CRIMINAL PROCEDURE AND EVIDENCE ACT 2011

Principal Act

Act. No. 2011-24

	Commencement
ss. 1 & 703 (LN. 2011/186)	6.10.2011
s.690 (LN. 2011/203)	14.10.2011
ss. 2(1), 610-620, 698, Schs. 11 & 12 (LN. 2012/017)	8.3.2012
ss. 415 and 420 to 423 (LN. 2012/091)	28.6.2012
ss 3-84, 86-414, 416-419, 424-609, 621- 689, 691-697, 699-702, Schs 1-10 & 13 (LN. 2012/184)	23.11.2012
Assent	12.8.2011

Amending enactments	Relevant current provisions	Commencement date
Act. 2012-13	ss. 2(1), 170(3), (3)(a) & (4), 225, 226, 241, 244(1) & (4), 245, 246, 247(1)(a) & (4)(a), 248(5), 249, 251(1), (2)(a) & (b), (3), (4), (7), (9) & (12), 252(1), 266A, 359-364, 427(1), 433(1), 434(5) & 695(2)	23.11.2012[1]
2013-03	s. 199(3)	17.1.2013
LN. 2013/056	ss. 2(1), 258 & 259	4.4.2013
Act. 2013-21	ss. 12(1)(a), (5), 690(5),(6), 690A & Sch. 14	10.10.2013[2]

Transposing:
Directive 2011/36/EU

[1] *Commencement notice see LN. 2012/186*
[2] *Commencement notice see LN. 2013/136*

2011-24

Criminal Procedure and Evidence

This version is out of date

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2011-24

Criminal Procedure and Evidence

This version is out of date

AN ACT TO MAKE FRESH PROVISION IN RELATION TO THE POWERS AND DUTIES OF THE POLICE, THE TREATMENT OF PERSONS IN POLICE DETENTION, AND EVIDENCE AND PROCEDURE IN CRIMINAL CASES; AND FOR CONNECTED PURPOSES.

PART 1 – PRELIMINARY

Title and commencement.

1.(1) This Act may be cited as the Criminal Procedure and Evidence Act 2011.

(2) This Act comes into operation on the day appointed by the Government.

(3) Different dates may be appointed under subsection (2) for different provisions and for different purposes.

Interpretation.

2.(1) In this Act, unless otherwise stated or the context otherwise requires–

"absolute discharge" means an order under section 517(1)(a) discharging a person absolutely;

"adult" means a person aged 18 years or more;

"appellate court", in relation to criminal proceedings, means the Court of Appeal in its criminal jurisdiction or the Supreme Court hearing an appeal from the Magistrates' Court;

"appropriate adult"–

(a) in relation to a person under the age of 18, means–

(i) his parent or guardian;

(ii) if he is in the care of the Care Agency - a person representing that Agency; or

(iii) if a person described in (i) or (ii) is not available - any responsible person aged 18 or over who is not a police officer or a person employed by the police;

(b) in relation to a person who is mentally disordered or mentally vulnerable–

(i) a relative, guardian or other person responsible for the person's care or custody; or

(ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or person employed by the police;

(iii) failing these, some other responsible adult aged 18 or over who is not a police officer or person employed by the police.

"broadcast" means broadcast by wireless telegraphy sounds or visual images intended for general reception;

"Care Agency" means the agency established by section 3 of the Care Agency Act 2009;

"caution" means a disposal of a case without a prosecution where the offender has admitted the offence and is warned that the criminal conduct will be recorded for possible reference in future criminal proceedings or relevant security checks;

"child" means a person under the age of 14 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;

"code of practice" means a code of practice issued by the Minister under Part 29;

"Collector of Customs" has the same meaning as "Collector" as defined in section 2 of the Imports and Exports Act, 1986;

"community order" means an order made under section 521;

"community sentence" means a sentence which consists of or includes–

(a) a community order; or

(b) a youth rehabilitation order;

"compensation order" means an order for compensation made under section 595 or section 577 as the case may be;

"complainant", in relation to an offence or alleged offence, means a person against or in relation to whom the offence was, or is alleged to have been, committed;

"conditional discharge" or "order for conditional discharge" means an order under section 517(1)(b) discharging a person with conditions;

"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;

"controlled drug" has the meaning given to it in Part 21 of the Crimes Act 2011;

"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;

"court" means the Magistrates' Court, the Supreme Court or the criminal division of the Court of Appeal;

"Criminal Procedure Rules" means the Criminal Procedure Rules 2010 of England and Wales (S.I. 2010 No.60) made by the Criminal Rules Committee (as amended or replaced from time to time);

"criminal proceedings" means proceedings for an offence consisting of a trial or other hearing at which evidence falls to be given;

"custodial sentence" means a sentence of imprisonment or detention;

"custody officer" means the officer responsible for making and keeping the custody record and includes an officer other than a custody officer who is performing the functions of a custody officer pursuant to Part 5;

"custody record" means the record of particulars relating to the custody of a person who is detained at a police station in accordance with Part 5;

"custody time limit" means a time limit prescribed under section 228 during which a defendant may be kept in custody while awaiting completion of a stage in the proceedings;

"customs officer" has the same meaning as in section 2 of the Imports and Exports Act, 1986;

"defendant", in relation to criminal proceedings, means a person charged with an offence in those proceedings, whether or not he has been convicted; and "co-defendant", in relation to a defendant, means a person charged with an offence in the same proceedings;

"designated police station" means a police station listed in Schedule 3 pursuant to section 56;

"disqualification" means a disqualification from an activity imposed as part of a sentence;

"document" means anything in or on which information of any description is recorded, and includes an electronic record of data;

"editor", in relation to a website, means the webmaster or other person responsible for the content of the website;

"either-way offence" means an offence which, if committed by an adult, is triable either on indictment or summarily;

"excluded material" has the meaning given it by section 15;

"examination station" has the same meaning as in section 2 of the Imports and Exports Act, 1986;

"examining magistrate" means a magistrate conducting an examination to decide whether to commit a person to the Supreme Court for trial;

"fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction, except that in section 588 "fine" means a pecuniary penalty;

"guardian" in relation to a juvenile means–

(a) if an order appointing a person as guardian of the juvenile has been made under Part IV of the Children Act 2009 - that person;

(b) if no such order has been made - any person who, in the opinion of the court or police officer having responsibility for the proceedings in which the juvenile is concerned, has for the time being charge or control over that juvenile;

"human trafficking offence" means an offence committed under section 191A of the Crimes Act 2011;

"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;

"indictable-only offence" means an offence which is triable only on indictment;

"items subject to legal privilege" has the meaning given to it by section 14;

"judge" means a judge of the Supreme Court;

"jury", where the context requires, includes a panel of lay assessors;

"juvenile" means a person aged below 18 years, whether a child or a young person;

"Juvenile Court" means the Magistrates' Court when sitting as a Juvenile Court under the provisions of Part 27;

"legal representative" means a barrister or solicitor or any other person who is qualified to practice in the courts of Gibraltar, and "legally represented" is to be construed accordingly. Provided that in section 14 "legal representative" means any professional legal advisor;

"Magistrates' Court" includes the Juvenile Court;

"mental disorder" has the meaning given by section 3(1) of the Mental Health Act 2016;

"mentally disordered", in relation to any person, means suffering from a mental disorder;

"Minister" means the Minister with responsibility for justice;

"normal powers to impose conditions of bail" means the powers to impose conditions under section 109;

"offence", in relation to any country or territory outside Gibraltar, includes an act or omission punishable under the law of that country or territory, however it is described;

"offence of violence" means–

(a) an offence listed in Schedule 4 to the Crimes Act 2011;

(b) conspiracy to commit any of those offences;

(c) attempting to commit any of those offences;

(d) encouraging or assisting or inciting another to commit any of those offences;

"offence triable either way" means an offence punishable either on conviction on indictment or on summary conviction, and includes an attempt to commit such an offence;

"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;

"oral evidence" includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

"overall time limit" means the maximum period allowed to the prosecution to complete a stage in the proceedings prescribed under section 228;

"parent", in relation to a juvenile, means a person, other than a guardian or the Care Agency, who has parental responsibility for the juvenile, as that term is used in the Children Act 2009;

"period of conditional discharge" has the meaning given by section 517(1)(b);

"place" includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever;

"police force" means the Gibraltar Police Force as constituted by the Police Act 2006;

"police detention" has the meaning given in subsection (2);

"police officer" means a member of the police force;

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

"premises" includes–

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

(b) any stall, tent or moveable structure (including an offshore installation);

(c) any other place whatever, whether or not occupied as land;

"prescribed" means prescribed by rules of court or by regulations or an order, as the context requires;

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

"probation officer" means a person appointed as a probation officer in the public service of Gibraltar;

"probation order" means an order made under Part X of the Criminal Procedure Act;

"proceedings" means criminal proceedings;

"programme service" means any service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both, either–

(a) for reception at 2 or more places in Gibraltar (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or

(b) for reception at a place in Gibraltar for the purpose of being presented there to members of the public or to any group of persons,

and includes a television, sound or digital broadcasting service.

