) Subject to subsection (7) of this section an offence under subsection (3) or (4) shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(7) Where a magistrates' court convicts a person of an offence under subsection (3) or (4), such court may if it thinks–

(a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than such court has power to inflict; or

(b) in a case where it commits that person for trial to the Supreme Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (3) or (4) by the Supreme Court,

commit him in custody or on bail to the Supreme Court for sentence.

(8) A person who is convicted summarily of an offence under subsection (3) or (4) shall be liable–

(a) if not committed to the Supreme Court for sentence, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both; and

(b) if committed for sentence to or if dealt with by the Supreme Court as for such a contempt, to imprisonment for a term not exceeding twelve months or to a fine at level 4 on the standard scale or to both.

(9) In any proceedings for an offence under subsection (3) or (4)–

(a) in a case of a person granted bail under section 85, a copy of the record kept under section 86and certified by a police officer not below the rank of sergeant; or

(b) in the case of a person granted bail under any other provisions of this Act, a document certified by the appropriate officer of the court to be a record which relates to the time and place appointed for the person specified in the record to surrender to custody,

shall be deemed to be conclusive evidence of the time and place appointed for that person to surrender to custody.

(10) For the purpose of subsection (9)(b), "the appropriate officer" of the court is–

(a) in the case of the magistrates' court, the clerk to the justices or such other officer as may be authorised by him to act for that purpose;

(b) in the case of the Supreme Court such officer as may be authorised for that purpose by the Registrar of the court.

Offence of absconding by person released on bail.

103A.(1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody, he shall be guilty of an offence.

(2) If a person who–

(a) has been released on bail in criminal proceedings; and

(b) having reasonable cause therefor, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

(3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody or, that having reasonable cause therefore, he surrendered to custody as soon as reasonably practicable.

(4) Subject to subsection (5) of this section an offence under subsection (1) or (2) shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(5) Where a magistrates' court convicts a person of an offence under subsection (1) or (2), such court may if it thinks–

(a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than such court has power to inflict; or

(b) in a case where it commits that person for trial to the Supreme Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) by the Supreme Court,

commit him in custody or on bail to the Supreme Court for sentence.

(6) person who is convicted summarily of an offence under subsection (1) or (2) shall be liable–

(a) if not committed to the Supreme Court for sentence, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both; and

(b) if committed for sentence to or if dealt with by the Supreme Court as for such a contempt, to imprisonment for a term not exceeding twelve months or to a fine at level 4 on the standard scale or to both.

(7) In any proceedings for an offence under subsection (1) or (2)–

(a) in a case of a person granted bail under section 42, a copy of the record kept under section 43 and certified by a police officer not below the rank of sergeant; or

(b) in the case of a person granted bail under any other provisions of this Act, a document certified by the appropriate officer of the court to be a record which relates to the time and place appointed for the person specified in the record to surrender to custody,

shall be deemed to be conclusive evidence of the time and place appointed for that person to surrender to custody.

(8) For the purpose of subsection (7)(b), "the appropriate officer" of the court is–

(a) in the case of the magistrates' court, the clerk to the justices or such other officer as may be authorised by him to act for that purpose;

(b) in the case of the Supreme Court such officer as may be authorised for that purpose by the Registrar of the court.

Liability to arrest by absconding or breaking conditions of bail.

104.(1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of the police fails to surrender to custody at the place and time appointed for him to do so, a police officer may apply to the magistrates' court for a warrant for his arrest.

(2) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the place and time appointed for him to do so, such court may issue a warrant for his arrest.

(3) If a person who has been released on bail in criminal proceedings absents himself from a police station or such other place as has been appointed under section 85 after he has surrendered into the custody of the police and before he is permitted by a police officer not below the rank of sergeant so to do, a police officer may apply to the magistrates' court for a warrant for his arrest.

(4) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume hearing of those proceedings the court may issue a warrant for his arrest, but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by an officer of the court.

(5) A person who has been released on bail in criminal proceedings and is under a duty to surrender into custody, may be arrested without warrant by a police officer–

(a) if the police officer has reasonable grounds for believing that such person is not likely to surrender to custody;

(b) if the police officer has reasonable grounds for believing that such person is likely to break any of the conditions of his bail or has reasonable grounds to suspect that such person has broken any of those conditions; or

(c) in any case where that person is released on bail with one or more surety or sureties, if a surety notifies the police officer in writing that such person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as surety.

(6) A person arrested in pursuance of subsection (5) shall be brought as soon as practicable, and in any event within twenty-four hours after his arrest before the magistrates court, and in reckoning for the purposes of this subsection any period of twenty-four hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(7) A Magistrate before whom a person is brought under subsection (6) may, if of the opinion that the person–

(a) is not likely to surrender to custody; or

(b) has broken or is likely to break any conditions of his bail,

remand him in custody or commit him to custody as the case may require or alternatively grant him bail subject to the same or to different conditions, but, if not of that opinion, shall grant him bail subject to the same conditions, if any, as were originally imposed.

Offence of agreeing to indemnify sureties in criminal proceedings.

105.(1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to custody of a person granted bail, he and that other person shall be guilty of an offence.

(2) An offence under subsection (1) is committed whether the agreement is made before or after the person being indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or money's worth.

(3) Where a magistrates' court convicts a person for an offence under subsection (1) above, the court may, if it thinks–

(a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than such court has power to inflict; or

(b) in a case where it commits that person for trial to the Supreme Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) by the Supreme Court,

commit him in custody or on bail to the Supreme Court for sentence.

(4) A person guilty of an offence under subsection (1) above shall be liable–

(a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both; or

(b) on conviction on indictment or if sentenced by the Supreme Court on committal for sentence under subsection (3), to imprisonment for a term not exceeding twelve months or to a fine at level 4 on the standard scale or to both.

PART XIII
CONTROL BY THE CROWN

Power of Attorney General to enter nolle prosequi.

106.(1) In any criminal case, and at any stage thereof before the verdict or judgment, as the case may be, the Attorney General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue and thereupon the defendant shall be at once discharged in respect of the charge for which the

nolle prosequi is entered, and if he has been committed to prison shall, be released, or if on bail, his recognizances shall be discharged, but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) If the defendant is not before the court when such *nolle prosequi* is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the Superintendent, if the defendant is detained in the prison, and also, if the accused person has been committed for trial to the magistrates' court, and the magistrates' court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties, if any, and also to the defendant and his sureties in case he shall have been admitted to bail.

Fiats and consent etc., of Attorney General.

107. Any document purporting to be the fiat, order, sanction, consent or *nolle prosequi* of the Attorney General and to be signed by the Attorney General shall be admissible as prima facie evidence without further proof.

Power to appoint prosecuting counsel.

108. The Attorney General may appoint any counsel to be a prosecuting counsel for the purposes of any case.

Police may conduct prosecutions before magistrates' court.

109. In any trial or inquiry before the magistrates' court, if the proceedings have been instituted by a police officer, any police officer may appear and conduct the prosecution whether or not he is the officer who laid the information.

Prosecuting counsel and police officers subject to directions of Attorney General.

110. Every police officer conducting a prosecution under the provisions of section 109 and every prosecuting counsel shall be subject to the directions of the Attorney General.

Powers of prosecuting counsel.

111. A prosecuting counsel may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs counsel to prosecute in any such case, a prosecuting counsel may conduct the prosecution and the counsel so instructed shall act therein under the prosecuting counsel's directions.

PART XIV
EVIDENCE

Summoning of Witnesses

Power to summon witnesses, etc..

112. Any court may, at any stage of any criminal proceedings, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

Provided that the prosecutor or the counsel for the prosecution or the defendant or his counsel, shall have the right to cross-examine any such person, and the court shall adjourn the case for such time, if any, as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

Witnesses in custody.

113.(1) Without prejudice to any other power to summon witnesses conferred upon it by this Act or any other law, any court desirous of examining as a witness in any criminal proceedings pending before it, any person confined in the prison, may issue an order to the Superintendent requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the court for examination.

(2) The Superintendent, on receipt of such an order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for such purpose.

Arrest and punishment of recalcitrant witnesses.

114.(1) Without prejudice to any other powers conferred upon the Supreme Court by this Act or any other law, the Supreme Court may, where any person summoned to attend as a witness before it in any criminal proceedings fails to attend as required by the summons, issue a warrant to arrest him and bring him before the Supreme Court at the time specified in the warrant.

(2) If any person attending or brought before the Supreme Court refuses, without just excuse, to be sworn or give evidence, or to produce any document or thing, the Supreme Court may, by warrant, commit him to custody until the expiration of a period not exceeding fourteen days as may be specified in the warrant, or until he sooner gives evidence or produces the document or thing, or may impose upon him a fine at level 3 on the standard scale.

(3) If such a person, upon being brought before the Supreme Court at or before the expiration of the period specified in the warrant, again refuses to do what is required of him, the Supreme Court may, if it sees fit, further commit him to custody for such period not exceeding fourteen days as may be specified in the warrant and so again, from time to time, until such person consents to do what is required of him.

(4) Without prejudice to any other powers conferred upon the Supreme Court by this Act or any other law, a person who, without just excuse–

(a) fails to attend before the Supreme Court as required by any summons; or

(b) having attended the Supreme Court, departs without obtaining the permission of the Supreme Court or fails to attend after adjournment of the Supreme Court after being ordered so to attend,

is liable by order of the Supreme Court to a fine at level 3 on the standard scale.

Competence and Calling of Witnesses

Competence of persons charged and their spouses.

115. A person charged with an offence, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided that–

(a) a person so charged shall not be called as a witness except upon his own application;

(b) the failure of any person charged with an offence give evidence shall not be made the subject of any comment by the prosecution;

(c) a person charged and being a witness in pursuance of this Part may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

(d) a person charged and called as a witness in pursuance of this Part shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character unless–

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;

(ii) he has personally or by his counsel asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged in the same proceedings;

(e) every person called as a witness in pursuance of this Part shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence;

(f) nothing in this Part shall affect the provisions of section 129 or any right of the person charged to make a statement without being sworn.

Calling of spouse of person charged.

116.(1) The wife or husband of a person charged with an offence, may be called as a witness either for the prosecution or defence.

(2) Nothing in this Part shall affect a case where the wife or husband of a person charged with an offence may, at common law, be called as a witness.

Limitation.

117. A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence of dishonesty or criminal damage–

(a) from answering any question put to that person in proceedings for the recovery or administration of any property for the execution of any trust or for an account of any property or dealings with property; or

(b) from complying with any order made in any such proceedings,

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence of dishonesty or criminal damage, be admissible in evidence against that person or, unless they married after the making of the statement or admission, against the wife or husband of that person.

Calling of persons charged.

118. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Right of reply.

119. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply:

Provided that the Attorney General, when appearing in person for the prosecution, shall in all cases have the right of reply.

Evidence in the Magistrates' Court

Written statements in committal proceedings.

120.(1) In committal proceedings, a written statement by any person shall, if the conditions mentioned in subsection (2) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions are–

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and

(d) none of the other parties, before the statement is tendered in evidence at the committal proceedings, objects to the statement being so tendered under this section.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say–

(a) if the statement is made by a person under the age of twenty-one, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under paragraph (c) of subsection (2) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible in committal proceedings by virtue of this section, the court before which the proceedings are held may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court commits the defendant for trial by virtue of section 132 or the court otherwise directs, be read aloud at the hearing, and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(6) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(7) Section 126 (1) shall apply to any written statement tendered in evidence in committal proceedings under this section, as it applies to a deposition taken in such proceedings, but in its application to any such

statement that subsection shall have effect as if paragraph (b) thereof were omitted.

(8) In subsection (2) of section 182 the reference in proviso (i) to facts disclosed in any deposition taken before a justice in the presence of the defendant shall be construed as including a reference to facts disclosed in any such written statement as aforesaid.

(9) Section 125 shall not apply to any such statement as aforesaid.

Proof of identity of driver of vehicle.

121. Where on the summary trial of an information for an offence in the case of which section 96 of the Traffic Act gives power to require information as to the identity of the driver of a vehicle–

(a) it is proved to the satisfaction of the court that a requirement under section 96 to give information as to the identity of the driver of the particular vehicle on the particular occasion to which the information relates has been served on the accused by post; and

(b) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion,

the court may accept that statement as evidence that the defendant was the driver of that vehicle on that occasion.

Onus of proving exceptions, etc..

122. Where the defendant to an information or complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him, and this notwithstanding that the information or complaint contains an allegation negativing the exception, exemption, proviso, excuse or qualification.

Deposition of person dangerously ill.

123.(1) Where a person appears to a justice of the peace to be able and willing to give material information relating to an indictable offence or to any person accused of an indictable offence, and–

(a) the justice is satisfied, on a representation made by a medical practitioner, that the person able and willing to make the statement is dangerously ill and unlikely to recover; and

(b) it is not practicable for examining justices to take the evidence of the sick person in accordance with the provisions of this Act,

the justice may take in writing the deposition of the sick person on oath.

(2) A deposition taken under this section may be given in evidence before examining justices inquiring into an information against the offender or in respect of the offence to which the deposition relates, but subject to the same conditions as apply, under section 128 to its being given in evidence upon the trial of the offender or offence.

Signature of depositions.

124. An examining justice who signs a certificate authenticating one or more depositions or statements tendered under section 120 shall be treated, for the purposes of section 126(1)(c) as signing that deposition or statement or each of those depositions and statements.

Use in summary trial of evidence given before examining justices.

125. Where under the provisions of this Act the magistrates' court, having begun to inquire into an information as examining justices, proceeds to try the information summarily, any evidence already given before the court shall be deemed to have been given in and for the purposes of the summary trial.

Evidence in the Supreme Court

When deposition of witness may be read.

126.(1) Where any person has been committed for trial for any offence, the deposition of any person taken before the examining justice may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence and the conditions hereinbefore referred to are the following–

(a) the deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this Act, or of a witness who is proved at the trial by the oath of a credible witness to be dead or suffering from mental disorder, or too ill, infirm or aged to attend, or to be kept out of the way by means of the procurement of the accused or on his behalf or who has quitted Gibraltar and cannot be produced in court;

(b) it must be proved at the trial, either by a certificate purporting to be signed by the justice before whom the deposition purports to have been taken or by the clerk of the magistrates' court, or by the oath of a credible witness, that the deposition was taken in the presence of the accused and that the accused or his barrister or solicitor had full opportunity of cross-examining the witness; and

(c) the deposition must purport to be signed by the justice before whom it purports to have been taken:

Provided that the provisions of this subsection shall not have effect in any case in which it is proved–

(i) that the deposition, or, where the proof required by paragraph (b) is given by means of a certificate, that the certificate was not in fact signed by the justice by whom it purports to have been signed; or

(ii) where the deposition is the deposition of a witness whose attendance at the trial is stated to be

unnecessary, that the witness has been duly notified that he is required to attend the trial.

(2) Any documents or articles produced in evidence before the examining justice by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the justice otherwise orders, be retained by the justice and forwarded with the depositions to the court of trial.

Depositions of medical witnesses.

127. Without prejudice to the provisions of section 126, the deposition of an analyst or of a medical practitioner, taken and attested by a justice in the presence of the accused person, may, with the consent of the accused person or his counsel, be read as evidence although the deponent is not called as a witness:

Provided that the court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Depositions of sick persons.

128.(1) The provisions of this section shall apply in any case in which the deposition of a sick person is taken in accordance with the provisions of section 123.

(2) If afterwards, upon the trial of any offender or offence to which the deposition may relate, the person who made the same deposition shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to come to court or to give evidence, or that such person is no longer within Gibraltar, it shall be lawful to read such statement in evidence, either for or against the defendant, without further proof thereof, if the same purports to be signed by the justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the court that reasonable notice in writing of the intention to take such statement has been served upon the person (whether prosecutor or defendant) against whom it is proposed to be read in evidence, and that such person or his counsel has, or might have had, if he had chosen to be present, full opportunity of cross examining the person who made the same.

Statement of accused before magistrates' court.

129.(1) Any statement made by the accused in proceedings before examining justices in answer to the charge and taken down in accordance with the provisions of this Act may, whether signed by the accused or not, be given in evidence on his trial without further proof.

(2) Nothing in this section shall prevent the prosecutor in any case from giving in evidence at the trial any admission or confession or other statement of the accused made at any time which is by law admissible as evidence against the accused.

Accused entitled to inspect depositions.

130. Any person under trial before the Supreme Court shall be entitled, at the time of his trial, to inspect all depositions or copies thereof, which have been taken against him.

Prosecution evidence where mental disorder or diminished responsibility alleged.

131. Where on a trial for murder the defendant contends–

(a) that at the time of the alleged offence he was suffering from mental disorder so as not to be responsible according to law for his action; or

(b) that at that time he was suffering from such abnormality of mind as is specified in section 61(1) of the Criminal Offences Act (diminished responsibility),

the court shall allow the prosecution to adduce or elicit evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.

Evidence in All Courts

Proof by written statement.

132.(1) In any criminal proceedings, other than committal proceedings, a written statement by any person shall, if such of the conditions mentioned in

subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions are–

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties or their solicitors, within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section–

Provided that the conditions mentioned in paragraphs (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say–

(a) if the statement is made by a person under the age of twenty-one, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (c) of subsection (2) shall be accompanied by a copy of that

document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section–

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(5) An application under paragraph (b) of subsection (4) to a court other than the magistrates' court may be made before the hearing and on any such application the powers of the court shall be exercisable by any person entitled to sit as a judge of the court.

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(8) A document required by this section to be served on any person may be served–

(a) by delivering it to him or to his solicitor;

(b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his solicitor and leaving it at his office;

(c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his solicitor at his office; or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body at that office.

Proof by formal admission.

133.(1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant, and the admission by any party of any such fact under this section shall, as against that party, be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section–

(a) may be made before or at the proceedings;

(b) if made otherwise than in court, shall be in writing;

(c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

(d) if made on behalf of a defendant who is an individual, shall be made by his barrister or solicitor;

(e) if made at any stage before the trial by a defendant who is an individual, must be approved by his barrister or solicitor, whether at the time it was made or subsequently, before or at the proceedings in question.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter, including any appeal or retrial.

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

Notice of alibi.

134.(1) On a trial on indictment the defendant shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the defendant shall not, without the leave of the court, call any other person to give such evidence unless–

(a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the defendant at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;

(b) if the name or the address is not included in that notice, the court is satisfied that the defendant, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;

(c) if the name or the address is not included in that notice, but the defendant subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; and

(d) if the defendant is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the defendant was not informed of the requirements of this section in accordance with any rules made under this Act.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the defendant by his solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

(6) A notice under subsection (1) shall either be given in court during, or at the end of, the proceedings before the examining justices or be given in writing to the solicitor for the prosecutor, and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to that solicitor.

(7) A notice required by this section to be given to the solicitor for the prosecutor may be given by delivering it to him, or by leaving it at his office, or by sending it in a registered letter or by the recorded delivery service addressed to him at his office.

(8) In this section–

"evidence in support of an alibi" means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission; and

"the prescribed period" means the period of seven days from the end of the proceedings before the examining justices.

(9) In computing the said period a Sunday, Christmas Day, Good Friday, a day which is a bank or public holiday under section 58 of the Interpretation and General Clauses Act or a day appointed for public thanksgiving or mourning shall be disregarded.

Evidence by certificate.

135.(1) In any criminal proceedings, a certificate purporting to be signed by a police officer and certifying that a plan or drawing exhibited thereto is a

plan or drawing made by him of the place or object specified in the certificate, and that the plan or drawing is correctly drawn to a scale so specified, shall be evidence of the relative position of the things shown on the plan or drawing.

(2) In any proceedings for an offence under the Traffic Act, or any other law relating to the use of vehicles on roads, a certificate purporting to be signed by a police officer and certifying that a person specified in the certificate stated to the police officer–

(a) that a particular motor vehicle was being driven by, or belonged to, that person on a particular occasion;

(b) that a particular motor vehicle belonged, on a particular occasion, to a firm in which that person also stated that he was at the time of the statement a partner; or

(c) that a particular motor vehicle belonged, on a particular occasion, to a corporation of which that person also stated that he was at the time of the statement a director, officer or employee,

shall be admissible as evidence for the purpose of determining by whom the vehicle was being driven, or to whom it belonged, as the case may be, on that occasion.

(3) In any proceedings for an offence under sections 29 to 35 of the Post Office Act a statutory declaration by any person–

(a) that he dispatched or received or failed to receive any goods or postal packet or that any goods or postal packet when dispatched or received by him were in a particular state or condition; or

(b) that a vessel, vehicle or aircraft was at any time employed by or under the Post Office for, or engaged in, the transmission of postal packets under contract,

shall be admissible as evidence of the facts stated in the declaration.

(4) Nothing in this section shall be deemed to make a certificate or statutory declaration admissible as evidence in proceedings for an offence

except in a case where and to the extent to which oral evidence to the like effect would have been admissible in those proceedings.