"programme", in relation to a programme service, includes any item included in that service; and "television programme" includes a teletext transmission;

"prohibited article " has the meaning given it by section 5(7);

"prosecutor" means an individual or body charged with duties to conduct criminal prosecutions, and includes–

(a) 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; and

(b) a person acting on behalf of the prosecutor;

"publication"–

(a) includes any speech, writing, radio or television broadcast or other communication, in whatever form, that is addressed to the public at large or any section of the public; but

(b) does not include an indictment or other document prepared for use in particular legal proceedings;

"publish", in relation to a report, means to issue it as, or include it in, a publication;

"recordable offence" means an offence for which a sentence of imprisonment can be imposed;

"relevant evidence", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence;

"relevant programme" means a programme included in a programme service;

"relevant time" in relation to proceedings means the time when events giving rise to the charge to which the proceedings relate is alleged to have occurred;

"relevant time" in relation to detention of a person has the meaning given by section 65(2);

"reparation order" means an order made under section 634;

"restitution order" means an order made under section 600;

"review officer" means the police officer who has to carry out a review of the detention of a person in police detention under section 63;

"rules of court" means rules made by the Chief Justice under section 696 or the Criminal Procedure Rules;

"sexual offence" means–

(a) an offence listed in Schedule 3 to the Crimes Act 2011;

(b) conspiracy to commit any of those offences;

(c) attempting to commit any of those offences;

(d) encouraging or assisting or inciting another to commit any of those offences;

"special finding" means a finding under Part 28 (Mentally Disordered Offenders)–

(a) of unfitness to be tried; or

(b) that the defendant did the act or made the omission charged against him;

"special procedure material" has the meaning given it by section 18;

"special verdict" means a verdict under Part 28 that a defendant is not guilty by reason of mental disorder;

"spent conviction" means a conviction that is to be treated as spent for the purposes of Part 25;

"standard scale" means the standard scale of fines for offences as set out in Part A of Schedule 9 to this Act;

"statement" means any representation of fact, however made;

"statutory maximum fine" means a fine at the highest level on the standard scale;

"summary offence" means an offence which if committed by an adult is not triable on indictment except in conjunction with an indictable offence;

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

"suspended sentence" means a sentence of the kind provided for in sections 507 to 509;

"triable either way" in relation to an offence means that the offence may be tried either summarily or on indictment, as indicated by the maximum penalty prescribed for the offence;

"trigger offence" means an offence listed in Schedule 5;

"vehicle" includes any motor vehicle, vessel, aircraft or hovercraft;

"verdict of acquittal" does not include a special verdict, and any reference to acquittal is to be construed accordingly;

"witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings;

"young person" means a person who has attained the age of 14 years and is under the age of 18 years;

"youth rehabilitation order" means an order made under section 522;

(2) A person is in police detention for the purposes of this Act if the person–

(a) has been taken to a police station after being arrested for an offence or for any other reason; or

(b) is arrested at a police station after attending voluntarily at the station or accompanying a police officer to it,

and is detained there or is detained elsewhere in the charge of a police officer; but–

(c) a person who is at a court after being charged is not in police detention for those purposes.

(3) For the purposes of this Act, a reference to a person being convicted of an offence under the law of a country or territory outside Gibraltar includes–

(a) a finding by a court exercising jurisdiction under the law of that country or territory in respect of such an offence equivalent to a finding that the person is not guilty by reason of mental disorder; and

(b) a finding by such a court in respect of such an offence equivalent to a finding that the person is under a disability and did the act charged against him in respect of the offence.

(4) The question whether an offence is one which is punishable with imprisonment is to be decided without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

(5) For the purposes of this Act a criminal investigation is an investigation conducted by police officers with a view to it being ascertained whether–

(a) a person should be charged with an offence; or

(b) a person charged with an offence is guilty of it.

(6) In this Act references to material are to material of all kinds, and in particular include references to–

(a) information; and

(b) objects of all descriptions.

(7) In this Act references to recording information are to putting it in a durable or retrievable form, such as writing or tape.

(8) Section 643(1) and (2) apply as regards the presumption and determination of the age of a person who appears to the court to be a juvenile.

Offences under two or more laws.

3. If an act or omission constitutes an offence under 2 or more Acts, or both under an Act and under any other law, the offender–

(a) may, unless the contrary intention appears, be prosecuted and punished under either or any of those Acts or under such other law; but

(b) may not be punished twice for the same offence.

Application of English procedure.

4.(1) Subject to the provisions of this and any other Act, and to any rules made by the Chief Justice under section 696, criminal jurisdiction, as regards practice, procedure and powers, is to be exercised in conformity with the law and practice for the time being observed in England as follows–

(a) by the Magistrates' Court - the law and practice of Magistrates' Courts;

(b) by the Supreme Court in its original jurisdiction and its criminal appellate jurisdiction - the law and practice in the Crown Court;

(c) by the Supreme Court in its jurisdiction upon a case stated - the law and practice in the Divisional Court of Queen's Bench upon a case stated;

(d) by the Court of Appeal in its criminal jurisdiction - the law and practice in the Criminal Division of the Court of Appeal,

so far as is reasonable taking into account the circumstances of Gibraltar.

(2) Without limiting subsection (1), and subject to provisions of this Act or of rules made under this Act specifying otherwise–

(a) the Criminal Procedure Rules apply in Gibraltar with such modifications (for example, in nomenclature) as the circumstances of Gibraltar may require and so far only as the circumstances of Gibraltar may permit;

(b) criminal practice directions issued by the Chief Justice of England and Wales may be referred to for guidance as to criminal practice in Gibraltar.

(3) Without limiting subsection (2)(a) as to modifications, any reference in the Criminal Procedure Rules to an Act of the United Kingdom Parliament is, if there is a corresponding Gibraltar Act, to be read as a reference to that Act.

(4) Without affecting the power to make rules of court under section 696, the Chief Justice may–

(a) make rules of court supplementing, amending, replacing or modifying the Criminal Procedure Rules as they apply to Gibraltar; and

(b) issue criminal practice directions,

and any such rules or directions apply in place of the Criminal Procedure Rules or practice directions of the Chief Justice of England and Wales respectively.

PART 2 – POWERS TO STOP AND SEARCH OR ENTER AND SEARCH

Powers to stop and search

Power of police officers to stop and search persons, vehicles, etc.

5.(1) A police officer 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 police officer may–

(a) search–

(i) any person or vehicle;

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

for stolen or prohibited articles or any article to which subsection (9) applies; and

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

(3) This section does not give a police officer 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, or any article to which subsection (9) applies.

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

(a) does not reside in the dwelling; and

(b) 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 police officer 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 police officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, or an article to which subsection (9) applies, he may seize it.

(7) For the purposes of this Part, an article is prohibited 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) an offence under section 408 of the Crimes Act 2011 (Taking a conveyance without authority);

(d) an offence under section 415 of the Crimes Act 2011 (Fraud); and

(e) an offence under section 354 of the Crimes Act 2011 (Destroying or damaging property).

(9) This subsection applies to every article in relation to which a person has committed, or is committing or is going to commit an offence under section 128 of the Crimes Act 2011 (Having article with blade or point in a public place).

Provisions relating to search under section 5 and other powers.

6.(1) A police officer who detains a person or vehicle in the exercise of–

(a) the power conferred by section 5; or

(b) 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 subsequently to the officer that no search is required, or that a search is impracticable.

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

(a) the power conferred by section 5; or

(b) any other power–

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

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

the officer must, subject to subsection (4), take reasonable steps before he commences the search to bring to the attention of the appropriate person –

(c) if the police officer is not in uniform - documentary evidence that he is a police officer; and

(d) whether he is in uniform or not - the matters specified in subsection (3),

and the police officer must not commence the search until he has performed that duty.

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

(a) the police officer's name;

(b) the object of the proposed search;

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

(d) the effect of section 9(4) or (5), as appropriate.

(4) A police officer need not bring the effect of section 9(4) or (5) to the attention of the appropriate person if it appears to the officer that it will not be practicable to make the record as in section 9(1).

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

(a) if the police officer 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 (2) a police officer must leave a notice stating–

(a) that he has searched it;

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

(c) the effect of section 9(5).

(7) The police officer must 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 5 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, authorises a police officer–

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

(b) if not in uniform, to stop a vehicle.

Power to stop and search in anticipation of, or after, violence.

7.(1) If a police officer of or above the rank of Inspector reasonably believes that–

(a) incidents involving serious violence may take place in any locality in Gibraltar; and

(b) it is expedient to give an authorisation under this section to prevent their occurrence,

the officer may give an authorisation that the powers conferred by this section are exercisable in that locality for a specified period not exceeding 24 hours.

(2) If a police officer of or above the rank of Inspector reasonably believes that–

(a) an incident involving serious violence has taken place in any locality in Gibraltar;

(b) a dangerous instrument or offensive weapon used in the incident is being carried by a person in that locality; and

(c) it is expedient to give an authorisation under this section to find the instrument or weapon,

the officer may give an authorisation that the powers conferred by this section are exercisable in that locality for a specified period not exceeding 24 hours.

(3) If a police officer of or above the rank of Inspector reasonably believes that persons are carrying dangerous instruments or offensive weapons in any locality in Gibraltar without good reason, the officer may give an authorisation that the powers conferred by this section are exercisable in that locality for a specified period not exceeding 24 hours.

(4) If it appears to an officer of or above the rank of Chief Inspector expedient, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any activity falling within the authorisation, he may direct that the authorisation continues in force for a further 24 hours.

(5) If an Inspector gives an authorisation under subsection (1) he must, as soon as practicable, cause an officer of or above the rank of Chief Inspector to be informed.

(6) This section confers on any police officer in uniform power–

(a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.

(c) to require any person to remove any item which the officer reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity;

(d) to seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

(7) A police officer may, in the exercise of the powers conferred by subsection (3), stop any person or vehicle and make any search he thinks fit, whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

(8) If in the course of a search under this section a police officer discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.

(9) This section applies (with the necessary modifications) to ships, aircraft and hovercraft as it applies to vehicles.

(10) A person who fails–

(a) to stop, or to stop a vehicle; or

(b) to remove an item worn by him,

when required to do so by a police officer under this section commits an offence and is liable on summary conviction to imprisonment for 1 month or to a fine at level 3 on the standard scale, or both.

Provisions supplementary to section 7.

8.(1) An authorisation or direction under section 7 must–

(a) be in writing signed by the officer giving it; and

(b) specify the grounds on which it is given and the locality in which and the period during which the powers conferred by this section are exercisable.

(2) An authorisation under subsection (2) of section 7 need not be given in writing if it is not practicable to do so but any oral authorisation must state the matters which would otherwise have to be specified under subsection (1) of this section and must be recorded in writing as soon as is practicable.

(3) The driver of a vehicle that is stopped by a police officer under this section is entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section, if he applies for such a statement within 3 months after the day on which the vehicle was stopped.

(4) A person who is searched by a police officer under this section is entitled to obtain a written statement that he was searched under the powers conferred by this section, if he applies for such a statement within 3 months after the day on which he was searched.

(5) In section 7–

"dangerous instrument" means an instrument which has a blade or is sharply pointed;

"offensive weapon" has the meaning given that term by Part 8 of the Crimes Act 2011.

(6) For the purposes of section 7, a person carries a dangerous instrument or an offensive weapon if he has it in his possession.

(7) The powers conferred by section 7 are in addition to and do not derogate from any power otherwise conferred by this Act.

Duty to make records concerning searches.

9.(1) When a police officer has carried out a search in the exercise of any such power as is mentioned in section 6(1), other than a search under section 12, a record of the search must be made in writing unless it is not practicable to do so.

(2) If a record of a search is required to be made by subsection (1)–

(a) if the search results in a person being arrested and taken to a police station, the officer must ensure that the record is made as part of the person's custody record;

(b) in any other case, the officer must make the record at the time, or, if that is not practicable, as soon as practicable after the completion of the search.

(3) The record of a search of a person or a vehicle must–

(a) 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 police officer to have resulted from the search; and

(b) identify the police officer who carried out the search.

(4) If a record of a search of a person has been made under this section, the person who was searched is entitled to a copy of the record if he asks for one within 3 months of the search being made.

(5) If–

(a) a record of a search of a vehicle has been made under this section; and

(b) the owner of the vehicle 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 within 3 months of the search being made,

the person who made the request is entitled to a copy.

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

Road checks.

10.(1) This section governs the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying a person who–

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

(b) is a witness to such an offence;

(c) intends to commit such an offence; or

(d) is unlawfully at large.

(2) For the purposes of this section a road check consists of the exercise in a place of the power to stop traffic conferred by section 53(3) of the Traffic Act 2005 so as to stop all vehicles, or all vehicles of a particular type, during the period for which the power is exercised in that place.

(3) Subject to subsection (5), there may only be 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 an indictable offence; and

(ii) for suspecting that the person is, or is about to be, in the place 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 an indictable offence;

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

(i) for believing that the offence would be an indictable offence; and

(ii) for suspecting that the person is, or is about to be, in the place 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 place.

(5) An officer below the rank of Chief Inspector may authorise 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), the officer who gives it must–

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

(b) inform an officer of the rank of Chief Inspector or above that it has been given.

(7) The duties imposed by subsection (6) must be performed as soon as is practicable after the giving of the authorisation.

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

(9) If the officer to whom the report is made considers that the road check should not continue, he must 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 must specify the place in which vehicles are to be stopped.

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

(a) must specify a period, not exceeding 7 days, during which the road check may continue; and

(b) may direct that the road check is to be–

(i) continuous; or

(ii) conducted at specified times,

during that period.

(12) If it appears to a police 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 7 days, during which it may continue.

(13) An authorisation under this section must specify–

(a) the name of the officer giving it;

(b) the purpose of the road check; and

(c) the place 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 indictable offence.

(15) If a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it stopped is entitled to obtain a written statement of the purpose of the road check, if he applies for such a statement within 12 months after 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).

Reports of searches and road checks.

11.(1) The Commissioner of Police must publish an annual report that contains information for the period to which it relates relating to–

(a) searches under section 5 carried out during that period; and

(b) road checks authorised under section 10 during that period.

(2) The information about searches does not need to include information about specific searches but must 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 or articles to which section 5(9) applies; and

(iii) for other prohibited articles; and

(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).

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

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

(b) about the result of each of them.

Powers to enter and search

Power to authorise entry and search of premises.

12.(1) If, on application made by a police officer, a magistrate is satisfied that there are reasonable grounds for believing that–

(a) an indictable offence or a Schedule 14 offence has been committed;

(b) 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;

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

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

(e) any of the conditions specified in subsection (3) applies,

the magistrate may issue a warrant authorising a police officer to enter and search the premises.

(2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).

(3) The conditions mentioned in subsection (1)(e) are that–

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

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

(d) the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(4) The power to issue a warrant conferred by this section is in addition to any such power conferred by any other law.

(5) In this section a Schedule 14 offence means an offence listed in Schedule 14.

Special provisions as to access.

13.(1) A police officer may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application to a judge or magistrate under Schedule 1 and in accordance with that Schedule.

(2) Any provision of an enactment in force when this Part came into force under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a police officer ceases to have effect so far as it relates to the authorisation of searches for–

(a) items subject to legal privilege;

(b) excluded material; or

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

Meaning of "items subject to legal privilege".

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

(a) communications between a legal representative 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 legal representative 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".

15.(1) Subject to the following provisions of this section, in this Part "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 of–

(i) documents; or

(ii) 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 to–

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

(b) a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.

(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".

16. In this Part "personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to–

(a) his physical or mental health;

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

(c) counselling 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".