(5) Nothing in this section shall be deemed to make a certificate or statutory declaration admissible as evidence in proceedings for any offence–

(a) unless a copy thereof has, not less than seven days before the hearing or trial, been served on the person charged with the offence; or

(b) if that person, not later than three days before the hearing or trial, or within such further time as the court may in special circumstances allow, serves notice on the prosecutor requiring the attendance at the trial of the person who signed the certificate or the person by whom the declaration was made, as the case may be.

Other Provisions about Evidence in Criminal Proceedings

Expert reports.

136.(1) Subject to rules made under section 78, 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.

137. For the purpose of helping members of juries to understand complicated issues of fact or technical terms rules of court may make provision–

(a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and

(b) as to the furnishing of glossaries for such purposes as may be specified,

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

Overseas evidence for use in Gibraltar.

138.(1) Where on an application made in accordance with subsection (2) it appears to a Justice of the Peace or a judge–

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter ("a letter of request") requesting assistance in obtaining outside Gibraltar such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) may be made by the Attorney General or, if the proceedings have been issued, by the person charged in those proceedings.

(3) The Attorney General may issue a letter of request if–

(a) he is satisfied as to the matters mentioned in subsection (1)(a); and

(b) the offence in question is being investigated or he has instituted proceedings in respect of it.

(4) Subject to subsection (5), a letter of request shall be sent by the Attorney General–

(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

(b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency a letter of request may be sent direct to such court or tribunal as is mentioned in subsection (4)(a).

(6) In this section "evidence" includes documents and other articles.

(7) Evidence obtained by virtue of letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(8) In exercising the discretion conferred by section 67 in relation to a statement contained in evidence taken pursuant to 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) if proceedings have been instituted, as to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being taken.

Evidence of Previous Convictions

Proof by fingerprints.

139.(1) A previous conviction may be proved against any person in any criminal proceedings, by the production of such evidence of the conviction as is mentioned in this section, and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate purporting to be signed by or on behalf of the Commissioner of Police or the Commissioner of the Metropolitan Police, London, containing particulars relating to a conviction extracted from the criminal records kept by him, and certifying that the copies of the fingerprints exhibited to the certificate are copies of the fingerprints appearing in the said records to have been taken

from the person convicted on the occasion of the conviction, shall be evidence of the conviction and evidence that the copies of the fingerprints exhibited to the certificate are copies of the fingerprints of the person convicted.

(3) A certificate purporting to be signed by or on behalf of the Commissioner of Police, certifying that the fingerprints exhibited thereto were taken from any person whilst in lawful custody, shall be evidence that the fingerprints exhibited to the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the Commissioner of Police or the Commissioner of the Metropolitan Police, London, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of either such Commissioner to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of the Commissioner of Police under subsection (3), or otherwise shown to be the fingerprints of the person against whom the

previous conviction is sought to be proved are the fingerprints of the same person, shall be evidence of the matters so certified.

(5) The method of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized method of proving such conviction.

Evidence of convictions in Gibraltar or the United Kingdom.

140.(1) A previous conviction may be proved against any person in any criminal proceedings, by producing a record or extract of such conviction, and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted.

(2) A record or extract of a conviction shall, in the case of an indictable offence, consist of a certificate containing the substance and effect only, omitting the formal part of the indictment and conviction, and purporting to be signed by the clerk of the court or other officer having the custody of the records of the court by which the conviction was made.

(3) A record or extract of a conviction shall, in the case of a summary conviction, consist of a copy of such conviction purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction was made or to be signed by the proper officer of the court by which the conviction was made.

(4) A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(5) This section shall apply to convictions in the United Kingdom as well as to convictions in Gibraltar.

(6) The mode of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized method of proving such conviction.

Evidence of convictions elsewhere.

141.(1) A previous conviction in any place outside Gibraltar or the United Kingdom may be proved in any criminal proceedings by the production of a

certificate purporting to be given under the hand of a police officer in the country where the conviction was obtained, containing a copy of the sentence or order, and the fingerprints, or photographs of the fingerprints, of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.

(2) Such a certificate shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

Evidence in magistrates' court.

142. Where a person is convicted of a summary offence by the magistrates' court, other than a juvenile court, and it is proved to the satisfaction of the court that not less than seven days previously a notice was served on the offender in the prescribed form and manner specifying any alleged previous conviction of the offender of a summary offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, and the offender is not present in person before the court, the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

Admissibility of evidence of previous conviction.

143. Subject to the provisions of this Act and of any other law relating to the admission of evidence of previous convictions, it shall not be lawful, on the trial of any person before any court, for evidence of any previous conviction for any offence to be admitted in evidence before a verdict or finding of guilty shall have been returned.

Conviction as evidence of commission of offence.

144.(1) In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in Gibraltar or by a court martial outside Gibraltar shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence, whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or

before any court in Gibraltar or by a court martial outside Gibraltar, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence–

(a) by or before any court in Gibraltar; or

(b) by a court martial outside Gibraltar,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice–

(a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

(b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(5) In this section "court martial" means a court martial constituted under the Army Act 1955 as applied by section 5 of the Gibraltar Regiment Act 1998 and "criminal proceedings" includes proceedings in Gibraltar or elsewhere before a court martial.

PART XV
PROCEEDINGS IN THE MAGISTRATES' COURT

Sittings of the Court

Sittings of the court.

145.(1) The magistrates' court shall not–

(a) try summarily an information for an indictable offence or hear a complaint except when sitting in a court house;

(b) try an information for an offence that is not indictable or hold an inquiry into the means of an offender for the purposes of section 241 or impose imprisonment, except when sitting in a court house.

(2) Subject to the provisions of any law to the contrary, where the magistrates' court is required by this section to sit in a court house, it shall sit in open court.

(3) Subject to the provisions of subsection (4), the justices composing the court before which any proceedings take place shall be present during the whole of the proceedings:

Provided that, if during the course of the proceedings any justice absents himself, he shall cease to act further therein and, if the remaining justices are enough to satisfy the requirements of this Act, the proceedings may continue before a court composed of those justices.

(4) Where the trial of an information is adjourned after the defendant has been convicted and before he is sentenced or otherwise dealt with, the court which sentences or deals with him need not be composed of the same justices as that which convicted him, but, where among the justices composing the court which sentences or deals with an offender there are any who were not sitting when he was convicted, the court which sentences or deals with the offender shall before doing so make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when the offender was convicted to be fully acquainted with those facts and circumstances.

(5) This section shall have effect subject to the provisions of this Act relating to domestic proceedings.

Recognizances for Good Behaviour

Binding over.

146.(1) The power of the magistrates' court on the complaint of any person to adjudge any other person to enter into a recognizance, with or without

sureties, to keep the peace or to be of good behaviour towards the complainant shall be exercised by order on complaint.

(2) If any person ordered by the magistrates' court under subsection (1) to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour fails to comply with the order, the court may commit him to custody for a period not exceeding six months or until he sooner complies with the order.

Discharge of recognizance on complaint of surety.

147.(1) On complaint being made to a justice of the peace by a surety to a recognizance to keep the peace or to be of good behaviour entered into before the magistrates' court that the person bound by the recognizance as principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognizance, the justice may issue a warrant to arrest the principal and bring him before the magistrates' court or a summons requiring the principal to appear before the court:

Provided that the justice shall not issue a warrant unless the complaint is in writing and substantiated on oath.

(2) The magistrates' court, when the principal appears or is brought in pursuance of such a summons or warrant as aforesaid, may, unless it adjudges the recognizance to be forfeited, order the recognizance to be discharged and order the principal to enter into a new recognizance, with or without sureties, to keep the peace or to be of good behaviour.

Varying or dispensing with requirements as to sureties.

148. Where the magistrates' court has committed a person to custody in default of finding sureties, the court may, on application by or on behalf of the person committed, and after hearing fresh evidence, reduce the amount in which it is proposed that any surety should be bound or dispense with any of the sureties or otherwise deal with the case as it thinks just.

Postponement of taking recognizance.

149.(1) Where the magistrates' court has power to take any recognizance, the court may, instead of taking it, fix the amount in which the principal and his sureties, if any, are to be bound, and thereafter the recognizance may be taken by any such person as may be prescribed.

(2) Nothing in this section shall enable the magistrates' court to alter the amount of a recognizance fixed by the Supreme Court.

Forfeiture of recognizance.

150.(1) Where a recognizance to keep the peace or to be of good behaviour has been entered into before the magistrates' court or any recognizance is conditioned for the appearance of a person before the magistrates' court or for his doing any other thing connected with a proceeding before the magistrates' court, and the recognizance appears to the court to be forfeited, the court may, subject to subsection (2), declare the recognizance to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound.

(2) Where a recognizance is conditioned to keep the peace or to be of good behaviour, the court shall not declare it forfeited except by order made on complaint.

(3) The court which declares the recognizance to be forfeited may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or remit the sum.

(4) Payment of any sum adjudged to be paid under this section, including any costs awarded against the defendant, may be enforced, and any such sum shall be applied, as if it were a fine and as if the adjudication were a summary conviction:

Provided that, at any time before the issue of a warrant of commitment to enforce payment of the sum, or before the sale of goods under a warrant of distress to satisfy the sum, the court may reduce or remit the sum absolutely or on such conditions as the court thinks just.

Institution of Proceedings

Manner of instituting proceedings.

151.(1) Criminal proceedings before the magistrates' court may be instituted by the laying of an information before a justice or the bringing before the court of a person arrested without a warrant.

(2) Any person who believes from reasonable and probable cause that an offence has been committed by any person may lay information thereof before a justice.

Issue of summons or warrant for arrest.

152.(1) Upon an information being laid before a justice that any person has, or is suspected of having, committed an offence, the justice may, in any of the events mentioned in subsection (2)–

(a) issue a summons directed to that person requiring him to appear before the magistrates' court to answer to the information; or

(b) issue a warrant to arrest that person and bring him before the magistrates' court:

Provided that the justice shall not issue a warrant unless the information is in writing and substantiated on oath.

(2) A justice may issue a summons or warrant under this section–

(a) if the offence was committed or is suspected to have been committed in Gibraltar; or

(b) if under any law the magistrates' court has jurisdiction to try the offence notwithstanding that the offence was committed outside Gibraltar; or

(c) if an indictment for the offence may legally be preferred in Gibraltar, notwithstanding that the offence was committed outside Gibraltar.

(3) Where the offence charged is an indictable offence, a warrant under this section may be issued at any time notwithstanding that a summons has previously been issued.

(4) A justice of the peace may issue a summons or warrant under this section upon an information being laid before him notwithstanding any law requiring the information to be laid before two or more justices.

Service of summons after failure to prove service by post.

153. Where any law requires, expressly or by implication, that a summons in respect of an offence shall be issued or served within a specified period after the commission of the offence, and service of the summons may be effected by post, then, if service of the summons is not treated as proved, but it is shown that a letter containing the summons was posted at such time as to enable it to be delivered in the ordinary course of post within that period, a second summons may be issued on the same information, and that law shall have effect, in relation to that summons, as if the specified period were a period running from the return day of the original summons.

Construction of references to "complaints".

154. In any law conferring power on the magistrates' court to deal with an offence, or to issue a summons or warrant against a person suspected of an offence, on the complaint of any person, for references to a complaint there shall be substituted references to an information.

Mode of charging offences against children and young persons and limitation of time.

155.(1) Where a person is charged with committing any of the offences set out in Schedule 3 in respect of two or more children or young persons, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not, if he is summarily convicted, be liable to a separate penalty in respect of each child or young person except upon separate informations.

(2) The same information or summons may also charge any person as having the custody, charge or care, alternatively or together, and may charge him with the offences, of assault, ill-treatment, neglect, abandonment or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together, the person charged shall not, if he is summarily convicted, be liable to a separate penalty for each.

(3) A person shall not be summarily convicted of an offence set out in Schedule 3 unless the offence was wholly or partly committed within six months before the information was laid, but, subject as aforesaid, evidence

may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4) When any offence set out in Schedule 3 charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

Offences Triable on Indictment or Summarily

Procedure where offence triable on indictment or summarily.

156.(1) Where an information charges any person with an offence that is by virtue of any law both an indictable offence and a summary offence, the magistrates' court shall, if the accused has attained the age of fourteen, proceed as if the offence were not a summary offence, unless the court, having jurisdiction to try the information summarily, determines on the application of the prosecutor to do so.

(2) An application under subsection (1) shall be made before any evidence is called and, if the accused fails to appear to answer to the information, may be made in his absence.

(3) Where the magistrates' court has, in pursuance of subsection (1), begun to inquire into the information as examining justices, then, if at any time during the inquiry it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that it is proper to do so, the court may proceed to try the case summarily.

(4) The court proceeding to try a case summarily under subsection (3) shall, before asking the accused whether he pleads guilty, cause the charge to be written down, if this has not already been done, and read to him.

(5) Where, under subsection (1), the magistrates' court has begun to try an information summarily, the court may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to inquire into the information as examining justices.

(6) Nothing in this section shall affect any law enabling the accused or the prosecutor to claim that a summary offence shall be tried by a jury.

Inquiry converted into summary trial.

157.(1) The following provisions of this section shall have effect where an adult appears or is brought before the magistrates' court on an information charging him with any of the indictable offences specified in Schedule 4.

(2) If at any time during the inquiry into the offence it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor or made by the accused, and to the nature of the case, that the punishment that the court has power to inflict under this section would be adequate and that the circumstances do not make the offence one of a serious character and do not for other reasons require trial on indictment, the court may proceed with a view to summary trial.

(3) For the purpose of proceeding as aforesaid, the court shall cause the charge to be written down, if this has not already been done, and read to the accused and shall tell him that he may, if he consents, be tried summarily instead of being tried by a jury before the Supreme Court, and explain what is meant by being tried summarily.

(4) The court shall also explain to the accused that if he consents to be tried summarily and is convicted by the court he may be committed to the Supreme Court under section 159 if the court, on obtaining information of his character and antecedents, is of opinion that they are such that greater punishment should be inflicted than the court has power to inflict.

(5) After informing the accused as provided by subsections (3) and (4), the court shall ask him whether he wishes to be tried by a jury or consents to be tried summarily, and, if he consents, shall proceed to the summary trial of the information.

(6) A person summarily convicted of an indictable offence under this section shall be liable to imprisonment for six months and to a fine at level 4 on the standared scale.

(7) Where any person is convicted under this section of an offence of inciting to commit a summary offence, he shall not be liable to any greater penalty than he would be liable to on being summarily convicted of the last-mentioned offence.

(8) Where a person is convicted under this section of attempting to commit an offence that is both an indictable offence and a summary offence, he shall not be liable to any greater penalty than he would be liable to on being summarily convicted of the completed offence.

(9) The Government may, by notice in the Gazette,–

(a) amend or add to Schedule 4;

(b) provide that the provisions of this section shall apply in relation to any indictable offence not specified in Schedule 4 only if the magistrates' court consists of the stipendiary magistrate, sitting alone or with other justices.

Restriction on discontinuing trial and taking depositions.

158. Except as provided in section 156(5), the magistrates' court, having begun to try an information for any indictable offence summarily, shall not thereafter proceed to inquire into the information as examining justices.

Committal for sentence.

159. Where on the summary trial under section 156(3) or section 157 of an indictable offence, an adult is convicted of the offence, then, if on obtaining information about his character and antecedents the court is of opinion that they are such that greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead of dealing with him in any other manner, commit him in custody to the Supreme Court for sentence in accordance with the provisions of section 243.

Right to claim trial by jury.

160.(1) Where a person who has attained the age of fourteen is charged before the magistrates' court with a summary offence for which he is liable, or would if he were an adult be liable, to be sentenced by the court to imprisonment for a term exceeding three months, he may, subject to the provisions of this section, claim to be tried by a jury, unless the offence is an assault or an offence under section 130, 131 or 133 of the Criminal Offences Act.

(2) Where under subsection (1) or any other law a person charged with a summary offence is entitled to claim to be tried by a jury, his claim shall be

of no effect unless he appears in person and makes it before he pleads to the charge; and where under any law the prosecutor is entitled to claim that the accused shall be tried by a jury, his claim shall be of no effect unless he makes it before the accused pleads to the charge.

(3) The magistrates' court, when a person is charged with a summary offence for which he may claim to be tried by a jury, shall, before asking him whether he pleads guilty, inform him of his right to be so tried before the Supreme Court and explain what is meant by being tried summarily, and shall then ask him whether he wishes, instead of being tried summarily, to be tried by a jury.

(4) Where the accused is charged with an offence for which he is entitled under subsection (1) to be tried by a jury if he has been previously convicted of a like offence but not otherwise, the court shall explain to him that he may have a right to claim trial by a jury and, after giving him the same information as is provided by subsection (3), shall ask him whether, if he has that right, he wishes, instead of being tried summarily, to be tried by a jury.

(5) Where the accused is charged with an offence that is both–

(a) a summary offence for which the accused may claim to be tried by a jury; and

(b) an indictable offence,

then, if the court, having begun under section 156 (1) to proceed as if the offence were not a summary one, proceeds under subsection (3) of that section with a view to summary trial, it shall, before asking the accused whether he wishes to be tried by a jury, explain to him that if he is tried summarily and is convicted he may be committed for sentence to the Supreme Court under section 159 if the court, on obtaining information of his character and antecedents, is of opinion that they are such that greater punishment should be inflicted than the court has power to inflict.

(6) If–

(a) under this section or under any other law a person charged with a summary offence is entitled to claim to be tried by a jury and claims to be so tried; or

(b) the prosecutor exercises a right conferred on him by any law to claim that the accused shall be tried by a jury,

the court shall thereupon deal with the information in all respects as if it were for an offence punishable on conviction on indictment only, and the offence, whether or not indictable otherwise than by virtue of any such claim, shall as respects the accused be deemed to be an indictable offence.

Summary Trial

Restriction on justices sitting after dealing with bail.

161.(1) A justice of the peace shall not take part in trying the issue of a defendant's guilt on the summary trial of an information if in the course of the same proceedings the justice has been informed, for the purpose of determining the question of the defendant's admission to bail, that he has one or more previous convictions.

(2) For the purposes of this section any committal proceedings from which the proceedings on the summary trial arose shall be treated as part of the trial.

(3) This section shall not apply to a justice of the peace who is a stipendiary magistrate.

Limitation.

162. Except as otherwise expressly provided by any law, the magistrates' court shall not try an information unless the information was laid, or the complaint made, within six months from the time when the offence was committed:

Provided that this section shall not restrict any power to try summarily an indictable offence under section 157, 328 or 329, or under the provisions of any law whereby an indictable offence may be tried summarily with the consent of the accused but not otherwise.

Procedure on trial.

163.(1) On the summary trial of an information, the court shall, if the defendant appears, state to him the substance of the information and ask him whether he pleads guilty or not guilty.

(2) The court, after hearing the evidence and the parties, shall convict the defendant or dismiss the information.

(3) If the defendant pleads guilty, the court may convict him without hearing evidence.

Adjournment.

164.(1) The magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial, and may do so, notwithstanding anything in this Act, when composed of a single justice.

(2) The court may when adjourning either fix the time and place at which the trial is to be resumed, or, unless it remands the defendant, leave the time and place to be determined later by the court, but the trial shall not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice thereof.

(3) The magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the defendant and before sentencing him or otherwise dealing with him, but, if it does so, the adjournment shall not be for more than three weeks at a time.

(4) On adjourning the trial of an information the court may remand the defendant and, where the defendant is an adult, shall do so if–

(a) the offence is not a summary one; or

(b) the court has proceeded under section 156 (3) to summary trial after having begun to inquire into the information as examining justices,

and, where the court remands the defendant, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand.

Non-appearance of prosecutor.

165.(1) Where at the time and place appointed for the trial or adjourned trial of an information the defendant appears or is brought before the court and

the prosecutor does not appear, the court may dismiss the information or, if evidence has been received on a previous occasion, proceed in the absence of the prosecutor.

(2) Where, instead of dismissing the information or proceeding in the absence of the prosecutor, the court adjourns the trial, it shall not remand the defendant in custody unless he has been brought from custody or cannot be remanded on bail by reason of his failure to enter into a recognizance or to find sureties.

(3) Where a summons has been issued, the court shall not begin to try the information in the absence of the defendant or issue a warrant under this section unless either it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that the summons was served on the defendant within what appears to the court to be a reasonable time before the trial or adjourned trial or the defendant has appeared on a previous occasion to answer to the information.

Non-appearance of defendant.

166.(1) Where at the time and place appointed for the trial or adjourned trial of an information the prosecutor appears but the defendant does not, the court may, subject to subsection (3), proceed in his absence.

(2) Where the court, instead of proceeding in the absence of the defendant, adjourns, or further adjourns, the trial, the court may, if the information has been substantiated on oath, and subject to subsection (3), issue a warrant for his arrest:

Provided that–

(a) where the defendant fails to appear at an adjourned trial, the court shall not issue a warrant under this section unless it is satisfied that he has had adequate notice of the time and place of the adjourned trial; and

(b) where the court adjourns the trial after having, either on that or on a previous occasion, received any evidence or convicted the defendant without hearing evidence on his pleading guilty, whether under section 163(3) or 168(2), the court shall not issue a warrant under this section unless it thinks it

undesirable, by reason of the gravity of the offence, to continue the trial in the absence of the defendant.