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

(2) Material is only journalistic material for the purposes of this Part 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 will use it for the purposes of journalism is to be taken to have acquired it for those purposes.

Meaning of "special procedure material".

18.(1) In this Part, "special procedure material" means–

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

(b) journalistic material that is not excluded material.

(2) Subject to the following subsections, 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 15(2)(b).

(3) If 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 undertaking as defined in Schedule 2 to the Companies (Consolidated Accounts) Act 1999,

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

(4) If 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) If 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.

19.(1) This section and section 20 have effect in relation to the issue to a police officer under any enactment (including an enactment that comes into force after this Part comes into force unless the later enactment limits the power in this section) of a warrant to enter and search premises (a "search warrant").

(2) An entry on or search of premises under a search warrant is unlawful unless it complies with this section and section 20.

(3) A police officer who applies for a search warrant must–

(a) state–

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

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

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

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

(4) An application for a search warrant must be made without notice and supported by an information in writing.

(5) A police officer applying for a search warrant must answer on oath any question that the judge or magistrate hearing the application asks him.

(6) A search warrant must–

(a) authorise an entry on one occasion only, unless it specifies that it authorises multiple entries;

(b) if it specifies that it authorises multiple entries - specify whether the number of entries authorised is unlimited, or limited to a specified maximum;

(c) 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

(d) identify, as far as practicable, the articles or persons to be sought.

(7) Two copies must be made of every search warrant and be certified as such.

Execution of search warrants.

20.(1) A search warrant may–

(a) be executed by any police officer;

(b) authorise persons to accompany the officer who is executing it.

(2) A person authorised under subsection (1)(b)–

(a) has the same powers as the police officer whom he accompanies in respect of–

(i) the execution of the warrant; and

(ii) the seizure of anything to which the warrant relates; but

(b) may exercise those powers only in the company, and under the supervision, of the police officer.

(3) Entry and search under a search warrant must–

(a) be within one month from the date of its issue;

(b) be at a reasonable hour unless it appears to the police officer executing it that the purpose of a search may be frustrated by entry at a reasonable hour.

(4) If the occupier of premises which are to be entered and searched is present at the time when a police officer seeks to execute a search warrant in respect of them, the officer must–

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

(b) produce the warrant to the occupier; and

(c) supply him with a copy of it.

(5) If–

(a) the occupier of the premises is not present at the time when a police officer seeks to execute a search warrant; but

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

subsection (4) has effect as if a reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the police officer to be in charge of the premises, he must leave a copy of the warrant in a prominent place on the premises.

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

(8) A police officer executing a search warrant must make an endorsement on it stating whether–

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

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

(9) A search warrant which–

(a) has been executed; or

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

must be returned –

(c) if it was issued by a magistrate - to the clerk of the Magistrates' Court;

(d) if it was issued by a judge - to the Registrar.

(10) A warrant which is returned to a court under subsection (9) must be retained for 12 months from its return by the court officer to whom it was returned.

(11) 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 must be allowed to do so.

Entry and search without a search warrant

Entry for purpose of arrest, etc.

21.(1) Subject to the following provisions of this section, and without affecting any other enactment, a police officer may enter and search any premises for the purpose of–

(a) executing–

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

(ii) a warrant of commitment issued under section 52 of the Magistrates' Courts Act;

(b) arresting a person for an indictable offence;

(c) arresting a person for an offence under–

(i) section 79 of the Crimes Act 2011 (Prohibition of uniforms in connection with political objects);

(ii) sections 532, 533, 539, 540 or 541 of the Crimes Act 2011 (Offences relating to trespass on property);

(iii) section 53(3) of the Traffic Act 2005 (Failure to stop when required to do so by police officer in uniform);

(iv) section 62 of the Traffic Act 2005 (Driving, or being in charge, when under influence of drink or drugs);

(d) arresting any juvenile who has been remanded or detained under this Act;

(e) recapturing a person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in a prison or other place of detention;

(f) recapturing a person who is unlawfully at large and whom the officer is pursuing; or

(g) preventing death or personal injury or serious damage to property.

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

(a) are only exercisable if the police officer 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 2 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 police officer has reasonable grounds for believing that the person whom he is seeking may be.

(3) The powers of entry and search conferred by this section, if exercised for the purpose specified in subsection (1)(c)(ii), must be exercised by a police officer in uniform.

(4) 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.

(5) Subject to subsection (6), the rules of common law under which a police officer has power to enter premises without a warrant are hereby abolished.

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

Entry and search after arrest.

22.(1) Subject to the following provisions of this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an indictable 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 indictable offence which is connected with or similar to that offence.

(2) A police officer 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 evidence of the kind mentioned in that subsection.

(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 authorised them in writing.

(5) A police officer 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 presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.

(6) If a police officer conducts a search by virtue of subsection (5), he must as soon as practicable after making the search inform an officer of the rank of Inspector or above that he has made it.

(7) An officer who–

(a) authorises a search; or

(b) is informed of a search under subsection (6),

must make a record in writing of–

(a) the grounds for the search; and

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

(8) 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 must make the record as part of his custody record.

PART 3 – POWERS OF SEIZURE, ETC.

General interpretation of Part.

23.(1) In this Part–

"return", in relation to seized property, is to be construed in accordance with section 37, and cognate expressions are to be construed accordingly;

"seize", and cognate expressions, are to be construed in accordance with section 24(1);

"seized property", in relation to any exercise of a power of seizure, means anything seized in exercise of that power.

(2) In this Part, references, in relation to a time when seized property is in any person's possession in consequence of a seizure ("the relevant time"), to something for which the person making the seizure had power to search are to be construed–

(a) if the seizure was made on the occasion of a search carried out on the authority of a warrant, as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant;

(b) if the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by him to be, or appeared to him to be, of a particular description, as including–

(i) anything which at the relevant time is believed by the person in possession of the seized property, or (as the case may be) appears to him, to be of that description; and

(ii) anything which is in fact of that description;

(c) if the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description, as including–

(i) anything which there are at the relevant time reasonable grounds for believing is of that description; and

(ii) anything which is in fact of that description;

(d) if the property was seized in the course of a search to which neither paragraph (b) nor paragraph (c) applies, as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under section 27 and 28.

Copies.

24.(1) Subject to subsection (3)–

(a) in this Part, "seize" includes "take a copy of", and cognate expressions are to be construed accordingly;

(b) this Part applies as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and

(c) for the purposes of this Part, except sections 29 and 30, the powers mentioned in subsection (2) (which are powers to obtain hard copies etc. of information which is stored in electronic form) are to be treated as powers of seizure, and references to seizure and to seized property are to be construed accordingly.

(2) The powers mentioned in subsection (1)(c) are any powers conferred by section 25(4) or section 26.

(3) Subsection (1) does not apply to section 29(6) or 36.

General power of seizure, etc.

General power of seizure, etc.

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

(2) The police officer 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 police officer 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 police officer may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form–

(a) in which it can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form,

if he has reasonable grounds for believing that–

(c) the information–

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

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

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

(5) The powers of seizure conferred by this section are in addition to any similar power conferred by any enactment.

(6) No power of seizure conferred on a police officer under any enactment (including an enactment that comes into force after this Part comes into force unless the later enactment limits the power in this section) authorises the seizure of an item which the police officer exercising the power has reasonable grounds for believing to be subject to legal privilege.

Extension of powers of seizure to computerised information.

26.(1) Every power of seizure conferred by an enactment to which this section applies on a police officer who has entered premises in the exercise of a power conferred by an enactment includes a power to require any information stored in any electronic form and accessible from the premises to be produced in a form–

(a) in which it can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form.

(2) This section applies–

(a) to any enactment in force when this Part came into force;

(b) to sections 12 and 22;

(c) to paragraph 13 of Schedule 1; and

(d) to any enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.

Access and copying.

27.(1) A police officer who seizes anything in the exercise of a power conferred by any enactment (including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section) must, 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 must 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 police officer; 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 must allow the person who made the request access to it under the supervision of a police officer.

(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 must–

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

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

(5) A police officer 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) If anything is photographed or copied under subsection (4) (b), the photograph or copy must be supplied to the person who made the request, within a reasonable time from the making of the request.

(7) 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 might 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).

(8) The references to a police officer in subsections (1), (2), (3)(a) and (5) include a person authorised under section 20(2) to accompany a police officer executing a warrant.

Retention.

28.(1) Subject to subsection (4), anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 25 or 26 may be retained for as long as is necessary in all the circumstances.

(2) Without limiting subsection (1)–

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) –

(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, if there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) 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–

(i) is no longer in police detention or the custody of a court; or

(ii) is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) The reference in subsection (1) to anything seized by a police officer includes anything seized by a person authorised under section 20(1)(b) to accompany a police officer executing a warrant.

(6) Nothing in this section affects any power of a court to make an order under section 76 of the Police Act 2006.

Additional powers of seizure

Additional powers of seizure from premises.

29.(1) If–

(a) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or contain something for which he is authorised to search on those premises;

(b) a power of seizure to which this section applies, or the power conferred by subsection (2), would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and

(c) in all the circumstances, it is not reasonably practicable for it to be decided, on those premises –

(i) whether what he has found is something that he is entitled to seize; or

(ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure include power under this section to seize so much of what he has found as it is necessary to remove from the premises to enable that to be decided.

(2) If–

(a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize;

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be decided, or for something to be separated from something else, are confined to–

(a) how long it would take to carry out the determination or separation on those premises;

(b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

(c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation - whether the separation–

(i) would be likely; or

(ii) if carried out by the only means that are reasonably practicable on those premises would be likely, to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 25(6) (powers of seizure not to include anything that a person has reasonable grounds for believing is legally privileged) does not apply to the power of seizure conferred by subsection (2).

(5) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.

Additional powers of seizure from the person.

30.(1) If–

(a) a person carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search;

(b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and

(c) in all the circumstances it is not reasonably practicable for it to be decided, at the time and place of the search –

(i) whether what he has found is something that he is entitled to seize; or

(ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure include power under this section to seize so much of what he has found as it is necessary to remove from that place to enable that to be decided.

(2) If–

(a) a person carrying out a lawful search of any person finds something ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that person's powers of seizure include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be decided, or for something to be separated from something else, are confined to–

(a) how long it would take to carry out the determination or separation at that time and place;

(b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;

(c) whether the determination or separation would (or would if carried out at that time and place) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation, whether the separation–

(i) would be likely; or

(ii) if carried out by the only means that are reasonably practicable at that time and place would be likely, to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 25(6) (powers of seizure not to include anything that a person has reasonable grounds for believing is legally privileged) does not apply to the power of seizure conferred by subsection (2).

(5) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.

Notice of exercise of power under section 29 or 30.

31.(1) When a person exercises a power of seizure conferred by section 29, he must (subject to subsections (2) and (3)) give to the occupier of the premises a written notice–

(a) specifying what has been seized in reliance on the powers conferred by that section;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of sections 38 to 40;

(d) specifying the name and address of the person to whom notice of an application under section 38(2) in respect of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 32(2).

(2) If it appears to the person exercising on any premises a power of seizure conferred by section 29 that–

(a) the occupier of the premises is not present on the premises at the time of the exercise of the power; but

(b) there is some other person present on the premises who is in charge of the premises,

subsection (1) of this section has effect as if it required the notice under that subsection to be given to that other person.

(3) If it appears to the person exercising a power of seizure conferred by section 29 that there is no one present on the premises to whom he may give a notice for the purposes of complying with subsection (1) of this section, he must, before leaving the premises, instead of complying with that subsection, attach a notice such as is mentioned in that subsection in a prominent place to the premises.

(4) When a person exercises a power of seizure conferred by section 30 he must give a written notice to the person from whom the seizure is made–

(a) specifying what has been seized in reliance on the powers conferred by that section;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of sections 38 to 40;

(d) specifying the name and address of the person to whom notice of any application under section 38(2) in respect of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 32(2).

Return or retention of seized property

Examination and return of property seized under sections 29 and 30.

32.(1) This section applies when anything has been seized under a power conferred by section 29 or 30.

(2) The person for the time being in possession of the seized property in consequence of the exercise of that power must ensure that arrangements are in place so that (subject to section 40)–

(a) an initial examination of the property is carried out as soon as reasonably practicable after the seizure;

(b) the examination is confined to whatever is necessary for determining how much of the property falls within subsection (3);

(c) anything which is found, on that examination, not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and

(d) until the initial examination of all the seized property has been completed and anything which does not fall within subsection (3) has been returned, the seized property is kept separate from anything seized under any other power.

(3) The seized property falls within this subsection only to the extent that it is–

(a) property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by section 33;

(b) property the retention of which is authorised by section 35; or

(c) something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).

(4) In determining for the purposes of this section the earliest practicable time for the carrying out of an initial examination of the seized property, due regard must be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he chooses) of being represented at the examination.

(5) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

Obligation to return items subject to legal privilege.

33.(1) If, at any time after a seizure of anything has been made in exercise of a power of seizure to which this section applies–

(a) it appears to the person who for the time being has possession of the seized property in consequence of the seizure that the property–

(i) is an item subject to legal privilege; or

(ii) has such an item comprised in it; and

(b) if the item is comprised in something else which has been lawfully seized, and is not comprised in property falling within subsection (2),

the person must ensure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which an item subject to legal privilege is comprised falls within this subsection if–

(a) the whole or a part of the rest of the property is property falling within subsection (3) or property the retention of which is authorised by section 35; and

(b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.

(3) Property falls within this subsection to the extent that it is property for which the person seizing it had power to search when he made the seizure, but is not property which is required to be returned under this section or section 34.

(4) This section applies–

(a) to the powers of seizure conferred by sections 29 and 30; and

(b) to any power of seizure (not falling within paragraph (a)) conferred on a police officer by or under any enactment, including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.

Obligation to return excluded and special procedure material.

34.(1) If, at any time after a seizure of anything has been made in exercise of a power to which this section applies–

(a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property–

(i) is excluded material or special procedure material; or

(ii) has any excluded material or any special procedure material comprised in it;

(b) its retention is not authorised by section 35; and

(c) in a case in which the material is comprised in something else which has been lawfully seized - it is not comprised in property falling within subsection (2) or (3),

the person must ensure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which any excluded material or special procedure material is comprised falls within this subsection if–

(a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by this section or section 33; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(3) Property in which any excluded material or special procedure material is comprised falls within this subsection if–

(a) the whole or a part of the rest of the property is property the retention of which is authorised by section 35; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(4) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.

Retention of seized property.

35.(1) The retention of–

(a) property seized on any premises by a police officer who was lawfully on the premises;

(b) property seized on any premises by a relevant person who was on the premises accompanied by a police officer; and

(c) property seized by a police officer carrying out a lawful search of any person,

is authorised by this section if the property falls within subsection (2) or (3).

(2) Property falls within this subsection to the extent that there are reasonable grounds for believing that–

(a) it is property obtained in consequence of the commission of an offence; and

(b) it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.

(3) Property falls within this subsection to the extent that there are reasonable grounds for believing that–

(a) it is evidence in relation to any offence; and

(b) it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed.

(4) Nothing in this section authorises the retention (except pursuant to section 33(2)) of anything at any time when its return is required by section 33.

(5) Subsection (1)(a) includes property seized on any premises by a person authorised under section 20(1)(b) to accompany a police officer executing a warrant.

(6) In subsection (1)(b) the reference to a relevant person's being on any premises accompanied by a police officer is a reference only to a person who was so on the premises under the authority of a warrant under paragraph 16 of Schedule 10 of the Companies Act authorizing him to exercise together with a police officer the powers conferred by that paragraph.

Retention of property seized under section 29 or 30.

36.(1) This section has effect in relation to the following provisions (which are about the retention of items which have been seized and are referred to in this section as "the relevant provisions")–

(a) section 28; and

(b) paragraph 16 of Schedule 10 of the Companies Act.

(2) The relevant provisions apply in relation to any property seized in exercise of a power conferred by section 29 or 30 as if the property had been seized under the power of seizure by reference to which the power under that section was exercised in relation to that property.

(3) Nothing in any of sections 32 to 35 authorises the retention of any property at any time when its retention would not (other than as provided for in this Part) be authorised by the relevant provisions.

(4) Nothing in any of the relevant provisions authorises the retention of anything after an obligation to return it has arisen under this Part.

Person to whom seized property is to be returned.

37.(1) If–

(a) anything has been seized in exercise of any power of seizure; and

(b) there is an obligation under this Part for the whole or any part of the seized property to be returned,

the obligation to return it is (subject to the following provisions of this section) an obligation to return it to the person from whom it was seized.