(3) Where a summons has been issued, the court shall not begin to try the information in the absence of the accused or issue a warrant under this section unless either it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that the summons was served on the accused within what appears to the court to be a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer to the information.

Non-appearance of both parties.

167. Where at the time and place appointed for the trial or adjourned trial of an information neither the prosecutor nor the defendant appears, the court may dismiss the information or, if evidence has been received on a previous occasion, proceed in their absence.

Plea of guilty in absence of defendant.

168.(1) Notwithstanding any other provision of this Act and subject to subsection (4), this section shall apply where a summons has been issued requiring a person to appear before the magistrates' court, other than a juvenile court, to answer to an information for a summary offence, not being–

(a) an offence which is also triable on indictment; or

(b) an offence for which the defendant is liable to be sentenced to be imprisoned for a term exceeding three months,

and the clerk of the court is notified by or on behalf of the prosecutor that the following documents have been served upon the defendant with the summons, that is to say–

(i) a notice containing such statement of the effect of this section as may be prescribed; and

(ii) a concise statement in the prescribed form of such facts relating to the charge as will be placed before the court by or on behalf of the prosecutor if the

accused pleads guilty without appearing before the court.

(2) Where the clerk of the court receives a notification in writing purporting to be given by the accused or by a solicitor acting on his behalf that the accused desires to plead guilty without appearing before the court, the clerk of the court shall inform the prosecutor of the receipt of the notification and if at the time and place appointed for the trial or adjourned trial of the information the accused does not appear and it is proved to the satisfaction of the court, on oath or in the prescribed manner, that the notice and statement of facts referred to in subsection (1) have been served upon the defendant with the summons, then–

(a) the court may proceed to hear and dispose of the case in the absence of the defendant, whether or not the prosecutor is also absent, in like manner as if both parties had appeared and the defendant had pleaded guilty; or

(b) if the court decides not to proceed as aforesaid, the court shall adjourn or further adjourn the trial for the purpose of dealing with the information as if the notification had not been given:

Provided that–

(i) if at any time before the hearing the clerk of the court receives an intimation in writing purporting to be given by or on behalf of the defendant that he wishes to withdraw the notification, the clerk of the court shall inform the prosecutor thereof and the court shall deal with the information as if this section had not been passed;

(ii) before accepting the plea of guilty and convicting the defendant in his absence under this subsection, the court shall cause the notification and statement of facts, including any submission received with the notification which the defendant wishes to be brought to the attention of the court with a view to mitigation of sentence, to be read out before the court;

(iii) if the court proceeds under this subsection to hear and dispose of the case in the absence of the defendant,

the court shall not permit any statement to be made by or on behalf of the prosecutor with respect to any facts relating to the offence charged other than the statement of facts aforesaid except on a resumption of the trial after an adjournment under section 164(3) and shall not without adjourning under section 164(3)sentence him to any term of imprisonment or to any other form of detention, or order him to be subject to any disqualification.

(3) Subsection (2) of section 166 shall not apply to an adjournment by reason of the requirements of paragraph (b) of subsection (2) of this section or to an adjournment on the occasion of the defendant's conviction in his absence under subsection (2) of this section, and, in relation to such an adjournment, the notice required by subsection (2) of section 164 shall include notice of the reason for the adjournment.

(4) The Government may, by notice in the Gazette, provide that this section shall not apply in relation to such offences in addition to those specified in paragraphs (a) and (b) of subsection (1) as may be specified in the notice, and any notice under this subsection may vary or revoke any previous notice thereunder.

Corporations.

169.(1) On the trial by the magistrates' court of an information against a corporation, a representative may on behalf of the corporation enter a plea of guilty or not guilty.

(2) A notification or intimation for the purposes of section 168(2) may be given on behalf of the corporation by a director or the secretary of the corporation; and that subsection shall apply in relation to a notification or intimation purporting to be so given as it applies to a notification or intimation purporting to be given by an individual defendant.

(3) The provisions of Schedule 5 shall have effect where a corporation is charged with an offence before the magistrates' court.

Effect of dismissal of information for indictable offence.

170. Where on the summary trial of an information for an offence that would, but for the provisions of this Act, be punishable on conviction on indictment only the court dismisses the information, the dismissal shall have the same effect as an acquittal on indictment, without prejudice to the right of any party to appeal to the Supreme Court by way of case stated.

Application of fines, etc..

171. The clerk of the magistrates' court shall apply moneys received by him on account of a sum adjudged to be paid by a summary conviction as follows–

(a) in the first place in payment of any costs adjudged by the conviction to be paid to the prosecutor;

(b) in the second place in payment of any damages or compensation so adjudged to be paid to any person;

(c) in the third place in repayment to the prosecutor of any court fees paid by him;

(d) in the fourth place in payment of any court fees payable but not already paid by the prosecutor.

Committal Proceedings

Proceedings before examining justices.

172.(1) Examining justices shall sit in open court except where any enactment contains an express provision to the contrary and except where it appears to them as respects the whole or any part of committal proceedings that the ends of justice would not be served by their sitting in open court.

(2) Evidence given before examining justices shall be given in the presence of the accused, and the defence shall be at liberty to put questions to any witness at the inquiry.

Binding over of prosecutor and witnesses.

173.(1) The magistrates' court acting as examining justices shall bind each witness examined before it, other than the accused and any witness of his merely to his character, by a recognizance to attend and give evidence before the Supreme Court, and it shall bind the prosecutor by a recognizance to prosecute the accused before the Supreme Court:

Provided that the court shall not so bind the prosecutor in any case the prosecution of which is carried on by or under the direction of the Attorney General.

(2) Where it appears to the court, after taking into account any representation made by the accused or prosecutor, that the attendance at the trial of any witness examined before the court is unnecessary by reason of any statement by the accused, or of the accused having admitted before the court the truth of the charge, or of the evidence of the witness being merely formal, the court shall–

(a) if the witness has not already been bound over, bind him over to attend the trial conditionally, that is to say, on notice being given to him and not otherwise;

(b) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally.

(3) The magistrates' court on committing any person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over, conditionally and of the steps that he must take for the purpose of enforcing the attendance.

(4) If any witness on being required to enter into a recognizance under this section refuses to do so, the court may commit him to custody until after the trial of the accused or until he sooner enters into the recognizance:

Provided that if the court does not commit the accused for trial it shall release the witness.

Adjournments.

174.(1) The magistrates' court may, before beginning to inquire into an offence as examining justices, or at any time during the inquiry, adjourn the hearing, and if it does so shall remand the accused.

(2) The court shall, when adjourning, fix the time and place at which the hearing is to be resumed, and the time fixed shall be that at which the accused is required to appear or be brought before the court in pursuance of the remand.

Committal or discharge.

175.(1) Subject to the provisions of this Act and any other law relating to the summary trial of indictable offences, if the magistrates' court inquiring into an offence as examining justices is of opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused upon trial by jury for any indictable offence, the court shall commit him to the Supreme Court for trial and, if it is not of that opinion, it shall, if he is in custody for no other cause than the offence under inquiry, discharge him.

(2) The court may commit a person for trial–

(a) in custody, that is to say, by committing him to custody there to be safely kept until delivered in due course of law; or

(b) On bail, that is to say, by taking from him a recognizance, with or without sureties, conditioned for his appearance at the time and place of trial and at every time and place to which the trial may from time to time be adjourned,

and may, instead of taking recognizances in accordance with paragraph (b), fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 149 and in the meantime commit the accused to custody in accordance with paragraph (a).

(3) Where the court has committed a person to custody in accordance with paragraph (a) of subsection (2) then, if that person is in custody for no other cause, the court may, at any time before his trial, release him on his entering into such a recognizance as is mentioned in paragraph (b) of subsection (2).

Public notice of outcome.

176. Where the magistrates' court acting as examining justices commits any person for trial or determines to discharge him, the clerk of the court shall, on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access a notice–

(a) in either case giving that person's name, address and age, if known;

(b) in a case where the court so commits him, stating the charge or charges on which he is committed and the court to which he is committed;

(c) in a case where the court determines to discharge him, describing the offence charged and stating that it has so determined.

Committal without consideration of evidence.

177.(1) The magistrates' court inquiring into an offence as examining justices may, if satisfied that all the evidence before the court (whether for the prosecution or the defence) consists of written statements tendered to the court under section 120, with or without exhibits, commit the defendant for trial for the offence without consideration of the contents of those statements, unless–

(a) the defendant or one of the defendants is not represented by a barrister or solicitor;

(b) a barrister or solicitor for the defendant or one of the defendants, as the case may be, has requested the court to consider a submission that the statements disclose insufficient evidence to put that defendant on trial by jury for the offence.

(2) Section 175(1) shall not apply to a committal for trial under this section.

Restrictions on reporting.

178.(1) Except as provided by subsections (2), (5) and (10) it shall not be lawful to publish in Gibraltar a written report, or to broadcast in Gibraltar a report, of any committal proceedings in Gibraltar containing any matter other than that permitted by sub-section (6).

(2) Subject to sub-section (3) a magistrates' court shall, on an application for the purpose made with reference to any committal proceedings by the defendant or one of the defendants, as the case may be, order that sub-section (1) shall not apply to reports of those proceedings.

(3) Where in the case of two or more defendants one of them objects to the making of an order under sub-section (2), the court shall make the order if, and only if, it is satisfied, after hearing the representations of the defendant, that it is in the interests of justice to do so.

(4) An order under sub-section (2) shall not apply to reports of proceedings under sub-section (3), but any decision of the court to make or not to make such an order may be contained in reports published or broadcast before the time authorised by sub-section (5).

(5) It shall not be unlawful under this section to publish or broadcast a report of committal proceedings containing any matter other than that permitted by sub-section (6)–

(a) where the magistrates' court determines not to commit the defendant, or determines to commit none of the defendants, for trial, after it so determines; and

(b) where the court commits the defendant or any of the defendants for trial, after the conclusion of his trial or, as the case may be, the trial of the last to be tried;

and where at any time during the inquiry, the court proceeds to try summarily the case of one or more of the defendants under section 156,157 or 328 while committing the other defendant or one or more of the other defendants for trial, it shall not be unlawful under this section to publish or broadcast as part of a report of the summary trial, after the court determines to proceed as aforesaid, a report of so much of the committal proceedings containing any such matter as takes place before the determination.

(6) The following matters may be contained in a report of committal proceedings published or broadcast without an order under subsection (2) before the time authorised by sub-section (5), that is to say–

(a) the identity of the court and the names of the examining justices;

(b) the names, addresses and occupations of the parties and witnesses and the ages of the defendant or defendants and witnesses;

(c) the offence or offences, or a summary of them, with which the defendant or defendants is or are charged;

(d) the names of barristers and solicitors engaged in the proceedings;

(e) any decision of the court to commit the defendant or any of the defendants for trial, and any decision of the court on the disposal of the case of any defendants not committed;

(f) where the court commits the defendant or any of the defendants for trial, the charge or charges, or a summary of them, on which he is committed and the court to which he is committed;

(g) where the committal proceedings are adjourned, the date and place to which they are adjourned;

(h) any arrangements as to bail on committal or adjournment; and

(i) whether legal aid was granted to the defendant or any of the defendants.

(7) If a report is published or broadcast in contravention of this section, the following persons, that is to say–

(a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes; and

(c) in the case of a broadcast of a report, any body corporate which transmits or provides the programme in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical,

is guilty of an offence and is liable, on summary conviction, to a fine at level 4 on the standard scale.

(8) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Attorney General.

(9) Subsection (1) shall be in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports and proceedings of the magistrates' and other courts.

(10) For the purposes of this section committal proceedings shall, in relation to an information charging either an indictable offence or an offence which is to be tried on indictment at the instance of the defendant or the prosecutor, be deemed to include any proceedings in the magistrates' court before the court proceeds to inquire into the information as examining justices, but where a magistrates' court which has begun to try an information summarily discontinues the summary trial in pursuance of section 156(5) and proceeds to inquire into the information as examining justices, that circumstance shall not make it unlawful under this section for a report of any proceedings on the information which was published or broadcast before the court determined to proceed as aforesaid to have been so published or broadcast.

(11) In this section–

"broadcast" means broadcast by wireless telegraphy sounds or visual images intended for general reception; and

"publish", in relation to a report, means publish the report either by itself or as part of a newspaper or periodical, for distribution to the public.

Privilege of newspapers.

179. Any report in a newspaper, and any broadcast report, of committal proceedings in a case where publication is permitted by virtue only of section 178(5)**,** published as soon as practicable after it is so permitted, shall be treated for the purposes of sections 3 and 6 of the Defamation Act as having been published or broadcast contemporaneously with the committal proceedings.

PART XVI
PROCEEDINGS IN THE SUPREME COURT IN ITS ORIGINAL JURISDICTION

Manner of Trial

Trials to be with jury.

180. Every criminal case before the court shall be tried with a jury in the manner provided by this Act.

Indictments

Contents of indictments.

181.(1) Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) Notwithstanding any rule of law or practice, an indictment shall, subject to the provisions of this Part, not be open to objection in respect of its form or contents if it is framed in accordance with rules made under section 187.

Bills of indictment.

182.(1) Subject to the provisions of this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before the Supreme Court, and where a bill of indictment has been so preferred the Registrar shall, if he is satisfied that the requirements of

subsection (2) have been complied with, sign the bill, and it shall thereupon become an indictment and be proceeded with accordingly–

Provided that the Chief Justice may, if satisfied that such requirements have been complied with, on the application of the prosecutor or of his own motion, direct the Registrar to sign the bill and the bill shall be signed accordingly.

(2) Subject as hereinafter provided no bill of indictment charging any person with an indictable offence shall be preferred unless either–

(a) the person charged has been committed for trial for the offence; or

(b) the bill is preferred by the direction or with the consent of the Chief Justice or pursuant to an order made under section 255 of the Criminal Offences Act:

Provided that–

(i) where the person charged has been committed for trial, the bill of indictment against him may include, either in substitution for or in addition to counts charging the offence for which he was committed, any counts founded on facts or evidence disclosed in any examination or deposition taken before a justice in his presence, being counts which may lawfully be joined in the same indictment;

(ii) a charge of a previous conviction of an offence may, notwithstanding that it was not included in the committal or in any such direction or consent as aforesaid, be included in any bill of indictment.

(3) If a bill of indictment preferred otherwise than in accordance with the provisions of subsection (2) has been signed by the Registrar, the indictment shall be liable to be quashed:

Provided that–

(a) if the bill contains several counts, and the said provisions have been complied with as respects one or more of them, those

counts only that were wrongly included shall be quashed under this subsection; and

(b) where a person who has been committed for trial is convicted on any indictment or any count of an indictment, that indictment or count shall not be quashed under this subsection in any proceedings on appeal, unless application was made at the trial that it should be so quashed.

Objections to and amendment of indictments.

183.(1) Every objection to an indictment for any formal defect on the face thereof shall be taken immediately after the indictment has been read over to the accused and not later.

(2) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice, and may make such order as to the payment of any costs incurred owing to the necessity for amendment as the court thinks fit.

(3) Where an indictment is so amended, a note of the order for amendment shall be endorsed on the indictment.

Joinder of charges in same indictment.

184. Subject to the provisions of rules made under section 187, charges for more than one offence may be joined in the same indictment.

Separate trial of counts and postponement of trial.

185.(1) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.

(2) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a

consequence of the exercise of any power of the court under this Part to amend an indictment or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(3) Where an order of the court is made under this section for a separate trial or for the postponement of a trial–

(a) if such an order is made during a trial the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects, if the jury has been discharged, as if the trial had not commenced; and

(c) the court may make such order as to costs and as to admitting the accused person to bail, and as to the enlargement of recognizances and otherwise as the court thinks fit.

(4) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

Saving.

186.(1) Nothing in this Part or in any rules made under section 187 shall affect the law or practice relating to the jurisdiction of the court, nor prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions, or intentions which are legally necessary to constitute the offence with which the accused is charged, nor otherwise affect the laws of evidence in criminal cases.

(2) The provisions of this Part relating to indictments shall apply to criminal informations in the Supreme Court and inquisitions, and also to any plea, replication or other criminal pleading, with such modifications as may be made by rules under section 187.

Rules as to indictments.

187. The Chief Justice may make rules regulating indictments and any matter connected therewith, including provision for the manner in which and the time at which bills of indictment are to be preferred before the Supreme Court and the manner in which application is to be made to the Chief Justice for the preferment of a bill of indictment, and generally for the better carrying out of the provisions of this Part.

Pleas

Plea of guilty to other offence.

188. Where a prisoner is arraigned on an indictment for any offence, and can lawfully be convicted on such indictment of some other offence not charged in such indictment, he may plead not guilty of the offence charged in the indictment, but guilty of such other offence.

Pleas by corporations.

189.(1) A corporation may, on arraignment before the Supreme Court, enter in writing by its representative a plea of guilty or not guilty, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

(2) In this section "representative", in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.

(3) A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the

corporation for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

Selection, etc., of Jury

Number of jurors.

190.(1) The jury shall consist of nine persons save for the trial of a person arraigned on an indictment for murder or any offence punishable by death when the jury shall consist of twelve persons.

(2) Where it appears to the court that the duration of the trial may exceed four weeks, the court may order that no more than three persons (in this part referred to as "additional jurors") shall be chosen in accordance with the provisions of section 191 in addition to the number of jurors specified in subsection (1).

(3) The provisions of section 195 shall apply in respect of any person chosen as an additional juror.

Choosing the jury.

191. The jury shall be chosen from among the number of persons summoned to attend by lot in open court, until the required number of jurors including the number, if any, of any additional jurors ordered by the court under the provisions of section 190(2) appear, who, after all just causes of challenge allowed, shall remain as fair and indifferent and the same procedure shall be followed whenever it shall be necessary to form a new jury:

Provided that if a case be brought on for trial during the time that a jury in any other case may be deliberating, a new jury may be drawn.

Challenge of jurors.

192. On the arraignment of any person on an indictment for any offence, it shall not be lawful for the prosecutor or the defendant to challenge any juror or additional juror except for cause.

Deficiency of jurors.

193. Whenever there is a deficiency of jurors, it shall be lawful for the court to issue fresh orders, if necessary, and, subject to all rights of challenge, to put upon the jury so many men of the bystanders as shall be sufficient to make up the full number thereof, and it shall not be an objection to any such talesman that his name is not upon any jurors' or additional jurors' list.

Jury may try several issues.

194. Where no objection is made by either party it shall be lawful for the court to try any issue with the same jury that shall have previously tried or been drawn to try any previous issue, or to order the name of any person on such jury whom both parties may consent to withdraw or who may be justly challenged, or whom the court may excuse, to be set aside, and another person to be chosen by lot:

Provided that if an additional juror or additional jurors shall have been chosen, the court may appoint an additional juror to be a member of the jury, subject to the powers of the court contained in this section, and only when no additional juror is available, shall another person be chosen by lot.

Continuation of trial on death or discharge of juror.

195.(1) Where an additional juror has been chosen or additional jurors have been chosen, such a person shall be treated and have obligations as a juror for the period of the trial up to the time that either–

(a) he is appointed as a juror by reason of subsection (2)(a); or

(b) the jury consider their verdict, at which time the court shall discharge the additional juror or additional jurors in respect of the trial, but the court may require such person to attend the court as an additional juror if the same jury tries another issue.

(2) Where in the course of any trial any juror dies or is discharged by the court whether as being through illness incapable of continuing to act or for any other reason and either–

(a) an additional juror has been chosen or additional jurors have been chosen, the court shall appoint such person or persons,

selected in the order in which additional jurors were chosen as juror in place of a juror who has died or was discharged, or

(b) no additional juror has been chosen or any additional juror chosen has been appointed juror is not otherwise available to be appointed juror, but, subject to subsection (3), the number of the members of the jury is not reduced below seven,

the jury shall be considered as being and remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly.

(3) On a trial for murder or for any offence punishable with death subsection (2)(b) shall not apply on the death or discharge of any juror unless assent to its, then applying is given in writing by or on behalf of both the prosecution and the defendant or each of the defendants and in any event the number of jurors is not reduced below ten.

Discharge of jury.

196. Notwithstanding anything contained in section 195 the court may at any time discharge a jury if it sees fit so to do.

Swearing of juror.

197. A juror shall be sworn immediately after he has been chosen.

Appointment of foreman.

198.(1) When the jurors have been sworn, they shall appoint one of their number to be foreman.

(2) If a majority of the jurors do not agree in the appointment of a foreman within such time as the court shall consider reasonable, the court shall appoint a foreman.

(3) The foreman shall preside during the deliberations of the jury and shall ask any information from the court that is required by the jury or any of the jurors and shall announce the verdict of the jury.

Separation and refreshment.

199.(1) In any case the court may, if it thinks fit, at any time before the jury consider their verdict, permit them to separate.

(2) Jurors may, in the discretion of the court, be allowed reasonable refreshment.

Verdicts.

Delivery of verdicts.

200. Every verdict in a criminal case shall be delivered orally in open court by the foreman of the jury, and shall thereupon be recorded and read over to the jury before they are discharged.

When majority verdicts may be accepted.

201.(1) Where any person is arraigned on indictment for murder or any offence punishable with death, the court shall not accept any verdict of the jury unless it be unanimous.

(2) In any other criminal case, the court may accept a verdict upon which at least seven of the jurors are agreed:

Provided that the court shall only accept a majority verdict where the jury are unable to reach an unanimous verdict after deliberation for such time as the court may consider reasonable, not being less than two hours from the conclusion of the summing-up.

Effect of majority verdicts.

202. The verdict of a majority of the jurors accepted by the court under the provisions of section 201(2) shall be as good and valid in all respects as an unanimous verdict.

Announcements of verdicts.

203. In every case the foreman shall announce the number of jurors who agreed on the verdict and the number who dissented.

Validity of verdict where juror disqualified.

204. The verdict of a jury in any proceedings shall not be void by reason only that a juror is disqualified from serving on a jury in those proceedings.

Jury unable to reach verdict.

205.(1) If in any case the court is satisfied that there is no reasonable prospect of the jury agreeing upon a verdict which the court may accept, the court shall discharge the jury and either cause a new jury to be at once impanelled and sworn and charged with the case or adjourn the proceedings to such date as the court shall think fit:

Provided that a jury shall not be discharged before it has deliberated for at least three hours after the conclusion of the summing-up.

(2) A trial with a new jury shall proceed de novo as if the first jury had not been impanelled.

Penalties in Connection with Juries

Penalty for non-attendance.

206. If any person, having been duly summoned to attend as a juror without sufficient cause to be determined by the court, fails to attend in pursuance of such summons, or being called three times, does not answer to his name, or if any such man or a talesman after having been called is present but does not appear, or after his appearance and before he is sworn wilfully withdraws himself from the presence of the court, without leave of the court, the court may impose such fine not exceeding level 3 on the standard scale as to the court shall seem meet:

Provided that no juror shall be liable to a penalty for non-attendance on any jury unless the summons requiring him to attend has been duly served six days at least before the day on which he is required to attend.

Refusal to serve.

207. If any person duly summoned to attend as a juror refuses to serve when required by the court so to do, or if, having been duly sworn he departs the court before verdict given, or before he be regularly discharged, the court

may impose upon him such fine not exceeding level 3 on the standard scale as to the court shall seem meet:

Provided that the court may during the same sitting of the court remit or reduce such fine upon sufficient cause shown in open court, and within five days after the close of the sitting it may remit or reduce such fine on sufficient cause shown by affidavit filed.

Recovery of penalties.

208. If any person on whom any fine is so imposed neglects or refuses to pay the same to the person authorized by the Chief Justice to receive it, the court shall then or at its next sitting by order of the court, signed by the proper officer thereof, cause such fine to be levied by distress and sale of the goods and chattels of the person on whom such fine shall have been imposed, and the overplus money, if any, which remains after payment of such fine and deducting the reasonable charges of such distress and sale, shall be rendered to the person whose goods and chattels shall have been so distrained upon and sold and every fine so imposed shall, when received or levied, be paid to the proper officer of the court, to be by him paid into the Consolidated Fund.

Expenses of Witnesses

Expenses of witnesses.

209.(1) Every person who attends any criminal trial of the Supreme Court as a witness for the prosecution, whether on his recognizance or in obedience to a subpoena or by virtue of a warrant and every person who attends any such trial as a witness for the defence on his recognizance, shall be entitled at the conclusion of the case, whether he has been examined or not, to such sums for his attendance and expenses in accordance with such scale as the Chief Justice may direct.

(2) The court may, if it thinks fit, disallow the payment of any such sum to any such witness.

(3) If the court certifies that in its opinion any witness examined for the defence not being a witness as hereinbefore described–

(a) has given material evidence; and

(b) has given his evidence in a truthful and satisfactory manner,

it may order that the allowance and expenses of such witness shall be allowed and paid in the same manner as if he had attended on his recognizance and the account of such witness shall be taxed and paid accordingly.

(4) No claim made by a witness for any such sum shall be entertained unless the same is made within one month after the last day of the criminal trial in respect of which such claim is made.

(5) Payment of any allowances or expenses under this section shall be made out of the Consolidated Fund.

PART XVII
DEFERMENT OF SENTENCE

Power to defer sentence.

210.(1) Subject to the provisions of this section, the Supreme Court or the magistrates' court may defer passing sentence on an offender for the purpose of enabling the court to have regard in determining his sentence to his conduct after conviction including, where appropriate, the making by him of reparation for his offence or to any change in his circumstances.

(2) Any deferment under this section shall be until such date as may be specified by the court, not being more than six months after the date of the conviction, and where the passing of sentence has been deferred under this section it shall not be further deferred thereunder.

(3) The power conferred by this section shall be exercisable only if the offender consents and the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise this power.

(4) A court which under this section has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if during that period he is convicted in Gibraltar of any offence.

(5) Where a court which under this section has deferred passing sentence on an offender proposes to sentence him, whether on the date originally specified by the court or by virtue of subsection (4) above before that date, it

may issue a summons requiring him to appear before the court, or may issue a warrant for his arrest.

(6) Notwithstanding section 164 of this Act, the magistrates' court shall not be obliged to remand an offender in whose case it defers the passing of sentence under this section.

(7) Nothing in this section shall affect the power of the Supreme Court to bind over an offender to come up for judgment when called upon or the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this section.

PART XVIII
PUNISHMENT

Imprisonment

Imprisonment of children.

211.(1) A child shall not be ordered to be imprisoned for any offence or be committed to prison in default of payment of a fine, damages or costs.

Restrictions on power of imprisonment.

212.(1) A sentence of imprisonment imposed by the Supreme Court shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

(2) A young person shall not be ordered to be imprisoned for more than two years for any offence.

Commencement and duration of sentences.

213.(1) A sentence of imprisonment imposed by the Supreme Court shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

(2) The length of any sentence of imprisonment imposed on an offender by a court shall be treated as reduced by any period during which he was in custody by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those

proceedings arose, but where the offender was previously subject to a probation order, an order for conditional discharge or a suspended sentence in respect of that offence, any such period falling before the order was made or suspended sentence passed shall be disregarded for the purposes of this section.

(3) For the purposes of this section a suspended sentence shall be treated as a sentence of imprisonment when it takes effect under section 221 and as being imposed by the order under which it takes effect.

(4) Any reference in this Act or any other enactment, whether passed before or after the commencement of this Act, to the length of any sentence of imprisonment shall, unless the context otherwise requires, be construed as a reference to the sentence pronounced by the court and not the sentence as reduced by this section.

Consecutive sentences.

214. Wherever a sentence of imprisonment for any offence is passed by any court on any person already imprisoned under sentence for another offence, the court may order imprisonment for the subsequent offence to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, notwithstanding that the aggregate term of imprisonment may exceed the term for which such person could have been sentenced for either single offence.

Consecutive sentences in magistrates' court.

215.(1) The magistrates' court when imposing imprisonment on any person may order that the term of imprisonment shall commence on the expiration of any other term of imprisonment imposed by that or any other court, but where the magistrates' court imposes two or more terms of imprisonment to run consecutively the aggregate of such terms shall not, subject to the provisions of this section, exceed six months.

(2) If two or more of the terms imposed by the court are imposed in respect of an indictable offence tried summarily under section 156, the aggregate of the terms so imposed and any other terms imposed by the court may exceed six months but shall not, subject to the following provisions of this section, exceed twelve months.

(3) The limitations imposed by subsections (1) and (2) shall not operate to reduce the aggregate of the terms that the court may impose in respect of any offences below the term which the court has power to impose in respect of any one of those offences.

(4) Where a person has been sentenced by the magistrates' court to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine, or for want of sufficient distress to satisfy the fine, shall not be subject to the limitations imposed by subsections (1), (2) and (3).

(5) For the purposes of this section a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction or for want of sufficient distress to satisfy such a sum.

Minimum sentence in magistrates' court.

216. The magistrates' court shall not impose imprisonment for less than five days.

Mitigation of penalties.

217.(1) Where under any law the magistrates' court has power to sentence an offender to imprisonment for a period specified by that law, or to a fine of an amount specified by that law, then, except where the law expressly provides to the contrary, the court may sentence him to imprisonment for less than that period or, as the case may be, to a fine of less than that amount.

(2) Where under any law an offender sentenced, on summary conviction, to imprisonment or a fine is required to enter into a recognizance with or without sureties to keep the peace or observe any other condition, the court convicting him may dispense with or modify the requirement.

(3) Where under any law the magistrates' court has power to sentence an offender to imprisonment but not to a fine, then, except where the law expressly provides to the contrary, the court may, instead of sentencing him to imprisonment, impose a fine not exceeding level 3 on the standard scale and not of such an amount as would subject him, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.

Time in custody pending appeal.

218.(1) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the court hearing the appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

(2) Where a court gives a contrary direction under subsection (1) it shall state its reasons for so doing.

(3) The Court of Appeal shall not give a contrary direction where it has given leave to appeal under section 9(1)(b) or (c) of the Court of Appeal Act or where the Supreme Court has granted a certificate under section 9(1)(b) of that Act.

(4) The length of sentence shall be reduced by the time for which he was in police detention in connection with the offence.

Suspended sentences.

219.(1) A court which passes a sentence of imprisonment of not more than two years for an offence may order that the sentence shall not take effect unless during a period specified in the order (hereinafter referred to as the "operational period") being not less than one year or more than three years from the date of the order, the offender commits in Gibraltar another offence punishable with imprisonment and thereafter a court orders under the provisions of section 221 that the original sentence shall take effect.

(2) On passing a suspended sentence the court shall explain to the offender, in ordinary language, the liability under section 221 if during the operational period he commits an offence punishable with imprisonment.

(3) Subject to any provision to the contrary contained in this Act or any enactment passed or instrument made under any enactment after the lst day of July, 1969–

(a) a suspended sentence which has not taken effect under section 221 shall be treated as a sentence of imprisonment for the purpose of all enactments and instruments made under enactments except any enactment or instrument which

provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment; and

(b) where a suspended sentence has taken effect under that section, the offender shall be treated for the purposes of the said excepted enactments and instruments as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under that section expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.

Prison sentence partly served and partly suspended.

220.(1) Where a court passes on an offender a sentence of imprisonment for a term of not less than three months and not more than two years, it may order that, after he has served part of the sentence in prison, the remainder of it shall be held in suspense.

(2) The part of the sentence to be served in prison shall be not less than twenty-eight days and the part to be held in suspense shall be not less than one-quarter of the whole term, and the offender shall not be required to serve the latter part unless it is restored under subsection (3), and this shall be explained to him by the court, using ordinary language and stating the substantial effect of that subsection.

(3) If at any time after the making of the order he is convicted of an offence punishable with imprisonment and committed during the whole period of the original sentence, then, subject to subsections (4) and (5), the court may restore the part of the sentence held in suspense and order him to serve.

(4) If a court, considering the offender's case with a view to exercising the powers of subsection (3), is of opinion that (in view of all the circumstances, including the facts of the subsequent offence) it would be unjust fully to restore the part of the sentence held in suspense, it shall either restore a lesser part or declare, with reasons given, its decision to make no order under the subsection.

(5) If an order restoring part of a sentence has been made under subsection (3), no order restoring any further part of it may be made.

(6) Where a court exercises those powers, it may direct that the restored part of the original sentence is to take effect as a term to be served either immediately or on the expiration of another term of imprisonment passed on the offender by that or another court.

(7) In this section "the whole period" of a sentence means the time which the offender would have had to serve in prison if the sentence had been passed without an order under subsection (1) and he had no remission under section 51 of the Prison Act.

(8) The Governor may, by order, vary–

(a) the minimum term of imprisonment for the time being specified in subsection (1); and

(b) the minimum part of the sentence to be served in prison for the time being specified in subsection (2).

(9) An order made by virtue of subsection 8(b) may provide that the minimum part of the sentence to be served in prison shall be a specified length of time or a specified fraction of the whole sentence.

Powers of court on conviction for further offence.

221.(1) Where an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and either he is convicted by or before a court having power under subsection (4) to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such court, then, unless the sentence has already taken effect, that court shall consider his case and deal with him by one of the following methods–

(a) the court may order that the suspended sentence shall take effect with the original term unaltered;

(b) it may order that the sentence shall take effect with the substitution of a lesser term for the original term;

(c) it may by order vary the original order under section 219(1) by substituting for the period specified therein a period expiring not later than three years from the date of the variation; or

(d) it may make no order with respect to the suspended sentence,

and a court shall make an order under paragraph (a) unless the court is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, and where it is of that opinion the court shall state its reasons.

(2) Where a court orders that a suspended sentence shall take effect, with or without variation of the original term, the court may order that that sentence shall take effect immediately or that the term thereof shall commence at the expiration of another term of imprisonment passed on the offender by that or another court.

(3) For the purposes of any enactment conferring rights of appeal in criminal cases, any such order made by a court shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

(4) An offender may be dealt with in respect of a suspended sentence either by the Supreme Court or, if the sentence was imposed by the magistrates' court, by that court.

(5) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Supreme Court, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the court and not by a jury.

(6) Where an offender is convicted by the magistrates' court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Supreme Court, the court may–

(a) if it thinks fit, commit him in custody or on bail to the Supreme Court; and

(b) if it does not, shall give written notice of the conviction to the Registrar of the Supreme Court.

(7) If it appears to the Chief Justice or a justice of the peace in the case of a suspended sentence imposed by the magistrates' court that, an offender has

been convicted in Gibraltar of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the Chief Justice or a justice of the peace, as the case may be, may issue a summons requiring the offender to appear at the place and time specified therein or may issue a warrant for his arrest.

Abolition of penal servitude and hard labour.

222.(1) No person shall be sentenced by any court to penal servitude.

(2) No person shall be sentenced by a court to imprisonment with hard labour.

Deportation

Power to recommend deportation.

223.(1) Subject to this section, where a person to whom section 12 of the Immigration Control Act applies and who has attained the age of seventeen years is convicted in Gibraltar of any offence for which he is punishable with imprisonment, any court having power to sentence him for that offence may, unless it commits him to be sentenced or further dealt with for that offence by another court, recommend where it sentences him for that offence, and in addition to so sentencing him, that he be deported from Gibraltar.

(2) A court shall not under this section recommend a person for deportation unless the person has been given not less than seven days notice of the court's intention to do so, but the court shall have power to adjourn after convicting an offender, for the purpose of enabling a notice to be given to him under this section or, if a notice was so given to him less than seven days previously, for the purpose of enabling the necessary seven days to elapse.

(3) For the purposes of this section–

(a) a person shall be deemed to have attained the age of seventeen years at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a recommendation for deportation; and

(b) the question whether an offence is one for which a person is punishable with imprisonment shall be determined without regard to any enactment restricting the imprisonment of young offenders or first offenders–

and, for the purpose of deportation, if a person who on being charged with an offence is found to have committed it he shall, notwithstanding any enactment to the contrary and notwithstanding that the court does not proceed to conviction, be regarded as a person convicted of the offence, and references to conviction shall be construed accordingly.

(4) Where a court recommends or purports to recommend a person for deportation, the validity of the recommendation shall not be called in question except on an appeal against the recommendation or against the conviction on which it is made, but the recommendation shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

(5) Nothing in this section shall empower a court to recommend the deportation of any person who is a Community National for the purposes of sections 39 to 51 of the Immigration Control Act, except in the case where the Principal Immigration Officer could refuse to allow the person to enter Gibraltar or could cancel any residence permit issued to that person.

Detention

Grave crimes committed by persons under 18.

224.(1) A person convicted of an offence who appears to the court to have been under the age of eighteen years at the time the offence was committed shall not, if he is convicted of murder, be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against any such person, but in lieu thereof the court shall, notwithstanding anything in this or in any other Act, sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Government may direct.

(2) Where a child or young person is convicted on indictment of an attempt to murder or of manslaughter, or of wounding with intent to do grievous bodily harm, and the court is of opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period as may be specified

in the sentence; and where such a sentence has been passed the child or young person shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Government may direct.

(3) A person detained pursuant to the directions of the Government under this section shall, while so detained, be deemed to be in legal custody.

(4) Any person so detained may, at any time, be discharged by the Government on licence and such a licence may be in such form and may contain such conditions as the Government may direct, and may at any time be revoked or varied by the Government. Where a licence has been revoked the person to whom the licence related shall return to such place as the Government may direct, and if he fails to do so may be apprehended without warrant and taken to that place.

Detention in police cells.

225.(1) The magistrates' court, where it has power to impose imprisonment on any person, may instead of doing so order him to be detained for any period not exceeding four days in a place certified by the Chief Justice to be suitable for the purpose.

(2) The Chief Justice may certify under this section any police cells or similar place provided by the Commissioner of Police.

(3) A woman or girl shall not be detained in any such place except under the supervision of women.

(4) The Chief Justice may make rules for the inspection of places certified by him under this section, for the treatment of persons detained in them and generally for the purpose of carrying this section into effect.

(5) Any expenses incurred in the maintenance of persons detained under this section shall be defrayed out of the Consolidated Fund.

Detention for one day.

226.(1) Where the magistrates' court has power to commit to prison a person convicted of an offence, or would have that power but for section 245 or 246, the court may order him to be detained within the precincts of the courthouse or at any police station until such hour, not later than eight

o'clock in the evening of the day on which the order is made, as the court may direct, and, if it does so, shall not, where it has power to commit him to prison, exercise that power.

(2) The court shall not make such an order under this section as will deprive the offender of a reasonable opportunity of returning to his abode on the day of the order.

Committal to custody overnight.

227.(1) Where the magistrates' court has power to commit to prison a person in default of payment of a sum adjudged to be paid by a summary conviction, or would have that power but for section 245 or 246, the court may issue a warrant for his detention in a police station, and, if it does so, shall not, where it has power to commit him to prison, exercise that power.

(2) A warrant under this section, unless the sum adjudged to be paid by the conviction is sooner paid, shall authorize any police officer to arrest the defaulter and take him to a police station and shall require the officer in charge of the station to detain him there until eight o'clock in the morning of the day following that on which he is arrested, or, if he is arrested between midnight and eight o'clock in the morning, until eight o'clock in the morning of the day on which he is arrested:

Provided that the officer may release him at any time within four hours before eight o'clock in the morning if the officer thinks it expedient to do so in order to enable him to go to his work or for any other reason appearing to the officer to be sufficient.

Fines and Recognizances

General power of Supreme Court to impose fines.

228. The Supreme Court, where an offender is convicted on indictment of any offence, not being an offence the sentence for which is fixed by law, shall have power to fine the offender in lieu of or in addition to dealing with him in any other manner in which the Supreme Court has power to deal with him.

Standard scale of fines.

229.(1) There shall be a standard scale of fines for offences which shall be known as "the standard scale".

(2) The scale shall be that provided in Schedule 7 to this Act.

(3) If it appears to the Government that there has been a change in the value of money since the date on which that level was last determined, he may by order substitute for the sum or sums for the time being specified in Schedule 7 such other sum or sums as appear to him justified by the change.

(4) Where any provision, whether contained in an Act passed before or after this Act, provides–

(a) that a person convicted for an offence shall be liable on conviction to a fine or to a maximum fine by reference to a specified level on the standard scale; or

(b) confers power by subsidiary legislation to make a person liable on conviction of an offence, whether or not created by subordinate legislation, to a fine or a maximum fine by reference to a specified level on the standard scale,

it is to be construed as referring to the standard scale for which this section provides and to the levels specified in Schedule 7 from time to time.

Power to allow time, etc..

230.(1) Subject to the provisions of this section, where a fine is imposed by, or a recognizance is forfeited before the Supreme Court, an order may be made in accordance with the provisions of this section–

(a) allowing time for the payment of the fine or the amount due under the recognizance;

(b) directing payment of the amount by instalments of such amounts on such days as may be specified in the order;

(c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered;

(d) in the case of a recognizance, discharging the recognizance or reducing the amount due thereunder:

Provided that any term of imprisonment fixed under this subsection in default of payment of a fine shall not exceed the period applicable to the case under Schedule 6.

(2) An order under this section may be made by the Chief Justice upon application made in writing to the Registrar and such an order may amend any previous order made under this section.

(3) Where any person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by the Supreme Court to, or is serving or otherwise liable to serve, a term of imprisonment, the Supreme Court may order that any term of imprisonment fixed under paragraph (c) of subsection (1) shall not begin to run until after the end of the first mentioned term of imprisonment.

(4) The power conferred by this section to discharge a recognizance or reduce the amount due thereunder shall be in addition to the powers conferred by any other law relating to the discharge, cancellation, mitigation or reduction of recognizances or sums forfeited thereunder.

(5) This section shall not apply to a fine imposed by the Supreme Court on appeal against a decision of the magistrates' court.

Defaults in payment of instalments.