(2) If–

(a) any person is obliged under this Part to return anything that has been seized to the person from whom it was seized; and

(b) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,

he must instead return it to that other person or, as the case may be, to the person appearing to him to have the best right to the thing in question.

(3) If different persons claim to be entitled to the return of anything that is required to be returned under this Part, the thing may be retained for as long as is reasonably necessary for the determination, in accordance with subsection (2), of the person to whom it must be returned.

(4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which–

(a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises; and

(b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.

Remedies and safeguards

Application to the Magistrates' Court.

38.(1) When anything has been seized in exercise, or purported exercise, of a relevant power of seizure, any person with a relevant interest in the seized property may apply to the Magistrates' Court, on one or more of the grounds mentioned in subsection (2), for the return of the whole or a part of the seized property.

(2) The grounds for an application under subsection (1) are that–

(a) there was no power to make the seizure;

(b) the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 33(2);

(c) the seized property is or contains any excluded material or special procedure material which –

(i) has been seized under a power to which section 34 applies;

(ii) is not comprised in property falling within section 34(2) or (3); and

(iii) is not property the retention of which is authorised by section 35;

(d) the seized property is or contains something seized under section 29 or 30 which does not fall within section 32(3);

(3) Subsections (5) and (6) of section 34 apply for the purposes of subsection (2)(c) as they apply for the purposes of that section.

(4) Subject to subsection (5), the Magistrates' Court, on an application under subsection (1), must–

(a) if satisfied as to any of the matters mentioned in subsection (2) - order the return of so much of the seized property as is property in relation to which the court is so satisfied; and

(b) to the extent that it is not so satisfied - dismiss the application.

(5) The Magistrates' Court, on an application under subsection (1)–

(a) made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure; or

(b) made–

(i) by a person with a relevant interest in anything seized under section 29 or 30; and

(ii) on the grounds that the requirements of section 32(2) have not been or are not being complied with,

may give such directions as it thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(6) On an application under this section, the Magistrates' Court may authorise the retention of any property which–

(a) has been seized in exercise, or purported exercise, of a relevant power of seizure; and

(b) would otherwise fall to be returned,

if it is satisfied that the retention of the property is justified on grounds stated in subsection (7).

(7) The grounds referred to in subsection (6) are that if the property were returned it would immediately become appropriate–

(a) to issue, on the application of the person who is in possession of the property at the time of the application, a warrant under which it would be lawful to seize the property; or

(b) to make an order under paragraph 4 of Schedule 1 under which the property would fall to be delivered up or produced to the person mentioned in paragraph (a).

(8) If any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts ("part A" and "part B") comprised in it such that–

(a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in subsection (7) in relation to part A;

(b) it would (or would but for the facts mentioned in paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B; and

(c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,

the facts mentioned in paragraph (a) must not be taken into account by the Magistrates' Court in deciding whether the retention of the property is justified on grounds falling within subsection (7).

(9) If a person fails to comply with an order or direction made or given by the Magistrates' Court in exercise of its jurisdiction under this section–

(a) the court may deal with him as if he had committed a contempt of the Supreme Court; and

(b) any enactment relating to contempt of the Supreme Court has effect in relation to the failure as if it were such a contempt.

(10) The relevant powers of seizure for the purposes of this section are–

(a) the powers of seizure conferred by sections 29 and 30;

(b) any power of seizure (not falling within paragraph (a) or (b)) conferred on a police officer by or under any enactment (including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.)

(11) References in this section to a person with a relevant interest in seized property are references to–

(a) the person from whom it was seized;

(b) any person with an interest in the property; or

(c) any person, not falling within paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

(12) For the purposes of subsection (11)(b), the persons who have an interest in seized property include, in the case of property which is or contains an item subject to legal privilege, the person in whose favour that privilege is conferred.

Cases in which duty to secure arises.

39.(1) When property has been seized in exercise, or purported exercise, of any power of seizure conferred by this Part or Part 2, a duty to secure arises under section 40 in relation to the seized property if–

(a) a person entitled to do so applies under section 38 for the return of the property;

(b) at least one of the conditions set out in subsections (2) and (3) is satisfied; and

(c) notice of the application is given to a relevant person.

(2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 33(2).

(3) The second condition is that–

(a) the seized property was seized by a person who had, or purported to have, power to seize it by virtue only of a power conferred by this Part or Part 2 (other than section 12(2)); and

(b) the application–

(i) is made on the ground that the seized property is or contains something which does not fall within section 32(3); and

(ii) states that the seized property is or contains special procedure material or excluded material.

(4) In relation to property seized by a person who had, or purported to have, power under this Part or Part 2 to seize it by virtue only of the powers of seizure conferred by section 61(5) of the Drug Trafficking Offences Act 1995, the second condition is satisfied only if the application states that the seized property is or contains excluded material.

(5) In this section "relevant person" means–

(a) the person who made the seizure;

(b) the person for the time being having possession, in consequence of the seizure, of the seized property; or

(c) the person named for the purposes of subsection (1)(d) or (4)(d) of section 31 in any notice given under that section with respect to the seizure.

The duty to secure.

40.(1) The duty to secure that arises under this section is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to ensure that arrangements are in place so that the seized property (without being returned) is not, at any time after the giving of the notice of the application under section 39(1)–

(a) examined;

(b) copied; or

(c) put to any use to which its seizure would, apart from this subsection, entitle it to be put,

except with the consent of the applicant or in accordance with the directions of the Magistrates' Court.

(2) Subsection (1) does not have effect in relation to any time after the withdrawal of the application to which the notice relates.

(3) Subsection (9) of section 38 applies in relation to any jurisdiction conferred on the Magistrates' Court by this section as it applies in relation to the jurisdiction conferred by that section.

Use of inextricably linked property.

41.(1) This section applies to property, other than property which is for the time being required to be secured pursuant to section 40, if–

(a) it has been seized under any power conferred by this Part or Part 2; and

(b) it is inextricably linked property.

(2) Subject to subsection (3), the person for the time being having possession, in consequence of the seizure, of the inextricably linked property must ensure that arrangements are in place so that the seized property (without being returned) is not at any time, except with the consent of the person from whom it was seized–

(a) examined;

(b) copied; or
(c) put to any other use.

(3) Subsection (2) does not require that arrangements under that subsection should prevent inextricably linked property from being put to any use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(4) Property is inextricably linked property for the purposes of this section if it falls within any of subsections (5) to (7).

(5) Property falls within this subsection if–

(a) it has been seized under a power conferred by section 29 or 30; and

(b) but for subsection (3)(c) of section 32, arrangements under subsection (2) of that section in relation to the property would be required to ensure the return of the property as mentioned in subsection (2)(c) of that section.

(6) Property falls within this subsection if–

(a) it has been seized under a power to which section 33 applies; and

(b) but for subsection (1)(b) of that section, the person for the time being having possession of the property would be under a duty to ensure its return as mentioned in that subsection.

(7) Property falls within this subsection if–

(a) it has been seized under a power of seizure to which section 34 applies; and

(b) but for subsection (1)(c) of that section, the person for the time being having possession of the property would be under a duty to ensure its return as mentioned in that subsection.

PART 4 – POWERS OF ARREST WITHOUT WARRANT

Arrest without warrant: Police officers.

42.(1) A police officer may arrest without a warrant anyone–

(a) who is about to commit an offence;

(b) who is in the act of committing an offence;

(c) whom the officer has reasonable grounds for suspecting to be about to commit an offence;

(d) whom the officer has reasonable grounds for suspecting to be committing an offence.

(2) If a police officer has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3) If an offence has been committed, a police officer may arrest without a warrant anyone–

(a) who is guilty of the offence;

(b) whom the officer has reasonable grounds for suspecting to be guilty of it.

(4) The power of summary arrest of a person conferred by subsection (1), (2) or (3) is exercisable only if the police officer has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person.

(5) The reasons are–

(a) to enable the name of the person to be ascertained (if the police officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b) correspondingly as regards the person's address;

(c) to prevent the person–

(i) causing physical injury 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 (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person;

(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person, whether because the person is not ordinarily resident in Gibraltar or otherwise.

(6) Subsection (5)(c)(iv) applies only in a situation in which members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

Arrest without warrant: Other persons.