231.(1) Where any order is made under section 234 directing payment by instalments of a fine or the amount due under a recognizance, and default is made in the payment of any instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(2) Where any order as is mentioned in subsection (1) is made, then–

(a) on payment of the fine or the amount to the Registrar or, if the person in respect of whom the order is made is in prison, the

Superintendent, the order shall cease to have effect, and, if the person is in prison and is not liable to be detained for any other cause, he shall forthwith be discharged; and

(b) on payment to the Registrar or the Superintendent of part of the fine or of the amount, the total number of days in the term of imprisonment shall be reduced proportionately, that is to say, by such number of days as bears to the total number of days less one day the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine or amount.

(3) Any sums received by the Superintendent under subsection (2) shall be paid by him to the Registrar.

Duty of magistrates' court to consider means of offender.

232.(1) In fixing the amount of a fine, the magistrates' court shall take into consideration among other things the means of the person on whom the fine is imposed and for this purpose, shall enquire into his means.

(2) In fixing the amount of a fine, the magistrates' court shall not take into consideration the amount of the court fees payable in the case, and payment of those fees shall not be required in addition to the fine.

Limit on fines.

233.(1) A child shall not be ordered to pay any fine of an amount greater than that provided for in Schedule 7 for any offence.

(2) A young person shall not be ordered to pay any fine of an amount greater than that provided for in Schedule 7 for any offence.

Power to dispense with immediate payment.

234.(1) The magistrates' court when it adjudges by conviction or order a sum to be paid may, instead of requiring immediate payment, allow time for payment, or order payment by instalments.

(2) Where the magistrates' court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments.

(3) Where a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

Enforcement by distress or committal.

235.(1) Subject to the following provisions of this Part and to section 221, where default is made in paying a sum adjudged to be paid by a conviction or order of the magistrates' court, the court may issue a warrant of distress for the purpose of levying the sum or issue a warrant committing the defaulter to prison.

(2) A warrant of commitment may be issued either–

(a) where it appears on the return to a warrant of distress that the money and goods of the defaulter are insufficient to satisfy the sum with the costs and charges of levying the sum; or

(b) instead of a warrant of distress.

(3) The period for which a person may be committed to prison under such a warrant shall not, subject to the provisions of any other law, exceed the period applicable to the case under Schedule 6.

(4) The Government may, by order, omit, vary or amend any of the matters contained in Schedule 7.

Postponement of issue of warrant.

236.(1) Where the magistrates' court has power to issue a warrant of distress under this Part, it may, if it thinks it expedient to do so, postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just.

(2) Where the magistrates' court has power to issue a warrant of commitment under this Part, it may, if it thinks it expedient to do so, fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just.

Defect in distress warrant and irregularity in execution.

237.(1) A warrant of distress issued for the purpose of levying a sum adjudged to be paid by the conviction or order of the magistrates' court shall not, if it states that the sum has been so adjudged to be paid, be held void by reason of any defect in the warrant.

(2) A person acting under a warrant of distress shall not be deemed to be a trespasser from the beginning by reason only of any irregularity in the execution of the warrant.

(3) Nothing in this section shall prejudice the claim of any person for special damages in respect of any loss caused by a defect in the warrant or irregularity in its execution.

(4) A person who removes any goods marked as articles impounded in the execution of a warrant of distress, or defaces or removes any such mark, is guilty of an offence and is liable, on summary conviction, to a fine of £5.

(5) A person charged with the execution of a warrant of distress who willfully retains from the proceeds of a sale of the goods on which distress is levied, or otherwise exacts any greater costs and charges than those properly payable, or makes any improper charge, is guilty of an offence and is liable, on summary conviction, to a fine of £5.

Release from custody, etc., on payment.

238.(1) Where imprisonment or other detention has been imposed on any person by the order of the magistrates' court in default of payment of any sum adjudged to be paid by the conviction or order of the magistrates' court or for want of sufficient distress to satisfy such a sum, then, on the payment of the sum, together with the costs and charges, if any, of the commitment and distress, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.

(2) Where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any sum adjudged to be paid by the conviction or order of the magistrates' court or for want of sufficient distress to satisfy such a sum, payment is made of part of the sum, the period of detention shall be reduced by such number of days as bears to

the total number of days in that period less one day the same proportion as the amount so paid bears to so much of the said sum, and the costs and charges of any distress levied to satisfy that sum, as was due at the time the period of detention was imposed.

(3) In calculating the reduction required under subsection (2) any fraction of a day shall be left out of account.

Application of money found on defaulter.

239.(1) Where the magistrates' court has adjudged a person to pay a sum by a conviction the court may order him to be searched.

(2) Any money found on the arrest of a person adjudged to pay such a sum, or on a search as aforesaid, or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the court otherwise directs, be applied towards payment of the said sum, and the balance, if any, shall be returned to him.

(3) The magistrates' court shall not allow the application as aforesaid of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

Committal for non-payment.

240.(1) The magistrates' court on adjudging a person to pay a sum by a conviction shall, subject to the provisions of subsection (2), allow him at least seven days to pay the sum or the first instalment of the sum.

(2) If the offender fails to pay the sum on the occasion of his conviction and–

(a) he appears to the court to have sufficient means to pay the sum forthwith; or

(b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or

(c) he fails to satisfy the court that he has a fixed abode; or

(d) there are some other special circumstances appearing to the court to justify immediate committal,

the court may on that occasion issue a warrant of commitment under this Part, and if it does so shall state in the warrant the reasons for not allowing the offender time to pay.

(3) Where time is allowed for payment, or payment by instalments is ordered, the magistrates' court shall not on the occasion of the conviction impose a term of imprisonment in the event of a future default in paying the sum adjudged to be paid by the conviction unless the offender is present and the court determines that for special reason, whether having regard to the gravity of the offence, to the character of the offender or other special circumstances, it is expedient that he should be imprisoned without further inquiry in default of payment and where a court imposes a term of imprisonment as aforesaid, it shall state its reason for doing so.

(4) Where the magistrates' court has imposed a term of imprisonment as provided by subsection (3) then, if at any time the offender asks the court to commit him to prison immediately, the court may do so notwithstanding anything in subsection (1).

(5) Nothing in this section shall affect the power of the magistrates' court to enforce by distress payment of a sum adjudged to be paid by a conviction.

Restriction on committal and means inquiry.

241.(1) Where the court does not on the occasion of the conviction issue a warrant of commitment or fix a term of imprisonment as provided by section 245, it shall not commit an offender to prison for failing to pay a sum adjudged to be paid by a summary conviction or for want of sufficient distress to satisfy such a sum unless, on an occasion subsequent to the conviction, the court has inquired into his means in his presence.

This subsection shall not apply where the offender is in prison.

(2) The magistrates' court may, for the purpose of enabling inquiry to be made under this section–

(a) issue a summons requiring the offender to appear before the court at the time and place appointed in the summons; or

(b) issue a warrant to arrest him and bring him before the court.

(3) On the failure of the offender to appear before the court in answer to a summons under this section the court may issue a warrant to arrest him and bring him before the court.

(4) A warrant issued under this section may be executed in like manner, and the like proceedings may be taken with a view to its execution, as if it had been issued under section 121.

(5) Notwithstanding anything in section 20, a warrant under this section shall cease to have effect when the sum in respect of which the warrant is issued is paid to the police officer holding the warrant.

Supervision pending payment.

242.(1) Where any person is adjudged to pay a sum by a summary conviction and the magistrates' court does not commit him to prison forthwith in default of payment, the court may, either on the occasion of the conviction or on a subsequent occasion, order him to be placed under the supervision of such person as the court may from time to time appoint.

(2) An order placing a person under supervision in respect of any sum shall remain in force so long as he remains liable to pay the sum or any part of it unless the order ceases to have effect or is discharged under subsection (3).

(3) An order under this section may be discharged by the court, without prejudice to the making of a new order.

(4) Where a person under twenty-one years old has been adjudged to pay a sum by a summary conviction and the court does not commit him to prison forthwith in default of payment, the court shall not commit him to prison in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless he has been placed under supervision in respect of the sum or the court is satisfied that it is undesirable or impracticable to place him under supervision.

(5) Where a court, being satisfied as aforesaid, commits a person under twenty-one years old to prison without an order under this section having been made, the court shall state the grounds on which it is so satisfied in the warrant of commitment.

(6) Where an order placing a person under supervision with respect to a sum is in force, the magistrates' court shall not commit him to prison in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless the court has before committing him taken such steps as may be reasonably practicable to obtain from the person appointed for his supervision an oral or written report on the offender's conduct and means and has considered any report so obtained, in addition, in a case where an inquiry is required by section 246, to that inquiry.

Procedure on Committal for Sentence

Procedure on committal for sentence.

243.(1) Where a person is committed to the Supreme Court for sentence, in accordance with the provisions of section 159, the Registrar shall give notice to the prosecutor and the Superintendent of the date on which the case will be dealt with.

(2) The Supreme Court shall enquire into the circumstances of the case and shall have power to deal with the offender in any manner in which he could be dealt with by the Supreme Court if he had just been convicted of the offence on indictment before the Supreme Court.

(3) Part I of the Legal Aid and Assistance Act shall apply where an offender is committed to the Supreme Court for sentence, as if the offender were committed for trial for an indictable offence, subject to the modifications that in section 3(2)(b) the words "after reading the depositions" shall be omitted and that in section 9, paragraph (a) shall be omitted and paragraph (b) amended by inserting immediately after the word "sentence" the word "or any order committing him for sentence to the Supreme Court".

PART XIX
ALTERNATIVES TO PUNISHMENT

Discharge

Absolute and conditional discharge.

244.(1) Where any court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of

opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period not exceeding twelve months from the date of the order, as may be specified therein.

(2) An order discharging a person subject to such a condition as aforesaid is referred to in this Act as "an order for conditional discharge", and the period specified in any such order as "the period of conditional discharge".

(3) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(4) Where, under the following provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Probation

Power to make probation orders.

245.(1) Where any court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years.

(2) An offender in respect of whom a probation order is made shall be required to be under the supervision of a probation officer.

(3) Subject to the provisions of section 251, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct

of the offender or for preventing a repetition by him of the same offence or the commission of other offences:

Provided that, without prejudice to the power of the court to make an order for compensation under section 282, the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation order.

(4) Without prejudice to the generality of subsection (3), a probation order may include requirements relating to the residence of the offender:

Provided that–

(a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(b) where the order requires the offender to reside in an institution, the name of the institution and the period for which he is so required to reside shall be specified in the order.

(5) Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order, including any additional requirements proposed to be inserted therein under subsection (3) or subsection (4) of this section or under section 251, and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than fourteen years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

(6) The court by which a probation order is made shall forthwith give copies of the order to the offender and to the probation officer responsible for the supervision of the offender and to the person in charge of any institution in which the probationer is required by the order to reside.

Orders where mental treatment appropriate.

246.(1) Where any court is satisfied, on the evidence of a medical practitioner appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of an offender is such as requires and as may be susceptible to treatment but is not such as to justify his being detained under Part II of the Mental Health Act, the court may, if it makes a

probation order, include therein a requirement that the offender shall submit, for such period not extending beyond twelve months from the date of the order as may be specified therein, to treatment by or under the direction of a medical practitioner with a view to the improvement of the offender's mental condition.

(2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say,–

(a) treatment as a voluntary patient under section 4 of the Mental Health Act in a hospital as defined by that Act;

(b) treatment as a resident patient in such a hospital;

(c) treatment as a non-resident patient at such institution or place as may be specified in the order; or

(d) treatment by or under the direction of such medical practitioner as may be specified in the order,

but except as aforesaid the nature of the treatment shall not be specified in the order.

(3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, and, if the offender is to be treated as a voluntary patient or as a resident patient as aforesaid, for his reception.

(4) While the probationer is under treatment as a voluntary patient or as a resident patient in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.

(5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order is of opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated

accordingly; and the arrangements may provide for the probationer to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.

(6) Where any such arrangements as are mentioned in subsection (5) are made for the treatment of a probationer–

(a) the medical practitioner by whom the arrangements are made shall give notice in writing to the probation officer responsible for the supervision of the probationer, specifying the institution or place in or at which the treatment is to be carried out; and

(b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

(7) Subject as hereinafter provided, a report in writing as to the mental condition of any person purporting to be signed by a medical practitioner experienced in the diagnosis of mental disorders may be received in evidence for the purposes of subsection (1) without proof of the signature, qualifications or experience of the practitioner:

Provided that such a report shall not be so received unless the person to whom it relates consents or, where that person is under seventeen years of age, unless his parent or guardian consents or no parent or guardian can be found.

(8) Where a person of whose mental condition evidence is received for the purposes of subsection (1) or, where that person is under seventeen years of age, his parent or guardian, desires to call rebutting evidence, the court shall not make a probation order in his case containing any such requirement as is authorized by this section unless he, or his parent or guardian, as the case may be, has been afforded an opportunity of calling such evidence.

(9) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

Breach of requirements of order.

247.(1) If at any time during the probation period it appears to the Chief Justice, or to a justice on information, that the probationer has failed to comply with any of the requirements of the order, the Chief Justice or justice, as the case may be, may issue a summons requiring the probationer to appear at the place and time specified therein, or may issue a warrant for his arrest:

Provided that a justice shall not issue a warrant except upon information in writing and on oath.

(2) The following persons shall have jurisdiction for the purposes of subsection (1), that is to say–

(a) if the probation order was made by the Supreme Court, the Chief Justice;

(b) if the probation order was made by the magistrates' court, a justice;

and any summons or warrant issued under this section shall direct the probationer to appear or be brought before the court by which the probation order was made.

(3) If it is proved to the satisfaction of the court before which a probationer appears or is brought under this section that the probationer has failed to comply with any of the requirements of the probation order, that court may, without prejudice to the continuance of the probation order, impose on him a fine of £10 or in a case to which section 263 applies, make an order under that section requiring him to attend at an attendance centre, or may deal with the probationer, for the offence in respect of which the probation order was made, in any manner in which the court could deal with him if it had just convicted him of that offence.

(4) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any law to be a sum adjudged to be paid by a conviction.

(5) A probationer who is required by the probation order to submit to treatment for his mental condition shall not be treated for the purposes of

this section as having failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances; and, without prejudice to the provisions of section 253, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

Commission of further offence.

248.(1) If it appears to the Chief Justice or a justice of the peace that a person in whose case a probation order or an order for conditional discharge has been made has been convicted by a court of an offence committed during the probation period or during the period of conditional discharge, and has been dealt with in respect of that offence, the Chief Justice or justice of the peace, as the case may be, may issue a summons requiring that person to appear at the place and time specified therein, or may issue a warrant for his arrest:

Provided that a justice of the peace shall not issue such a summons except on information and shall not issue such a warrant except on information in writing and on oath.

(2) The following persons shall have jurisdiction for the purposes of subsection (1), that is to say–

(a) if the probation order or the order for conditional discharge was made by the Supreme Court, the Chief Justice;

(b) if the order was made by the magistrates' court, a justice.

(3) A summons or warrant issued under this section shall direct the person so convicted to appear or to be brought before the court by which the probation order or the order for conditional discharge was made.

(4) If a person in whose case a probation order or an order for conditional discharge has been made by the Supreme Court is convicted and dealt with by the magistrates' court in respect of an offence committed during the probation period or during the period of conditional discharge, the magistrates' court may commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the Supreme Court and if it does so the clerk of the magistrates' court shall send to the

Supreme Court a copy, signed by the clerk of the magistrates' court, of the minute or memorandum of the conviction entered in the register of the magistrates' court.

(5) Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made, that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period, or during the period of conditional discharge, as the case may be, the court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if he had just been convicted by or before that court of that offence.

(6) If a person in whose case a probation order or an order for conditional discharge has been made by the magistrates' court is convicted before the Supreme Court of an offence committed during the probation period or during the period of conditional discharge, or is dealt with by the Supreme Court, for an offence so committed in respect of which he was committed for sentence to that court, the Supreme Court may deal with him, for the offence for which the order was made, in any manner in which the magistrates' court could deal with him if it had just convicted him of that offence.

Questions as to compliance to be decided by Chief Justice.

249.(1) In proceedings before the Supreme Court under the foregoing provisions of this Part, any question whether a probationer has failed to comply with the requirements of the probation order or has been convicted of an offence committed during the probation period, and any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge, shall be determined by the Chief Justice and not by the verdict of a jury.

(2) Any court, on making a probation order or an order for conditional discharge or on discharging an offender absolutely under this Part may, without prejudice to its power of awarding costs against him, order the offender to pay compensation in accordance with the provisions of section 282 .

Power to amend probation orders.

250. The court by which a probation order was made may, upon application made by the probation officer or by the probationer, by order amend a probation order by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which could be included in the order if it were then being made by that court in accordance with the provisions of sections 245 and 246:

Provided that–

(a) the court shall not amend a probation order by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order;

(b) the court shall not so amend a probation order that the probationer is thereby required to submit to treatment for his mental condition for any period exceeding twelve months in all;

(c) the court shall not amend a probation order by inserting therein a requirement that the probationer shall submit to treatment for his mental condition unless the amending order is made within three months after the date of the original order.

Attendance of probationer when amendment of order proposed.

251. Where any court proposes to amend a probation order, otherwise than on the application of the probationer, it shall summon him to appear before the court; and if the probationer is not less than fourteen years of age, the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this section shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement.

Amendment of orders requiring mental treatment.

252. Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of any requirement of the probation order is of opinion–

(a) that the treatment of the probationer should be continued beyond the period specified in that behalf in the order; or

(b) that the probationer needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of a probation order; or

(c) that the probationer is not susceptible to treatment; or

(d) that the probationer does not require further treatment,

or where the practitioner is for any reason unwilling to continue to treat or direct the treatment of the probationer, he shall make a report in writing to that effect to the probation officer and the probation officer shall apply to the court which made the probation order for the variation or cancellation of the requirement.

Review of orders requiring residence in an institution.

253.(1) Where a probation order, whether as originally made or as amended under this Part, requires the probationer to reside in an institution, otherwise than for the purpose of submitting to treatment for his mental condition as a voluntary or resident patient, for a period extending beyond six months from the date of the order as originally made or of the amending order, as the case may be, the probation officer shall, as soon as may be after the expiration of six months after that date, report on the case to the court which made the probation order.

(2) On receipt of any such report, the court shall review the probation order for the purpose of considering whether to cancel the requirement as to residence or reduce the period thereof, and may, if it thinks fit, amend the order accordingly without the necessity for any application in that behalf.

Discharge of probation orders.

254.(1) The court by which a probation order was made may, upon application made by the probation officer or by the probationer, discharge the order.

(2) Where, under the provisions of this Part, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

Copies of discharging and amending orders.

255. On the making of an order discharging or amending a probation order, the clerk of the magistrates' court or the Registrar, as the case may be, shall forthwith give copies of the discharging or amending order to the probation officer, and the probation officer shall give a copy to the probationer and to the person in charge of any institution in which the probationer is or was required by the order to reside.

Reports by probation officers.

256. Where a report by a probation officer is made to any court, other than a juvenile court, with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the court to the offender or his counsel:

Provided that if the offender is under seventeen years of age and is not represented by counsel, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

Appointment of probation officers.

257. The Chief Justice, with the approval of the Minister for Social Affairs, shall appoint such number of persons to be probation officers as he shall consider sufficient.

Selection of probation officers.

258.(1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the court which makes the probation order, and if the probation officer so selected dies or is unable for any reason

to carry out his duties, or if the court considers it desirable that another officer should take his place, another probation officer shall be selected by the court.

(2) Where a woman or girl is placed under the supervision of a probation officer, the probation officer shall, if possible, be a woman.

Rules regarding probation.

259. The Chief Justice may make rules prescribing–

(a) the duties of probation officers;

(b) the form of records to be kept under this Part;

(c) the remuneration of any person appointed to carry out any duties under this Part, and the fees and charges to be made for any act, matter or thing to be done or observed under this part; and

(d) generally for carrying the purposes or provisions of this Part into effect.

Community Service Orders

Community service orders.

260.(1) Where a person of sixteen years or more is convicted of an offence punishable with imprisonment, the court by or before which he was convicted may, if the convicted person consents, make a community service order requiring him to perform unpaid work in accordance with section 261.

(2) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in aggregate not less than 40 and, subject to subsection (8)(g), not more than 240.

(3) The court shall not make a community service order unless it is satisfied–

(a) after hearing (if the court thinks it necessary) an officer of the Social Services Agency, that the person is suitable to perform work under the order; and

(b) that there is provision for him to perform work under the order.

(4) On making a community service order the court shall assign an officer of the Social Services Agency (in this section and sections 261 and 262 referred to as "the relevant officer") to supervise the carrying out of the order; the Head of Operations of the Social Services Agency may at any time thereafter assign a different person to be the relevant officer.

(5) Where a court makes a community service orders in respect of two or more offences by the person, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but the total number of hours shall not exceed 240.

(6) Before making a community service order the court shall explain to the person–

(a) the purpose and effect of the order and in particular the requirements of the order set out in section 261;

(b) the consequences which may follow if the person fails to comply with any of the requirements of the order as set out in section 262;

(c) that the court may review the order on the application of the person or the relevant officer.

(7) The court making a community service order shall immediately give a copy of it to the person and to the relevant officer.

(8) Nothing in subsection (1) shall be construed as preventing a court making a community service order from also–

(a) making an order for costs;

(b) making a compensation order;

(c) imposing a disqualification from driving;

(d) making a forfeiture order;

(e) making a restitution order;

(f) ordering the person to be of good behaviour; or

(g) making a probation order, but in such a case the number of hours of unpaid work to be performed under the community service order shall be not more than 100.

Obligations under a community service order.

261.(1) A person in respect of whom a community service order is in force shall–

(a) keep in touch with the relevant officer in accordance with any instructions given to him by that officer, and notify that officer of any change of address; and

(b) perform for the number of hours specified in the order such work at such times as he may be instructed by the relevant officer.

(2) The work required to be performed under a community service order shall be performed within a period of twelve months beginning with the date of the order and, unless revoked, the order shall remain in force until the person has worked under it for the number of hours specified in it.

(3) The instructions given by the relevant officer shall, so far as practicable, be such as to avoid any conflict with the person's religious beliefs and any interference with the times, if any, at which the person normally works or attends a school or other educational establishment.

Review and consequences of breach of community service order.

262. The court which made a community service order in respect of a person may–

(a) review the order on application of the relevant officer or the person;

(b) if the person fails to comply with any of the requirements of the order–

(i) impose a fine up to level 3 on the standard scale and provide for the order to continue; or

(ii) revoke the order and deal with the person as if he had just been convicted of the offence in respect of which the order was made.

Attendance Centres

Power to order attendance at centre.

263.(1) Where a court has power or would but for section 212 have power, to impose imprisonment on a person who is not less than twelve but under twenty-one years of age, or to deal with any such person for failure to comply with any of the requirements of a probation order, the court may order him to attend at an attendance centre for such number of hours, not exceeding thirty-six in the aggregate, as may be so specified by the court.

(2) The times at which an offender is required to attend at an attendance centre by virtue of an order made under this section shall be such as to avoid interference, so far as practicable, with his school hours or working hours, and the first such time shall be specified in the order, being a time at which the centre is available for the attendance of the offender in accordance with rules made, under this section, and the subsequent times shall be fixed by the officer in charge of the centre, having regard to the offender's circumstances:

Provided that an offender shall not be required under this section to attend at an attendance centre on more than one occasion on any day or for more than three hours on any occasion.

Discharge and variation of orders.

264. The court by which an order has been made under section 263(1) may, on the application of the offender or of the officer in charge of the attendance centre, by order–

(a) discharge the order; or

(b) vary the day or hour specified therein for the offender's first attendance at the centre,

and where the application is made by such officer, the court may deal with it without summoning the offender.

Copies of orders.

265. Where an order is made under section, 263(1) or 264, the court shall cause a copy of the order to be delivered or sent to the officer in charge of the attendance centre, and shall also cause a copy to be delivered to the offender or sent by registered post addressed to the offender's last or usual place of abode.

Powers of officers in charge of centres.

266.(1) When an offender attends at an attendance centre, the officer in charge of such centre may, if he deems it appropriate, at any time direct the offender thereafter to attend at some place other than the attendance centre and the offender shall attend at such place in accordance with such direction.

(2) Where the officer in charge of an attendance centre has given a direction that the offender shall attend at some place other than the attendance centre he may at any time revoke such direction and the offender shall thereafter attend at the attendance centre unless and until any further direction shall be given by the officer in charge. Where such a direction has been revoked, the officer in charge of the attendance centre shall ensure that notice of such revocation together with the time that the offender is required to attend at the attendance centre is given to the offender.

(3) The officer in charge of an attendance centre may, if he has directed that an offender shall attend at some place other than the attendance centre, delegate to some fit and proper person the duty of supervising the offender at such place and thereupon, in respect of such offender, the person to whom the delegation has been made shall have all the powers and duties of the officer in charge of the attendance centre, including the power to fix the times of attendance at such place under section 263(2), and the provisions of such subsection shall apply to attendance at such other place as they apply to attendance at an attendance centre.

Orders in default of payment of money.

267.(1) Where a person has been ordered to attend at an attendance centre in default of the payment of any sum of money, then–

(a) on payment of the whole sum, the order shall cease to have effect; and

(b) on the payment of a part of the sum, the total number of hours for which the offender is required to attend at the centre shall be reduced proportionately, that is to say, by such number of complete hours as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the said sum.

(2) Where an offender has been directed to attend at some place other than an attendance centre any payment which, under the provisions of subsection (1) has the effect of reducing the number of hours he is required to attend at an attendance centre shall reduce the number of hours he is required to attend at such other place.

Failure to attend.

268.(1) Where an order under section 263(1)has been made and it appears on information to the court by which the order was made that the person in whose case the order was made–

(a) has failed without reasonable excuse to attend at the centre in accordance with the order; or

(b) while attending at the centre has committed a breach of the rules made under section 269(1) which cannot adequately be dealt with under those rules,

the court may issue a summons requiring the offender to appear before it at the time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest requiring him to be brought before the court.

(2) If it is proved to the satisfaction of the court before which an offender appears or is brought under subsection (1) that he has failed to attend as

aforesaid, or has committed such a breach of the rules as aforesaid, the court may revoke the order requiring his attendance at the attendance centre and deal with him in any manner in which he could have been dealt with if the order had not been made.

Rules regarding attendance centres.

269.(1) The Government may make rules specifying attendance centres and generally for the regulation and management thereof and for the treatment, training, employment, discipline and control of persons ordered to attend at such centres or directed to attend at places other than attendance centres under this section.

(2) Any rules made under subsection (1) relating to attendance centres shall apply to any place at which an offender has been directed to attend by the officer in charge of an attendance centre and any breach of such rule shall, for the purposes of section 270, be treated as having been committed while attending an attendance centre and any failure to attend at such place in accordance with an order shall be deemed to be a failure to attend at an attendance centre for the purposes of that subsection.

Miscellaneous

Effect of orders for discharge or probation.

270.(1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Part placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Part:

Provided that where an offender, being not less than seventeen years of age at the time of his conviction of an offence for which he is placed on probation or conditionally discharged as aforesaid, is subsequently sentenced under this Part for that offence, the provisions of this subsection shall cease to apply to the conviction.

(2) Without prejudice to the provisions of this section, the conviction of an offender who is placed on probation or discharged absolutely or conditionally as aforesaid shall in any event be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted

persons, or authorizes or requires the imposition of any such disqualification or disability.

(3) The provisions of this section shall not affect–

(a) any right of any such offender to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;

(b) the revesting or restoration of any property in consequence of the conviction of any such offender.

Security for good behaviour.

271. Without prejudice to the provisions of section 335(2), any court may, on making a probation order or an order for conditional discharge under this Part, if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender.

PART XX
COSTS, COMPENSATION, RESTITUTION, REWARDS AND FORFEITURES

Costs

Award of costs by magistrates' court.

272.(1) On the summary trial of an information the magistrates' court shall have power to make such order as to costs–

(a) on conviction, to be paid by the defendant to the prosecutor; and

(b) on dismissal of the information, to be paid by the prosecutor to the defendant,

as it thinks just and reasonable:

Provided that–

(i) where under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation, and the sum so ordered to be paid does not exceed £1, the court shall not order the defendant to pay any costs under this subsection unless in any particular case it thinks fit to do so; and

(ii) where the defendant is a child or young person, the amount of the costs ordered to be paid by the defendant himself under this subsection shall not exceed the amount of any fine ordered to be so paid.

(2) The court shall specify in the conviction, or, as the case may be, the order of dismissal, the amount of any costs that it orders to be paid under subsection (1).

(3) Where examining justices determine not to commit the accused for trial on the ground that the evidence is not sufficient to put him upon his trial, and are of opinion that the charge was not made in good faith, they may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence.

(4) If the amount ordered to be paid under subsection (3) exceeds £25, the prosecutor may appeal within fourteen days to the Supreme Court, and no proceedings shall be taken upon the order until the time allowed for giving notice of appeal has elapsed, or, if within that time notice of appeal is given, until the appeal is determined or ceases to be prosecuted.

Costs in other matters.

273.(1) The provisions of this Part shall apply where a person is committed by the magistrates' court to the Supreme Court with a view to his being sentenced for an indictable offence under section 159.

(2) The provisions of this Part shall apply to a person committed by the magistrates' court as an incorrigible rogue under section 285 of the Criminal Offences Act as if he were committed for trial before the Supreme Court and as if the committing court were examining justices.

(3) The provisions of this Part shall apply where a person committed for trial is not ultimately tried, in which case the Supreme Court shall have the

same power to order the payment of costs as if the examining justices have not committed the accused for trial.

Costs of defective or redundant indictments.

274. Where it appears to the court that an indictment contains unnecessary matter, or is of unnecessary length, or is materially defective in any respect, the court may make such order as to the payment of that part of the costs of the prosecution which has been incurred by reason of the indictment so containing unnecessary matter, or being of unnecessary length, or being materially defective as the court thinks fit.

Award of costs by Supreme Court.

275.(1) Where any person is acquitted on indictment, then, if–

(a) he has not been committed to or detained in custody or bound by recognizance to answer the indictment; or

(b) the indictment is for an offence under the Merchandise Marks Act;

(c) the indictment is by a private prosecutor for the publication of a defamatory libel or for any corrupt practice within the meaning of the Parliament Act,

the Supreme Court may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the examining justices.

(2) Costs payable under this section shall be taxed by the Registrar.

Award of costs on appeal.

276.(1) The Supreme Court may, when it dismisses an appeal, order the appellant to pay the whole or any part of the costs of the appeal.

(2) The Supreme Court may, when it allows an appeal against a conviction, order the payment by the prosecutor to the appellant of such sums as appear to the Supreme Court to be reasonably sufficient to compensate the appellant for any expenses properly incurred in the

prosecution of his appeal, including any proceedings preliminary or incidental thereto, or in carrying on his defence.

(3) Costs payable under this section shall be taxed by the Registrar.

Enforcement of orders.

277.(1) Where the Supreme Court orders the payment of costs by an accused, defendant or appellant or the prosecutor under this Part, the payment shall be enforceable in the same manner as an order for payment of costs made by the Supreme Court in a civil case or as a sum adjudged summarily to be paid as a civil debt, and, if the person liable to pay is the person convicted, out of any money taken from him on arrest so far as the Supreme Court directs.

(2) Where the magistrates' court orders the payment of costs by the accused or the prosecutor, then–

(a) payment of costs by the accused shall be enforceable as a sum adjudged to be paid by the conviction;

(b) payment of costs by the prosecutor shall be enforceable as a sum adjudged summarily to be paid as a civil debt.

Saving.

278. Nothing in this Part shall affect the provision in any law for the payment of the costs of the prosecution or defence of any offence out of any assets, money or fund or by any person other than the prosecutor or defendant.

Compensation

Compensation in respect of persons killed or injured during arrest.

279. Subject to the provisions of section 289 of this Act if any person is injured or killed in endeavouring to apprehend any person who has been charged with an offence triable at the Supreme Court, the Supreme Court may order the payment from the Consolidated Fund to the person so injured, or to his widow or his children if he has been so killed, such sum of money, not exceeding £3,000, as the court may in its discretion deem fit.

Compensation for injury resulting from an offence.

280.(1) Subject to the provisions of this Part of the Act, it shall be lawful for any court before which a person has been convicted of any offence to make on application or otherwise and instead of or in addition to dealing with him in any other way, an order (in this Act referred to as "a compensation order") requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence.

(2) Compensation under subsection (1) shall in the case of the Supreme Court be of such an amount as the court considers appropriate, but in the case of the magistrates' court shall not exceed £2000, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor.

(3) In the case of an offence under Part XVI of the Criminal Offences Act, where the property is recovered, any damage to the property occuring while it was out of the owner's possession shall be treated for the purposes of subsection (1) above as having resulted from the offence, however and by whomsoever the damage was caused.

(4) No compensation order shall be made in respect of loss suffered by the dependants of a person in consequence of his death, and no such order shall be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated by subsection (3) as resulting from an offence under Part XVI of the Criminal Offences Act.

(5) In determining whether to make a compensation order and in determining the amount to be paid under such an order the court shall have regard to the accused's means so far as they appear or are known to the court.

(6) Where the court considers–

(a) that it would be appropriate both to impose a fine and to make a compensation order, but

(b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to making an appropriate compensation order, and if it deems fit, impose a fine as well.

Appeals in the case of compensation orders.

281.(1) A compensation order made by a court shall be treated for the purposes of section 284 of this Act as an order for the restitution of property.

(2) 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; and

(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.

Review of compensation orders.

282. At any time before a compensation order has been complied with or fully complied with, the court which made the compensation 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 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.

Effect of compensation orders on subsequent award in civil proceedings.

283.(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 thereof subsequently falls to be determined.

(2) The damages in the civil proceedings shall be assessed without regard to the order, but where the whole or part of the amount awarded by the order has been paid, the damages awarded in the civil proceedings shall not exceed the amount, if any, by which, as so assessed they exceed the amount paid under the order.

(3) Where the whole or part of the amount awarded by the order remains unpaid and the court awards damages in the civil proceedings, then, unless the person against whom the order was made has ceased to be liable to pay the amount unpaid, the court shall direct that the judgement–

(a) if it is for an amount not exceeding the amount unpaid under the order, shall not be enforced; or

(b) if it is for an amount exceeding the amount unpaid under the order, shall not be enforced as to a corresponding amount,

without the leave of the court.

Restitution

Orders for restitution.

284.(1) Where goods have been stolen and a person is convicted of any offence with reference to the theft, whether or not the stealing is the gist of his offence, the court by or before which the offender is convicted may, on the conviction, exercise any of the following powers–

(a) the court may order anyone having possession or control of the goods to restore them to any person entitled to recover them from him; or

(b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the first-mentioned goods, as being the proceeds of any disposal or realization of the whole or part of them or of goods so representing them, the court may order those other goods to be delivered or transferred to the applicant; or

(c) on the application of a person who, if the first-mentioned goods were in the possession of the person convicted, would

be entitled to recover them from him, the court may order that a sum not exceeding the value of those goods shall be paid to the applicant out of any money of the person convicted which was taken out of his possession on his apprehension.

(2) Where under subsection (1) the court has power on a person's conviction to make an order against him both under paragraph (b) and under paragraph (c) thereof with reference to the stealing of the same goods, the court may make orders under both paragraphs:

Provided that the applicant for the orders does not thereby recover more than the value of those goods.

(3) Where under subsection (1) the court on a person's conviction makes an order under paragraph (a) thereof for the restoration of any goods, and it appears to the court that the person convicted has sold the goods to a person acting in good faith, or has borrowed money on the security of them from a person so acting, then, on the application of the purchaser or lender, the court may order that there shall be paid to the applicant, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the applicant, or, as the case may be, the amount owed to the applicant in respect of the loan.

(4) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers, and for this purpose "the available documents" means any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial, the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

(5) References in this section to stealing are to be construed in accordance with section 192(1) and (4) of the Criminal Offences Act.

Suspension of orders pending appeal.

285.(1) The operation of any order for the restitution of any property to any person made on a conviction shall, unless the magistrates' court direct to the

contrary in any case in which, in its opinion, the title to the property is not in dispute, be suspended–

(a) in any case until the expiration of ten days after the date of the conviction; and

(b) in cases where the notice of appeal is given within ten days after the date of conviction, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules for securing the safe custody of any property, pending the suspension of the operation of any such order.

(2) The Supreme Court may by order annul or vary any order made on a trial for the restitution of any 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.

Return of property taken from accused.

286. Where a summons or warrant has been issued requiring any person to appear or be brought before the magistrates' court to answer to an information, or where any person has been arrested without a warrant for an offence, and property has been taken from him after the issue of the summons or warrant or, as the case may be, on or after his arrest without a warrant, the police shall report the taking of the property, with particulars of the property, to the magistrates' court, and, if the court, being of opinion that the whole or any part of the property can be returned to the accused consistently with the interests of justice and the safe custody of the accused, so directs, the property, or such part of it as the court directs, shall be returned to the accused or to such other person as he may require.

Title to stolen property.

287. Notwithstanding any enactment to the contrary, where property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property shall not be affected by reason only of the conviction of the offender.

Rewards

Awards for courage in arrest.

288. Subject to the provisions of section 289 of this Act any court before which any person is convicted of any arrestable offence may order payment from the Consolidated Fund to any person who may appear to the court to have been active in or towards the apprehension of any person convicted of that offence of such sum of money, not exceeding £500 in the case of the magistrates' court or £3,000 in the case of the Supreme Court, as to the court shall seem reasonable and sufficient to compensate such person or persons for their expenses, exertions, and loss of time in or towards such apprehension.

Regulations.

289. The Government may, after consultation with the Chief Justice, by regulation vary these maximum levels of compensation which may be awarded by the courts under the provisions of sections 279, 280 and 288 of this Act.

Forfeitures

Disposal of nonpecuniary forfeitures.

290. Subject to the Imports and Exports Act and to any other law relating to customs or excise or the control of imports, anything other than money forfeited on a conviction by the magistrates' court or the forfeiture of which may be enforced by the magistrates' court shall be sold or otherwise disposed of in such manner as the court may direct, and the proceeds shall be applied as if they were a fine imposed under the law on which the proceedings for the forfeiture are founded.

Powers of forfeiture.

291.(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 for 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 contained in this or any other Act.

(2) 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 orders (taken together with any other order that the court contemplates making).

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purposes of disposing of any property to which it relates or avoiding apprehension or detection.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall, if not already in their possession, be taken into the possession of the police.

PART XXI
SPECIAL PROVISIONS RELATING TO PERSONS SUFFERING FROM MENTAL DISORDER

Fitness to Plead

Postponement of issue of fitness to plead.

292.(1) Where on the trial of a person the question arises, at the instance of the defence or otherwise, whether the accused is under such a disability, whether under section 296 or otherwise, as would constitute a bar to his being tried, the following provisions shall have effect.

(2) The court, if having regard to the nature of the supposed disability, is of the opinion that it is expedient so to do and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence, and if before the question of fitness to be tried falls to be determined the jury return a verdict of acquittal on the count or each of the counts on which the defendant is being tried or, in the case of the magistrates' court, the court dismisses the information or each of the informations on which the defendant is being tried, that question shall not be determined.

(3) Subject to subsection (2), the question of fitness to be tried shall be determined as soon as it arises.

(4) In the Supreme Court the question of fitness to be tried shall be determined by a jury, and–

(a) where it falls to be determined on the arraignment of the defendant, then, if the trial proceeds, the defendant shall be tried by a jury other than that which determined that question;

(b) where it falls to be determined at any later time it shall be determined by a separate jury or by the jury by whom the defendant is being tried, as the court may direct.

(5) Where in accordance with subsection (2) or (3) it is determined that the defendant is under disability, the trial shall not proceed or further proceed.

(6) For the purpose of providing an appeal against a finding of the magistrates' court that the defendant is under disability, sections 347 and

357 shall apply as if references to a special finding included references to such a finding, and–

(a) where the question of fitness to be tried was determined later than the accused being required to plead, an appeal under section 347 against a finding that the defendant was under disability may be allowed (notwithstanding that the finding was properly come to) if the Supreme Court is of opinion that the case is one in which the defendant should have been acquitted before the question of fitness to be tried was considered;

(b) if the court is of that opinion, the court shall, in addition to quashing the finding, direct an acquittal to be recorded;

(c) subject to paragraph (b) above, where an appeal is allowed against a finding that the appellant is under disability, the appellant may be tried accordingly for the offence with which he was charged, and the court may make such orders as appear to the court to be necessary or expedient pending any such trial for his custody, admission to bail or continued detention.

Defendant apparently incapable of making his defence.

293.(1) When in the course of a trial the court has reason to believe that the defendant is suffering from mental disorder and consequently incapable of making his defence, it shall cause such person to be medically examined and shall thereafter take medical and any other available evidence regarding the state of the defendant's mind.

(2) If the court is of opinion that the defendant is suffering from mental disorder and consequently incapable of making his defence, it shall record a finding to that effect and postpone further proceedings in the case.

(3) If the case is one in which bail may be taken, the court may then release the defendant if the court is satisfied that he will be properly taken care of and prevented from doing injury to himself or to any other person, and on sufficient security being given for his appearance at a stated time or when required before the court or such person as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if the court is not so satisfied or if sufficient security is not given, the court shall order the defendant to be detained in hospital in the same manner as a criminal person of unsound mind and shall transmit the court record or a certified copy thereof to the Chief Secretary.

(5) Any order of the court under subsection (4) shall be sufficient authority for the detention of such defendant until the court finding him incapable of making his defence shall order him to be brought again before it in the manner provided by sections 296 and 297.

Remand for medical examination.

294.(1) If, on the trial by the magistrates' court of an offence punishable on summary conviction with imprisonment, the court is satisfied that the offence has been committed by the defendant, but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall adjourn the case to enable a medical examination and report to be made and shall remand him, but the adjournment shall not be for more than three weeks at a time.