43.(1) A person other than a police officer may arrest without a warrant anyone–

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

(b) whom the person has reasonable grounds for suspecting to be committing an indictable offence.

(2) If an indictable offence has been committed, a person other than a police officer may arrest without a warrant anyone–

(a) who is guilty of the offence;

(b) whom the person has reasonable grounds for suspecting to be guilty of it.

(3) The power of summary arrest of a person conferred by subsection (1) or (2) is exercisable only if–

(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person; and

(b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make it instead.

(4) The reasons are to prevent the person arrested–

(a) causing physical injury to himself or any other person;

(b) suffering physical injury;

(c) causing loss of or damage to property; or

(d) making off before a police officer can assume responsibility for him.

(5) This section does not apply in relation to an offence under sections 99 to 104 (Racial or religious hatred offences) of the Crimes Act 2011.

Repeal of statutory power of arrest without warrant or order.

44.(1) Subject to subsection (2), any enactment in force when this Part comes into force that enables a police officer–

(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 the court,

ceases to have effect.

(2) Nothing in subsection (1) affects the enactments listed in Schedule 2.

Fingerprinting of certain offenders.

45.(1) If a person has–

(a) been convicted of a recordable offence;

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

(c) not had his fingerprints taken–

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

(ii) since the conviction,

any police officer may at any time up to one month after the date of the conviction require him to attend a police station for his fingerprints to be taken.

(2) Whenever a person convicted of an offence has already had his fingerprints taken as mentioned in subsection (1)(c), that fact (together with any time when he has been in police detention for the offence) is to 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 when a person has been given a caution in respect of an offence which, at the time of the caution, he has admitted, as they apply when a person has been convicted of an offence, and references in this section to a conviction are to be construed accordingly.

(4) A requirement under subsection (1)–

(a) must give the person at least 7 days within which he must attend a police station; and

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

(4A) A person who without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.

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

Information to be given on arrest.

46.(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 practicable after the arrest.

(2) If a person is arrested by a police officer, 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 practicable after, the arrest.

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

(5) Nothing is this section requires 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.

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

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

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

Arrest elsewhere than at a police station.

48.(1) If a person is, at any place other than a police station–

(a) arrested by a police officer for an offence; or

(b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer,

the person must be taken by a police officer to a police station as soon as practicable after the arrest.

(2) Subsection (1) has effect subject to section 49 (release on bail) and subsection (6)(release without bail).

(3) Subject to subsections (4) and (5), the police station to which an arrested person is taken under subsection (1) must be a designated police station.

(4) A police officer may take an arrested person to any police station unless it appears to the officer that it may be necessary to keep the arrested person in police detention for more than 6 hours, in which case he must, subject to subsection (5), take the person to a designated police station.

(5) A police officer may take an arrested person to any police station if–

(a) either–

(i) the police officer has arrested the person without the assistance of another police officer and no other police officer is available to assist him; or

(ii) the police officer has taken the person into custody from a person other than a police officer without the assistance of any other police officer and no other police officer is available to assist him; and

(b) it appears to the police officer that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the police officer or some other person.

(6) A person arrested by a police officer at a place other than a police station must be released without bail if, at any time before the person arrested reaches a police station, a police officer is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under section 49.

(7) If the first police station to which an arrested person is taken after his arrest is not a designated police station, he must be taken to a designated police station not more than 6 hours after his arrival at the first police station unless he is released previously.

(8) Nothing in subsection (1) or in section 49 prevents a police officer delaying taking a person to a police station or releasing him on bail if the presence of the person at a place other than a police station is necessary in order to carry out investigations that it is reasonable to carry out immediately.

(9) If there is delay as mentioned in subsection (8), the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released on bail.

(10) This section does not affect the powers of arrest and detention in sections 58, 59 and 60 of the Immigration, Asylum and Refugee Act.

Bail elsewhere than at police station.

49.(1) A police officer may release on bail a person who is arrested or taken into custody in the circumstances mentioned in section 48(1).

(2) A person may be released on bail under subsection (1) at any time before he arrives at a police station.

(3) A person released on bail under subsection (1) must be required to attend a specified police station.

(4) No other requirement may be imposed on the person as a condition of bail.

Bail under section 49: Notices.

50.(1) If a police officer grants bail to a person under section 49, he must give the person a notice in writing before he is released, stating–

(a) the offence for which he was arrested; and

(b) the ground on which he was arrested.

(2) The notice must–

(a) inform him that he is required to attend a specified police station; and

(b) specify the time when he is required to attend.

(3) If the notice does not include the information mentioned in subsection (2), the person must subsequently be given a further notice in writing which contains that information.

Bail under section 49: Supplementary.

51.(1) A person who has been required to attend a police station is not required to do so if he is given notice that his attendance is no longer required.

(2) If a person is required to attend a police station which is not a designated police station he must be–

(a) released; or

(b) taken to a designated police station,

not more than 6 hours after his arrival.

(3) Nothing in Part 7 (Bail in Criminal Proceedings) applies in relation to bail under section 49.

(4) Nothing in section 49 or 50 or this section prevents the re-arrest without a warrant of a person released on bail under section 49 if new evidence justifying a further arrest has come to light since his release.

Failure to answer to bail under section 49.

52.(1) A police officer may arrest without a warrant a person who–

(a) has been released on bail under section 49 subject to a requirement to attend a specified police station; but

(b) fails to attend the police station at the specified time.

(2) A person arrested under subsection (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.

(3) For the purposes of–

(a) section 48 (subject to the obligation in subsection (3)); and

(b) section 53,

an arrest under this section is to be treated as an arrest for an offence.

(4) A person who without reasonable excuse fails to comply with a requirement under section 49 to attend the police station at the time specified in the requirement commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.

Arrest for further offence.

53. If–

(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 police officer that, if he were released from that arrest, he would be liable to arrest for some other offence,

he must be arrested for that other offence before being released.

Search upon arrest.

54.(1) If–

(a) a person has been arrested at a place other than a police station; and

(b) a police officer has reasonable grounds for believing that the person may present a danger to himself or others,

the police officer may search the person.

(2) If a person has been arrested at a place other than a police station a police officer may, subject to subsections (3) to (5) –

(a) search the arrested person for anything which–

(i) the person might use to assist him to escape from lawful custody; or

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

(b) if the offence for which the arrested person has been arrested is an indictable offence - enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to that offence.

(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 thing or any evidence as mentioned in subsection (2)(a).

(4) The powers conferred by this section to search a person–

(a) do not authorise a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves;

(b) do authorise a search of a person's mouth.

(5) A police officer 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 police officer 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 2 or more separated dwellings, it is limited to a power to search–

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

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

(8) A police officer 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 police officer 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 the person 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 5 – POLICE DETENTION

Police detention – conditions and duration

Limitations on police detention.

55.(1) A person arrested for an offence must not be kept in police detention except in accordance with this Part.

(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 this Part,

the custody officer must, subject to subsection (4), order the person's immediate release from custody.

(3) A person in police detention must not be released except on the authority of a custody officer–

(a) at the police station where the detention was authorised; or

(b) if the detention was authorised at more than one station - 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 must not be released under subsection (2).

(5) A person whose release is ordered under subsection (2) must be released without bail unless it appears to the custody officer that–

(a) there is need for further investigation of any matter in connection with which the person was detained at any time during the period of his detention; or

(b) in respect of any such matter, proceedings may be taken against him,

in which case he must be released on bail.

(6) For the purposes of this Part, a person arrested under section 65 of the Traffic Act 2005 is arrested for an offence.

(7) For the purposes of this Part, but subject to section 72(5), a person who–

(a) returns to a police station to answer to bail granted under section 49 or this Part; or

(b) is arrested under section 52 or section 71,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

(8) Subsection (7) does not apply in relation to a person who is granted bail subject to the duty mentioned in section 73(2)(b) and who either–

(a) attends a police station to answer to such bail; or

(b) is arrested under section 71 for failing to do so.

Designated police stations.

56.(1) The police stations listed in Schedule 3 are the police stations to be used for the purpose of detaining arrested persons.

(2) In an order made pursuant to section 698 amending Schedule 3 the Minister may make provision for the modification of the provisions of this Act in relation to any police station as appears to him to be necessary, expedient or desirable.

Custody officers at police stations.