(2) Where on such an adjournment the defendant is remanded on bail, it shall be a condition of the recognizance that he shall undergo medical examination by a medical practitioner at such institution or place as may be specified in the recognizance or by such medical practitioner as may be so specified, and, if arrangements have been made for the reception of the defendant, it may be a condition of the recognizance that he shall, for the purpose of the examination, reside, for such period as may be specified in the recognizance, in an institution or place so specified.

(3) Where the magistrates' court on committing any person for trial on bail is of opinion that an inquiry ought to be made as aforesaid, it may make it a condition of the recognizance taken for the purposes of his committal, but subject to the condition for his appearance, that he shall undergo medical examination or shall reside as aforesaid.

(4) Notwithstanding anything in the Mental Health Act, a person released on a recognizance conditioned as provided by this section may be received, for the purpose of medical examination, in a mental hospital.

Reception order.

295. Where a person is charged before the magistrates' court with any act or omission as an offence punishable on summary conviction with imprisonment, and the court–

(a) is satisfied that he did the act or made the omission charged; and

(b) is satisfied on the evidence of at least two medical practitioners that he is suffering from mental disorder; and

(c) is also satisfied that he is a proper person to be detained,

the court may, instead of dealing with him in any other manner, by order direct him to be received and detained in a hospital within the meaning of the Mental Health Act and may further direct the superintendent thereof, or any police officer, to take such person forthwith to a hospital, and he shall be detained therein as a criminal person of unsound mind.

Defendant certified capable of making his defence.

296. If any person confined in hospital by any order or warrant under section 292 is found by the medical practitioner in charge thereof to be capable of making his defence, such medical practitioner shall forthwith forward a certificate to that effect to the court which recorded the finding under section 292 in respect of such person, which certificate shall be admissible in evidence and such court shall thereupon order the removal of such person from the place where he is detained and shall cause him to be brought in custody before it in the manner prescribed by section 297.

Resumption of trial.

297. Whenever any trial is postponed the court may at any time resume the trial and require the defendant to appear or be brought before such court, when, if the court considers him capable of making his defence, the trial shall proceed, but if the court considers the defendant to be still incapable of making his defence, it shall act as if the defendant were brought before it for the first time.

Mental Disorder as a Defence

Procedure when mental disorder alleged.

298. When at the time of any proceedings in court, an accused person appears to be of sound mind, the court, notwithstanding that it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was, by reason of mental disorder, incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case, and in the case of a preliminary inquiry if the accused person ought, in the opinion of the court, to be committed for trial, the court shall so commit him.

Special verdict or finding.

299.(1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was suffering from mental disorder so as not to be responsible according to law for his actions at the time when the act was done or omission made, then, if it appears to the court before which such person is tried that he did the act or made the omission charged, but was suffering from mental disorder at the time when he did or made the same, the court shall return a special verdict or finding to the effect that the defendant was not guilty by reason of mental disorder.

(2) When such special verdict or finding is returned the court shall forward the court record or a certified copy thereof to the Chief Secretary and shall order the defendant to be kept in custody as a criminal person of unsound mind in hospital until Her Majesty's pleasure shall be known, and it shall be lawful for the Governor to signify Her Majesty's pleasure by warrant under his hand and for the Governor thereupon, and from time to time, to give such order for the safe custody of such person during pleasure, in hospital, prison or other suitable place of safe custody and in such manner as to the Governor may seem fit.

Prisoners Suffering from Mental Disorder

Prisoners suffering from mental disorder.

300. If any person, whilst detained in any prison, or other place of confinement, under sentence of death or imprisonment, or under charge of

any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction, or order, or under any other than civil process, shall appear to be suffering from mental disorder, it shall be lawful for two medical practitioners to enquire as to the soundness of mind of such person, and if it be duly certified by such medical practitioners that such person is suffering from mental disorder, it shall be lawful for the Governor, upon receipt of such certificates, to direct, by warrant under his hand, that such person shall be removed to hospital, and every person so removed there shall be detained therein in the same manner as a criminal person of unsound mind until it shall be duly certified to the Governor by the medical practitioner in charge thereof that such person has become of sound mind, whereupon the Governor may, if such person shall still remain liable to be kept in custody, issue a warrant directing that such person shall be removed back from thence to the prison or other place of confinement whence he shall have been taken, or, if the period of imprisonment or custody of such person shall have expired, that he shall be discharged.

Miscellaneous

Appointment of places of confinement and rules in connection therewith.

301. It shall be lawful for the Government to appoint a special place of confinement for criminal persons of unsound mind and to prescribe rules for the government and management of such place, the duties and conduct of the officers thereof and the care and treatment of the persons confined therein and any reference in this Part to the hospital shall include a reference to any place of confinement so specified.

Transfer of criminal persons of unsound mind.

302. The Government may, from time to time, by warrant direct the transfer of any criminal person of unsound mind detained in any prison, hospital or other place to some other prison, hospital or place, and such criminal person of unsound mind shall accordingly be received and detained in the place to which he is so transferred.

Escape and retaking.

303. In case of escape of any criminal person of unsound mind when being conveyed to or confined in any place under a warrant of the Government or

under any order of a court issued under this Part, he may be retaken at any time by the medical practitioner in charge of the hospital or by any officer or servant belonging thereto, or by any person assisting such medical practitioner, officer, or servant in this behalf, or by any police officer or by any person authorized in writing in this behalf by such medical practitioner, and upon being retaken he may be conveyed to and received and detained in such place.

Periodical reports.

304. The person in charge of any place in which any criminal person of unsound mind is detained shall make a report to the Chief Secretary at such times, and at least once a year, and containing such particulars as the Chief Secretary may require, of the condition and circumstances of every criminal person of unsound mind in such place; and the Governor shall, at least once in every two years during which a criminal person of unsound mind is detained, take into consideration the condition, history and circumstances of such person of unsound mind and determine whether he ought to be discharged or otherwise dealt with.

Discharge.

305.(1) The Governor, by warrant, may absolutely discharge any criminal person of unsound mind, and may also discharge any criminal person of unsound mind conditionally, that is to say, on such conditions as to the duration of such discharge and otherwise as the Governor may think fit.

(2) Where in pursuance of this section a criminal person of unsound mind has been discharged conditionally, if any of the conditions of such discharge appear to the Governor to be broken, or the conditional discharge is revoked, the Governor may by warrant direct him to be taken into custody, and to be conveyed to some place named in the warrant, and he may thereupon be taken in like manner as if he had escaped from such place, and shall be received and detained therein as if he had been removed thereto in pursuance of the provisions of section 302.

PART XXII
SPECIAL PROVISIONS RELATING TO CHILDREN AND YOUNG PERSONS

General

Presumption and determination of age.

306.(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of that court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age, presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of seventeen years, that person shall for the purposes of this Act be deemed not to be a child or young person.

(2) Where in any charge or indictment for any of the offences set out in Schedule 2, except as provided in that Schedule, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

(3) Where in any charge or indictment for any of the offences set out in Schedule 2, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

Segregation of children and young persons.

307. Arrangements shall be made for preventing as far as possible a child or young person while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult, not being a relative, who is charged with any offence other than an offence with which the child or young person is jointly charged, and for ensuring as far as possible that a girl, being a child or young person, shall while so detained, being conveyed, or waiting, be under the care of a woman.

Prohibition of unnecessary presence of children in court.

308. No child, other than an infant in arms, shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice, and any child present in court when under this section he is not to be permitted to be so shall be ordered to be removed.

Restriction on newspaper reports.

309.(1) In relation to any proceedings in any court which arise out of any offence against, or any conduct contrary to, decency or morality, the court may direct that–

(a) no newspaper report of the proceedings shall reveal the name, address, or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken, or as being a witness therein; and

(b) no picture be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings as aforesaid,

except in so far, if at all, as may be permitted by the direction of the court.

(2) A person who publishes any matter in contravention of any such direction is guilty of an offence and is liable, on summary conviction, to a fine at level 4 on the standard scale.

Evidence of Children and Young Persons

Evidence of children of tender years.

310.(1) Where, in any proceedings against any person for any offence, any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth, and his evidence, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of this Act shall be deemed to be a deposition within the meaning of this Act:

Provided that where evidence admitted by virtue of this section is given on behalf of the prosecution the defendant shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him.

(2) If any child whose evidence is received as aforesaid wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall, subject to the provisions of this Act, be liable, on summary conviction, to be dealt with as if he had been summarily convicted of perjury.

Power to clear court.

311.(1) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child or young person is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness:

Provided that nothing in this section shall authorize the exclusion of bona fide representatives of a newspaper or news agency.

(2) The powers conferred on a court by this section shall be in addition, and without prejudice, to any other powers of the court to hear proceedings in camera.

Extension of power to take depositions.

312.(1) Where a justice of the peace is satisfied by the evidence of a medical practitioner that the attendance before a court of any child or young person in respect of whom any of the offences set out in Schedule 2 is alleged to have been committed would involve serious danger to his life or health, the justice may take in writing the deposition of the child or young person on oath or in pursuance of section 313, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking it and of the day when and place where it was taken, and of the names of the persons, if any, present at the taking thereof.

(2) The justice taking any such deposition shall transmit it with his statement–

(a) if the deposition relates to an offence for which any accused person is already committed for trial, to the Registrar; and

(b) in any other case, to the clerk of the magistrates' court.

Admission of depositions.

313. Where, in any proceedings in respect of any of the offences set out in Schedule 2, the court is satisfied by the evidence of a medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, any deposition of the child or young person taken under this Act, shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the justice by or before whom it purports to be taken:

Provided that the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his counsel had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

Juvenile Courts

Constitution and procedure of juvenile courts.

314.(1) Subject to the provisions of section 318, the magistrates' court when sitting for the purpose of hearing any charge against a child or young person shall be known as a juvenile court.

(2) A juvenile court shall not sit in any room in which sittings of a court other than a juvenile court are held if the sitting of that other court has been or will be held there within an hour before or after the sitting of the juvenile court and no person shall be present at any sitting of the juvenile court except–

(a) members and officers of the court;

(b) parties to the case before the court, their counsel, and witnesses and other persons directly concerned in that case;

(c) bona fide representatives of newspapers or news agencies; and

(d) such other persons as the court may specially authorize to be present.

(3) The Chief Justice may make rules for regulating the procedure of the juvenile court.

Charges to be heard in juvenile courts.

315.(1) Every charge against a child or young person of an offence punishable summarily shall be heard by the magistrates' court sitting as a juvenile court except–

(a) a charge made jointly against a child or young person and an adult; and

(b) where a child or young person is charged with an offence and an adult is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence:

Provided that where, in the course of any proceedings before the magistrates' court not sitting as a juvenile court, it appears that the person to whom the proceedings relate is a child or young person, nothing in this subsection shall be construed as preventing the court, if it thinks fit to do so, from proceeding with the hearing and determination of those proceedings.

(2) No direction, whether contained in this Act or any other law, that a charge shall be brought before a juvenile court shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

Extension of jurisdiction.

316.(1) A juvenile court sitting for the purpose of hearing a charge against a person who is believed to be a child or young person may, if it thinks fit to do so, proceed with the hearing and determination of the charge notwithstanding that it is discovered that the person in question is not a child or young person.

(2) The attainment of the age of seventeen years by a probationer, or a person in whose case an order for conditional discharge has been made, shall not deprive a juvenile court of jurisdiction to enforce his attendance and deal with him in respect of any failure to comply with the requirements of the probation order or the commission of a further offence or to amend or discharge the probation order.

Restrictions on newspaper reports.

317.(1) Subject as hereinafter provided in this section no newspaper report of any proceedings in a juvenile court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein, nor shall any picture be published in any newspaper as being or including a picture of any child or young person so concerned in any such proceedings as aforesaid:

Provided that the court may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such an extent as may be specified in the order.

(2) A person who publishes any matter in contravention of this section is guilty of an offence and is liable, on summary conviction, to a fine at level 4 on the standard scale.

Care and Protection

Orders for care and protection.

318.(1) If a juvenile court is satisfied that any person brought before the court under this section by the Director or any police officer is a child or young person in need of care or protection, the court may either–

(a) commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him; or

(b) order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or

(c) without making any other order, or in addition to making an order under either paragraph (a) or (b), make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the court.

(2) The Director or any police officer having reasonable grounds for believing that a child or young person is in need of care or protection may bring him before a juvenile court, and it shall be the duty of the Director to bring before a juvenile court any child or young person who appears to him to be in need of care or protection unless he is satisfied that the taking of proceedings is undesirable in his interests, or that proceedings are about to be taken by some other persons.

(3) The provisions of sections 146 to 150 with respect to recognizances to be of good behaviour, including the provisions as to the enforcement thereof, shall apply to recognizances under subsection (1).

(4) For the purposes of this section–

(a) "Director" means the person appointed by the Government from time to time for the purposes of this section.

(b) "a fit person" includes the Director.

Duties of probation officers and other persons.

319.(1) Where a court makes an order under the provisions of this Act placing a child or young person under the supervision of a probation officer or of some other person, that officer or person shall, while the order remains in force, visit, advise and befriend him and, when necessary, endeavour to find him suitable employment, and may, if it appears necessary in his interests so to do, at any time while the order remains in force and he is under the age of seventeen years, bring him before a juvenile court, and that court may, if it thinks that it is desirable in his interests so to do, order him to be committed to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

Death or incapacity of probation officer.

320. Where the probation officer or other person named in the order placing a child or young person under supervision has died or is unable for any reason to carry out his duties, or where it is made to appear that it is for any reason desirable that another person should be appointed in the place of that officer or person, a juvenile court may appoint another probation officer or person to act in his place.

Committal to care.

321.(1) Any court by or before which a child or young person is found guilty of an offence punishable in the case of an adult with imprisonment shall, in addition to any other powers exercisable by virtue of this Act or any other law, have power to commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care, of him.

(2) Where an order is made under this section committing a child or young person to the care of a fit person, a probation order may also be made under the provisions of this Act.

Consideration of religious persuasion.

322.(1) Before making an order under this Act committing a child or young person to the care of a fit person, the court shall endeavour to ascertain the religious persuasion of the child or young person, and in selecting the person to whose care the child or young person is to be committed shall, if possible, select a person who is of the same religious persuasion as the child or young

person or who gives an undertaking that he will be brought up in accordance with that religious persuasion.

(2) Every order committing a child or young person to the care of a fit person shall contain a declaration–

(a) as to the age; and

(b) as to the religious persuasion,

of the child or young person with respect to whom it is made.

(3) Every order committing a child or young person to the care of a fit person shall, subject to the provisions of this Act, remain in force until he attains the age of eighteen years.

Effect of committal order.

323. The person to whose care a child or young person is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were his parent and the person so committed shall continue in his care notwithstanding any claim by a parent or any other person:

Provided that the child or young person shall not be sent out of Gibraltar while the order is in force, without the prior permission of the Supreme Court.

Variation and revocation of orders and discharge from care.

324.(1) The provisions of this section shall apply in relation to orders under this Act committing a child or young person to the care of a fit person, and in this section the expressions "child" and "young person" mean a person with respect to whom such an order is in force, irrespective of whether at the date of the making of the order, or at any subsequent date while the order is in force, he was, or is, a child or young person.

(2) The Chief Justice may, at any time, in his discretion discharge a child or young person from the care of the person to whose care he has been committed, and any such discharge may be granted either absolutely or subject to conditions.

(3) An order committing a child or young person to the care of a fit person may, upon the application of any person be varied or revoked by a juvenile court and the juvenile court revoking any such order may, upon the application of any person, substitute for that order an order placing the child or young person for a specified period not exceeding three years under the supervision of a probation officer or of some other person appointed for the purpose by the court:

Provided that an order under this subsection placing a young person under the supervision of a probation officer or some other person appointed by the court shall be of no effect after the time at which the person to whom the order relates attains the age of eighteen years.

(4) If, on the application made by the parent or guardian or any near relative of a child or young person committed by any such order as aforesaid, any court having power to vary or revoke the order is satisfied that he is not being brought up in accordance with his religious persuasion, the court shall, unless a satisfactory undertaking is offered by the person to whose care he has been committed, either revoke the order or vary it in such manner as the court thinks best calculated to secure that he is thenceforth brought up in accordance with that persuasion.

Procedure where child or young person runs away.

325.(1) A child or young person who runs away from a person to whose care he has been committed under this Act may be apprehended without warrant and brought back to that person, if he is willing to receive him, and if he is not willing to receive him, may be brought before a juvenile court and that court may–

(a) order that the child or young person be committed to the care of some other fit person; or

(b) without making an order under paragraph (a) or in addition to any other order, make an order placing him under the supervision of a probation officer or other person appointed by the court for a specified period not exceeding three years; and

(c) if the child or young person was committed to the care of the fit person from whom he has run away in consequence of the commission by him of an offence, order either in addition to

or without making any other order that he shall attend at the attendance centre for such hours as may be specified in accordance with the provisions of section 263.

(2) A person who knowingly–

(a) assists or persistently attempts to induce or induces a child or young person to run away from a person to whose care he has been committed as a fit person; or

(b) harbours or conceals a child or young person who has so run away or prevents him from returning,

is guilty of an offence and is liable, on summary conviction, to imprisonment for two months and to a fine at level 3 on the standard scale.

Contribution orders.

326.(1) Where an order has been made by a court committing a child or young person to the care of a fit person, the court which makes the order may at the same time, or the magistrates' court may at any time, make an order (hereinafter in this section referred to as a "contribution order") on any person who is under the provisions of this section liable to make contributions in respect of the child or young person, requiring him to contribute such weekly sum as the court having regard to his means thinks fit, during the period when the child or young person is in the care of the fit person.

(2) The persons liable to make contributions for the purposes of this section shall be–

(a) the father and mother of the person committed to the care of a fit person until the person so committed reaches the age of sixteen years; and

(b) where the person committed to the care of a fit person is of or over or attains the age of sixteen years and is engaged in remunerative employment that person himself.

(3) A person to whose care a child or young person has been committed may apply to the magistrates' court at any time for a contribution order and any sums payable under such order shall be paid to the court, which shall

transmit such sums to such person who shall apply them in or towards the maintenance or otherwise for the benefit of the child or young person.

(4) In this section "father" includes step father and "mother" includes step mother.

Rules as to children and young persons committed to care.

327. The Government may make rules in relation to children or young persons committed to the care of any person, as to the payment of sums from the Consolidated Fund to any person to whose care a child or young person is committed and as to the duties of any person to whose care a child or young person is committed.

Miscellaneous

Summary trial of information against young person.

328.(1) The following provisions of this section shall have effect where a person who has attained the age of fourteen but has not attained the age of seventeen appears or is brought before the magistrates' court on an information charging him with an offence, other than homicide, that is not a summary offence.

(2) If at any time during the inquiry into the offence it appears to the court expedient to do so, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the offence and the circumstances of the case, the court may proceed with a view to summary trial.

(3) For the purpose of proceeding as aforesaid, the court shall cause the charge to be written down, if this has not already been done, and read to the accused and shall tell him that he may, if he consents, be tried summarily instead of being tried by a jury before the Supreme Court, and explain what is meant by being tried summarily.

(4) After informing the accused as provided by subsection (3) the court shall ask him whether he wishes to be tried by a jury or consents to be tried summarily, and, if he consents, shall proceed to the summary trial of the information.

Summary trial of information against child.

329. Where a person under fourteen years old appears or is brought before the magistrates' court on an information charging him with an indictable offence, other than homicide, he shall be tried summarily:

Provided that, if a person under fourteen is charged jointly with a person who has attained that age, the court may, if it considers it necessary in the interests of justice, commit them both for trial.

Attendance at court of parents and guardians.

330.(1) Where a child or young person is charged with any offence or is for any other reason brought before a court, his parent or guardian, may in any case, and shall if he can be found and resides in Gibraltar, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where a child or young person is arrested or taken to a place of safety, the police officer by whom he is arrested or the officer of police in charge of the police station to which he is brought, or the person by whom he is taken to the place of safety, as the case may be, shall cause the parent or guardian of the child or young person, if he can be found, to be warned to attend at the court before which the child or young person will appear.

(3) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child or young person:

Provided that if that person is not the father, the attendance of the father may also be required.

(4) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

Power to proceed in absence of child or young person.

331. Where in any proceedings with relation to any of the offences set out in Schedule 2, the court is satisfied that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child or young person.

Regard for welfare of children and young persons.

332. Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

Words "conviction" and "sentence" not to be used.

333. The words "conviction" and "sentence" shall not be used in relation to children and young persons dealt with summarily and any reference in any law to a person convicted, a conviction or a sentence shall, in the case of a child or young person, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such finding, as the case may be.

Removal of disqualifications attaching to conviction.

334. A conviction or finding of guilt of or against a child or young person shall be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons or authorizes or requires the imposition of any such disqualification or disability.

Power to order parent to pay fine.

335.(1) Where a child or young person is charged with any offence for the commission of which a fine, damages or costs may be imposed, if the court is of opinion that the case would be best met by the imposition of a fine, compensation, damages or costs, whether with or without any other

punishment, the court may in any case order that the fine, compensation, damages or costs awarded be paid by the parent or guardian of the child or young person instead of the child or young person, unless the court is satisfied that the parent or guardian is not within the jurisdiction of the court or cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(2) In the case of a child or young person charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(4) Any sums ordered under this section, or on forfeiture of any such security as aforesaid, to be paid by a parent or guardian may be recovered from him by distress, imprisonment or otherwise in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(5) A parent or guardian may appeal to the Supreme Court against an order made by the magistrates' court under this section.

PART XXIII
APPEALS FROM THE MAGISTRATES' COURT TO THE SUPREME COURT

Right of Appeal

Right of appeal against conviction or sentence.

336.(1) A person convicted by the magistrates' court may appeal to the Supreme Court–

(a) if he pleaded guilty, against his sentence;

(b) if he did not, against the conviction or sentence.

(2) A person sentenced by the magistrates' court for an offence in respect of which a probation order or an order for conditional discharge has been previously made may appeal to the Supreme Court against the sentence.

(3) In this section the expression "sentence" includes any order made on conviction by the magistrates' court, not being–

(a) a probation order or an order for conditional discharge;

(b) an order for the payment of costs;

(c) an order under the Animals and Birds Act for the destruction of an animal or bird; or

(d) an order made in pursuance of any law under which the court has no discretion as to the making of the order or its terms.

(4) Where, under the Justices of the Peace Act, 1361, or otherwise, a person is ordered by the magistrates' court to enter into a recognizance with or without sureties to keep the peace or to be of good behaviour, he may appeal to the Supreme Court and in the case of any such appeal–

(a) the other party to the proceedings which were the occasion of the making of the order shall be the respondent to the appeal;

(b) section 5 of the Legal Aid and Assistance Act and, in relation to an appellant in custody for failure to comply with the order, section 99 of this Act, shall, with the necessary adaptations, apply as if the appeal were an appeal against a conviction.

Right of appeal against special findings.

337. A person in whose case a special finding under section 299 is made by the magistrates' court may appeal against the finding to the Supreme Court.

Appeals in cases concerning children and young persons.

338.(1) Appeals to the Supreme Court from orders of the magistrates' court may be brought in the following cases and by the following persons, that is to say–

(a) in the case of an order committing a child or young person to the care of a fit person, or placing a child or young person under the supervision of the probation officer or other person, by the child or young person or his parent or guardian on his behalf;

(b) in the case of an order requiring a person to enter into a recognizance to exercise proper care and guardianship over a child or young person, by the person required to enter into the recognizance;

(c) in the case of an order requiring a person to contribute in respect of himself or any other person, by the person required to contribute.

(2) Nothing in this section shall be construed as affecting any right of appeal to the Supreme Court conferred by this Act or any other law.

Procedure

Notice of appeal.

339.(1) An appeal from the magistrates' court to the Supreme Court shall be commenced by the appellant giving notice of appeal, within fourteen days after the day on which the decision of the magistrates' court was given, to the clerk of the magistrates' court and to the other party.

(2) For the purpose of subsection (1), the day on which the decision of the magistrates' court is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.

(3) Where it appears to the Supreme Court, on application made in accordance with the following provisions of this section, that any person wishing to appeal to that court from the magistrates' court has failed to give the notice of appeal required by this section within the period of fourteen days prescribed by subsection (1), the Supreme Court may, if it thinks fit, direct that any such notice of appeal previously given by the applicant after the expiration of the said period, or any such notice to be given by him within such further time as may be specified in the direction, shall be treated as if given within the said period.

(4) An application for a direction under subsection (3) shall be made in writing and be sent by the applicant to the Registrar, and, where the Supreme Court gives any such direction, the Registrar shall give notice of the direction to the applicant and to the clerk of the magistrates' court and the applicant shall give notice of the direction to the other party to the proceedings.

(5) The powers of the Supreme Court under subsection (3) shall be exercised by the Chief Justice.

Entry of appeal.

340.(1) In the case of an appeal to the Supreme Court from the magistrates' court, the clerk of the magistrates' court shall, on receipt of any notice of appeal, transmit the notice to the Registrar, who shall thereupon enter the appeal, and shall in due course give notice to the appellant, to the other party to the appeal and to the clerk of the magistrates' court as to the date, time and place fixed for the hearing of the appeal.

(2) A notice required by this section to be given to any person may be sent by post in a registered letter addressed to him at his last or usual place of residence.

Duties of Registrar.

341.(1) The Registrar shall take all necessary steps for obtaining a hearing under this Part of any appeals, of which notice is given to him, and shall obtain and lay before the Supreme Court in proper form all documents, exhibits, and other things relating to the proceedings in the court before which the appellant was tried which appear necessary for the proper determination of the appeal.

(2) If it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Supreme Court for summary determination, and, where the case is so referred, the Supreme Court may, if it considers that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon, notwithstanding any other provisions of this Part.

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person, who, if convicted, is entitled or may be authorized to appeal, shall be kept in the custody of the magistrates' court in accordance with rules made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal under this Part to any person who demands the same, and to the clerk of the magistrates' court, and the Superintendent shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

Abandonment of appeal.

342.(1) An appellant may abandon an appeal from the magistrates' court to the Supreme Court by giving notice in writing, not later than the third day before the day fixed for hearing the appeal, to the clerk of the magistrates' court, and the clerk shall thereupon give notice of the abandonment to the other party to the appeal and to the Registrar.

(2) Where notice to abandon an appeal has been duly given by the appellant–

(a) the magistrates' court may issue process for enforcing its decision, subject to anything already suffered or done under it by the appellant; and

(b) the magistrates' court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given to that party.

(3) Costs ordered to be paid under this section shall be enforceable as a civil debt.

Right of appellant to be present.

343.(1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where the Supreme Court gives him leave to be present.

(2) The power of the Supreme Court to pass any sentence under this Part may be exercised notwithstanding that the appellant is for any reason not present.

Procedure at hearing.

344. Any appeal to the Supreme Court from the magistrates' court in any criminal case shall be determined by the Supreme Court upon perusal of a copy, certified as a true copy by the clerk of the magistrates' court of the notes made by such clerk of the proceedings before the magistrates' court, and upon hearing the parties to the appeal or their counsel in the following order–

(a) the appellant or his counsel shall first address the court in support of the appeal;

(b) the respondent or his counsel shall then address the court;

(c) the appellant or his counsel shall then have the right of reply.

Powers of the Court on Appeal

Powers of Supreme Court on appeal.

345. The Supreme Court shall have the following powers in relation to an appeal, other than an appeal upon a case stated–

(a) on an appeal against conviction, or against conviction and sentence, the power–

(i) to quash the conviction and acquit the appellant; or

(ii) to affirm the conviction; or

(iii) to substitute a conviction for any other offence of which the appellant could have been lawfully convicted if he had been tried in the first instance upon an indictment for the offence with which he was charged or of which he could have been lawfully convicted by the magistrates' court;

(iv) in either of the cases mentioned in subparagraph (ii) and (iii), to affirm the sentence passed by the magistrates' court or to substitute therefore any other sentence, whether more or less severe and whether of the same nature or not, which that court would have had power to pass; and

(v) to order a re-trial of the appellant before the magistrates' court;

(b) on an appeal against sentence only, the power–

(i) to affirm the sentence; or

(ii) to substitute any other sentence, whether more or less severe and whether of the same nature or not, which the magistrates' court would have had power to pass;

(c) on an appeal against any other order, the power to affirm, quash or vary the order,

and in any such case the Chief Justice may make any consequential or incidental order which may appear just and proper.

Determination of appeals.

346.(1) The Supreme Court upon the hearing of an appeal against conviction shall allow the appeal if it thinks–

(a) that the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or

(b) that the judgment of the magistrates' court should be set aside on the ground of a wrong decision of any question of law; or

(c) that on any ground there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal:

Provided that the Supreme Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(2) Subject to the provisions of this Part, the Supreme Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and order of acquittal to be entered.

(3) Where apart from this subsection–

(a) an appeal against a special finding would fall to be allowed, and

(b) none of the grounds for allowing it relates to the question of the mental disorder of the accused,

the Supreme Court may dismiss the appeal if of opinion that but for the mental disorder of the accused the proper finding would have been that he was guilty of an offence other than the offence charged.

Appeals against special findings.

347.(1) Where in accordance with section 346 an appeal against a special finding is allowed–

(a) if the ground or one of the grounds, for allowing the appeal is that the finding of the court as to the mental disorder of the appellant ought not to stand and the Supreme Court is of opinion that the proper finding would have been that he was guilty of an offence, whether the offence charged or any other offence of which the court could have found him guilty, the court shall substitute for the special finding a finding of guilty of that offence, and shall have the like powers of punishing or

otherwise dealing with the appellant and other powers as the court before which he was tried would have had if the court had come to the substituted finding; and

(b) in any other case, the Supreme Court shall substitute for the finding of the court a finding of acquittal.

(2) The term of any sentence passed by the Supreme Court in the exercise of the powers conferred by subsection (1)(a) shall, unless the court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in the court before which the appellant was tried.

Supplementary powers.

348. For the purposes of this Part, the Supreme Court may on any appeal, if it thinks it necessary or expedient in the interest of justice–

(a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case; and

(b) if it thinks fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules before the Chief Justice or before any officer of the Supreme Court or any justice of the peace or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court; and

(c) if it thinks fit, receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application; and

(d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or

local investigation, which cannot in the opinion of the court conveniently be conducted before the court, order the reference of the question in manner provided by rules for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as it thinks fit to adopt it; and

(e) appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the court any other powers which may for the time being be exercised by the Supreme Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Enlargement of time.

349. The Chief Justice may, upon application made in open court by the party appealing after not less than two days' notice to the other party, enlarge any period of time prescribed for the doing of any act or the taking of any proceedings, if in any particular case the Chief Justice shall think fit so to do.

Power to correct omissions or mistakes.

350. Without prejudice to any other provisions of this Part, if upon any appeal to which this Part applies any objection shall be made on account of any omission or mistake in the drawing up of a conviction or order of the magistrates' court, and it shall be shown to the satisfaction of the Chief Justice that sufficient grounds were in proof before the magistrates' court to have authorized the drawing up of such conviction or order free from the omission or mistake, it shall be lawful for the Chief Justice to amend the conviction or order and to adjudicate thereon as if no such omission or mistake had existed.

Manner of enforcement of decision.

351. After the determination by the Supreme Court of an appeal from the magistrates' court, the decision appealed against as confirmed or varied by the Supreme Court, or any decision of the Supreme Court substituted for the decision appealed against, may, without prejudice to the powers of the Supreme Court to enforce the decision, be enforced–

(a) by the issue by the magistrates' court of any process that it could have issued if it had decided the case as the Supreme Court decided it; and

(b) so far as the nature of any process already issued to enforce the decision appealed against permits, by that process,

and the decision of the Supreme Court shall have effect as if it had been made by the magistrates' court.

Notification to magistrates' court.

352 . When an appeal against a conviction, special finding or order of the magistrates' court has been decided under the provisions of section 345 or 347(1), the Registrar shall forthwith notify that decision to the magistrates' court, and the last mentioned court shall, in relation to that decision, exercise all such powers as may be necessary for the enforcement thereof and as are conferred by this Act, or any other law for the enforcement of a conviction, special finding or order of the magistrates' court.

Cases Stated

Right to apply for statement of case.

353.(1) Any person who was a party to any proceedings before the magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the Supreme Court on the question of law or jurisdiction involved:

Provided that a person shall not make an application under this section in respect of a decision which by virtue of any law is final.

(2) An application under subsection (1) shall be made within fourteen days after the day on which the decision of the magistrates' court was given.

(3) For the purpose of subsection (2), the day on which the decision of the magistrates' court is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.

(4) On the making of an application under this section in respect of a decision any right of the applicant to appeal against the decision to the Supreme Court shall cease.

(5) If the justices are of opinion that an application under this section is frivolous, they may refuse to state a case, and, if the applicant so requires, shall give him a certificate stating that the application has been refused:

Provided that the justices shall not refuse to state a case if the application is made by or under the direction of the Attorney General.

(6) Where justices refuse to state a case, the Supreme Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case.

Certiorari not required for appeal by case stated.

354. No writ of certiorari or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated for obtaining the judgment or determination of the Supreme Court on such case.

Case may be sent back for amendment.

355. The Supreme Court shall have power, if it thinks fit, to cause any case stated to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Determination of question.

356. The Supreme Court shall hear and determine the question or questions of law arising on any case stated and shall thereupon reverse, affirm or

amend the determination in respect of which the case has been stated, or remit the matter to the magistrates' court, with the opinion of the Supreme Court thereon, or may make such other order in relation to the matter as to the Supreme Court may seem fit:

Provided always that no justice of the peace shall be liable to any costs in respect or by reason of such appeal against its determination.

Enforcement of decisions.

357. Any conviction, order, determination or other proceeding of the magistrates' court varied by the Supreme Court on an appeal by case stated, and any judgment or order of the Supreme Court on such an appeal, may be enforced as if it were a decision of the magistrates' court.

PART XXIV
MISCELLANEOUS

Mode of entering into recognizance.

358. For removing doubts it is hereby declared that where as a condition of the release of any person he is required to enter into a recognizance with sureties, the recognizances of the sureties may be taken separately and either before or after the recognizance of the principal, and if so taken the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

Procedure on breach of recognizance.

359.(1) Where any person charged with or convicted of an offence has entered into a recognizance conditioned for his appearance before the Supreme Court and in breach of that recognizance fails to appear, the Supreme Court may, without prejudice to the enforcement of the recognizance, issue a warrant for his arrest.

(2) A person in custody in pursuance of a warrant issued by the Supreme Court under subsection (1) shall be brought forthwith before the Supreme Court.

Rules.

360.(1) The Chief Justice may make rules with respect to any matter in respect of which rules may be made under this Act and generally for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), rules made under this section may–

(a) provide for enforcing the attendance of the parent or guardian of a child or young person brought before a court and may enable such parent or guardian to take part in the proceedings and enable orders to be made against him and may prescribe forms of summons to a child or young person and to his parent or guardian; and

(b) fix the amount of fees to be taken in any proceedings in the Supreme Court under this Act.

Repeals etc..

361.(1) The Criminal Procedure Act is repealed.

(2) Where a provision of any Act passed before this Act is in conflict with any provision of this Act, the provisions of this Act shall prevail.

SCHEDULE 1

SPECIFIC OFFENCES WHICH ARE ARRESTABLE OFFENCES

Section 22

1. An offence under the Official Secrets Act 1920.

2. An offence under the following provisions of the Criminal Offences Act-

section 40 (prohibtion of carrying offensive weapons without lawful excuse);

section 89 (assaulting a police officer in the execution of his duty or assisting such an officer);

section 121 (causing prostitution of women);

section 122 (procuration of girl under 18);

section 153 (publication of obscene matter);

section 181 (going equipped for stealing); or

section 194 (making off without payment).

3. An offence under the following provisions of the Nature Protection Act 1991–

(a) sections 6, 8(5), 11(2), 17X, 17XA (taking, sale etc. of birds and plants;

(b) sections 4(2) or 17T (disturbance of wild birds); or

(c) section 12 (introduction of new species).

4. An offence under the following provisions of the Traffic Act 2005–

(a) section 40(5) (driving whilst disqualified);

(b) section 54(2) (failure to stop and report an accident where personal injuries caused).

SCHEDULE 2

Section 72(2)

DOCUMENTARY EVIDENCE - SUPPLEMENTARY

1. Where a statement is admitted as evidence in criminal proceedings by virtue of sectons 65 to 70–

(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-examinig 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 sections 65 to 70 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. With prejudice to the generality of any enactment conferring power to make them–

(a) Supreme Court Rules;

(b) Criminal Appeal Rules; and

(c) Magistrates' Court Rules

may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of sections 65 to 70.

5. In sections 65 and 66, "confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.

SCHEDULE 3

Sections 155, 306, 312, 313 and 331

OFFENCES AGAINST CHILDREN AND YOUNG PERSONS, WITH RESPECT TO WHICH SPECIAL PROVISIONS OF THE ACT APPLY

1. The murder or manslaughter of a child or young person or aiding, abetting, counselling or procuring the suicide of a child or young person.

2. Infanticide.

3. Any offence under section 81, 82, 129 or 143 of the Criminal Offences Act.

4. Any offence against a child or young person under any of sections 63, 95, 96, 104 to 109, 112, 113, 115 to 125, 127, 140 or 141 of the Criminal Offences Act and any attempt to commit against a child or young person an offence under section 104, 107, 108, 109, 112, 113, 115, 121 or 122 of that Act:

Provided that for the purposes of section 263(2) of this Act this paragraph shall apply so far only as it relates to offences under sections 112, 113, 115, 117, 118, 119, 120, 127 and 141 of the Criminal Offences Act, and attempts to commit offences under sections 112, 113 and 115 of that Act.

5. Any other offence involving bodily injury to a child or young person.

SCHEDULE 4

Sections 92 and 157

INDICTABLE OFFENCES WHICH MAY BE DEALT WITH SUMMARILY

1. Offences under the following provisions of the Criminal Offences Act–

Sections 76 and 94;

Sections 117 and 118;

Sections 159(1), 160 and 161;

Section 177;

Section 179 other than–

(a) burglary comprising the commission of, or an intention to commit an offence which is not included in this Schedule; and

(b) burglary in a dwelling if entry to the dwelling or the part of it in which the burglary was committed, or to any building or part of a building containing the dwelling, was obtained by force or deception or by the use of any tool, key or appliance, or if any person in the dwelling was subjected to violence or the threat of violence;

Sections 181, 183, 191, 192, 195, 196, 197, 200, 202 and 203;

Section 208 (2)(a) in relation to any document being an authority for the payment of money or for the delivery or transfer of goods or chattels, where the amount of money, or the value of the goods or chattels, does not exceed £2000;

Section 210;

Section 215 (a) where the amount of the money or the value of the property in respect of which the offence is committed does not exceed £2000;

Sections 227, 228, 230 (where the offence is exporting or putting on board), 231;

Section 252 in relation to statements in statutory declarations.

2. Offences against section 19 of the Criminal Offences Act and incitement to commit them, where the arrestable offences to which they relate are included, or are to be treated as included, in this Schedule.

3. Offence under paragraph (1) of section 13 of the Debtors Act,1869.

4. Offences against section 29, 30, 31, 32, 33, 34 or 35 of the Post Office Act.

SCHEDULE 5

Section 169

PROSECUTION OF CORPORATIONS IN THE MAGISTRATES' COURT

1. The magistrates' court may commit a corporation for trial by an order in writing empowering the prosecutor to prefer a bill of indictment is respect of the offence named in the order.

2. An order under paragraph 1 of this Schedule shall not prohibit the inclusion in the bill of indictment of counts that under the provisions of the Act may be included in the bill in substitution for or in addition to counts charging the offence named in the order.

3. A representative may, on behalf of a corporation–

(a) make a statement before examining justices in answer to the charge;

(b) consent or object to summary trial or claim trial by jury.

4. Where a representative appears, any requirement of the Act that anything shall be done in the presence of the accused, or shall be read or said to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said to the representative.

5. Where a representative does not appear, any such requirement and any requirement that the consent of the accused shall be obtained for summary trial, shall not apply.

6. The provisions of the Act relating to committal to the Supreme Court for sentence shall not apply to a corporation.

7. Subject to the preceding provisions of this Schedule, the provisions of the Act relating to the inquiry into and trial of indictable offences and the trial by jury of certain summary offences shall apply to a corporation as they apply to an adult.

8. Where a corporation is charged jointly with an individual with an offence before the magistrates' court, then–

(a) if the offence is not a summary offence, but one that may be tried summarily with the consent of the accused, the court shall not try either of the accused summarily unless each of them consents to be so tried;

(b) if the offence is a summary offence, but one for which an accused has the right to claim trial by a jury, the court shall not try either of the accused summarily if the other exercises that right.

9. Section 189 of the Act shall apply to a representative for the purposes of this Schedule as it applies to a representative for the purposes of that section.

SCHEDULE 6

Sections 230 and 235

MAXIMUM PERIODS OF IMPRISONMENT IN DEFAULT OF PAYMENT

1. Subject to the following provisions of this Schedule, the periods set out in the second column of the following Table shall be the maximum periods applicable respectively to the amounts set out opposite thereto, being amounts due at the time the imprisonment is imposed.

TABLE.

An amount not exceeding £50	5 days
An amount exceeding £50 but not exceeding £500	45 days
An amount exceeding £500 but not exceeding £1000	90 days
An amount exceeding £1000 but not exceeding £1500	135 days
An amount exceeding £1500.	180 days

2. Where the amount due at the time imprisonment is imposed is so much of a sum adjudged to be paid by a summary conviction as remains due after part payment, the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the whole sum:

Provided that in calculating the reduction required under this paragraph any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five days.

3. The maximum period applicable to a sum of any amount enforceable as a civil debt shall be six weeks.

SCHEDULE 7

Sections 229, 233 and 235

STANDARD SCALE OF FINES FOR OFFENCES

Level on the scale	Amount of fine £
1	100
2	200
3	500
4	2000
5	5000

EXPLANATORY MEMORANDUM

This Act repeals and re-enacts the Criminal Procedure Act and up-dates it by following parts of the Police and Criminal Evidence Act 1984 in England.

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