57.(1) The Commissioner of Police must appoint one or more police officers of the rank of sergeant or above as custody officers for each designated police station.

(2) The Commissioner of Police may in writing delegate the power of appointment of custody officers to some other officer of the rank of Chief Inspector or above.

(3) A police 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.

(4) Subject to subsections (5) and (6) and section 62(2), the functions of a custody officer in relation to a person must not be performed by an officer who at the time when the function is to be performed is involved in the investigation of an offence for which the person is in police detention at the time.

(5) Subsection (4) does not 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 64;

(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.

(6) When an arrested person is taken to a police station which is not a designated police station, the functions in relation to him which at a designated police station would be the functions of a custody officer must be performed–

(a) if an officer who is not involved in the investigation of an offence for which the person is in police detention is readily available - by that officer;

(b) if no such officer is readily available - by the officer who took the person to the station, or any other officer.

(7) References to a custody officer in this Act include references to a police officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (3) or (6).

(8) If by virtue of subsection (6) an officer who took an arrested person to a police station is to perform the functions of a custody officer in relation to the person, the officer must as soon as practicable inform an officer of the rank of Inspector or above at a designated police station that he is to do so.

Duties of custody officer before charge.

58.(1) If 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 the person is detained after his arrest–

(c) must decide whether the officer has before him sufficient evidence to charge the person with the offence for which he was arrested; and

(d) may detain the person at the police station for the period necessary to enable him to make that decision.

(2) If the custody officer decides that he does not have such evidence before him, the person arrested must 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–

(a) to secure or preserve evidence relating to an offence for which he is under arrest; or

(b) to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for believing as mentioned in subsection (2), he may authorise the person arrested to be kept in police detention.

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

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

(6) Subsection (5) does not apply if 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 65(5), if the custody officer decides that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested must be–

(a) charged;

(b) released without charge and on bail; or

(c) released without charge and without bail.

(8) If–

(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,

the custody officer must so inform him.

(9) Subsection (10) applies if the offence for which the person is arrested is one in relation to which a sample could be taken under section 90 and the custody officer–

(a) is required by subsection (2) to release the person arrested and decides to release him on bail; or

(b) decides under subsection (7)(b) to release the person without charge on bail.

(10) The detention of a person may be continued to enable a sample to be taken under section 88, but this subsection does not permit a person to be detained for more than 24 hours after the relevant time.

(11) If the person arrested is not in a fit state to be dealt with under subsection (7), he may, notwithstanding section 67(5), be kept in police detention until he is in a fit state.

(12) The duty imposed on the custody officer under subsection (1) must be performed 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.

Breach of bail following release under section 58.

59.(1) This section applies if a person released on bail under section 58(7)(b) or subsection (2)(b)–

(a) is arrested under section 71 in respect of that bail; and

(b) is being detained following that arrest at the police station mentioned in section 71(2).

(2) The person arrested must be–

(a) charged; or

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

(3) The decision as to how a person is to be dealt with under subsection (2) is that of a custody officer.

(4) A person released on bail under subsection (2)(b) must be released on bail subject to any conditions which applied immediately before his arrest.

Release on bail under sections 58 and 59: Further provision.

60.(1) When a person is released on bail under section 58(2) or (7) or 59(2)(b), a custody officer may appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.

(2) The custody officer must give the person notice in writing of the exercise of the power under subsection (1).

(3) The exercise of the power under subsection (1) does not affect any other conditions to which bail is subject.

(4) If a person released on bail under section 58(2) or (7) or 59(2)(b) returns to a police station to answer bail or is otherwise in police detention at a police station, he may be kept in police detention to enable him to be dealt with in accordance with section 59 or to enable the power under subsection (1) to be exercised.

(5) If the person mentioned in subsection (4) is not in a fit state to enable him to be dealt with as mentioned in that subsection or to enable the power under subsection (1) to be exercised, he may, notwithstanding section 65(5), be kept in police detention until he is in a fit state.

(6) If a person is kept in police detention by virtue of subsection (4) or (5), section 58(1) to (3) and (7) (and section 63(8) so far as it relates to section 58(1) to (3)) do not apply to the offence in connection with which he was released on bail under section 58(2) or (7) or 59(2)(b).

Duties of custody officer after charge.

61.(1) If a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer must 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 given 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) if the person was arrested for a recordable 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) if a sample may be taken from the person under section 90 - 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;

(v) if the person was arrested for an offence which is not a recordable 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 or 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 or a particular offence;

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

(b) if the arrested person is a juvenile–

(i) any of the requirements of paragraph (a) is satisfied but, in the case of paragraph (a)(iv), only if the juvenile has attained the minimum age; 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–

(a) may authorise him to be kept in police detention; but

(b) may not authorise him to be kept in police detention by virtue of subsection (1)(a)(iv) for more than 6 hours after he was charged with the offence.

(3) The custody officer, in making the decisions required by subsection (1)(a) or (b) (except (a)(i) and (vii) and (b)(ii)), must have regard to the same considerations as those which a court is required to have regard to in making the corresponding decisions.

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

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

(6) Subsection (5) does not apply if 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) If a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1), the custody officer must ensure that the juvenile is moved to segregated accommodation in the police station.

(8) In this section, "minimum age" means the age specified in section 91(4).

Responsibilities in relation to persons detained.

62.(1) Subject to subsections (2) and (4), the custody officer at a police station must ensure that–

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

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

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

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

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

the custody officer no longer has the duty imposed on him by subsection (1)(a), but the officer to whom the transfer is made must ensure that the person is treated in accordance with this Act and any code of practice relating to the treatment of persons in police detention .

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

(4) If–

(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 with–

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

(ii) 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 must at once refer the matter 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.

63.(1) A review of the detention of each person in police detention in connection with the investigation of an offence must be carried out periodically–

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

(b) in the case of a person who has been arrested but not charged - by an officer of the rank of Inspector or above who has not been directly involved in the investigation.

(2) Subject to subsection (4)–

(a) the first review must be not later than 6 hours after the detention was first authorised;

(b) the second review must be not later than 9 hours after the first;

(c) subsequent reviews must be at intervals of not more than 9 hours.

(3) A review may be postponed–

(a) if, having regard to the circumstances prevailing at the latest time specified for it in subsection (2), it is not practicable to carry out the review at that time;

(b) without limiting paragraph (a), if at that time–

(i) 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) no review officer is readily available.

(4) If a review is postponed under subsection (3) it must be carried out as soon as practicable after the latest time specified for it in subsection (2).

(5) If a review is carried out after postponement under subsection (3), the fact that it was carried out does not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

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

(7) Subject to subsection (8), if the person whose detention is under review has not been charged before the time of the review, section 58(1) to (6) have effect in relation to him, but with the following modifications–

(a) replace references to the person arrested by references to the person whose detention is under review;

(b) replace references to the custody officer by references to the review officer;

(c) in subsection (6) insert after paragraph (a)–

"(aa) asleep;".

(8) If a person has been kept in police detention by virtue of section 58(11) or 60(5), section 58(1) to (6) do not have effect in relation to him but the review officer must decide whether he is yet in a fit state.

(9) If the person whose detention is under review has been charged before the time of the review, section 61(1) to (7) have effect in relation to him, but with the following modifications –

(a) replace references to the person arrested or to the person charged by references to the person whose detention is under review;

(b) in subsection (6), insert after paragraph (a)–

"(aa) asleep;".

(10) If–

(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 with–

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

(ii) 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 must at once refer the matter to an officer of the rank of Chief Inspector or above who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(11) Before deciding whether to authorise a person's continued detention the review officer must give–

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

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

an opportunity to make representations to the review officer about the detention.

(12) Subject to subsection (13), the person whose detention is under review or his legal representative may make representations under sub-section (11) either orally or in writing.

(13) 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.

Use of telephone for review under section 63.

64.(1) A review under section 63(1)(b) may be carried out by means of a discussion, conducted by telephone, with one or more persons at the police station where the arrested person is held.

(2) If a review is carried out under this section by an officer who is not present at the station where the arrested person is held–

(a) an obligation on that officer to make a record in connection with the carrying out of the review is an obligation to cause another officer to make the record;

(b) a requirement for the record to be made in the presence of the arrested person applies to the making of that record by that other officer; and

(c) the requirements of section 63(11) and (12) for–

(i) the arrested person; or

(ii) a legal representative representing him,

to be given an opportunity to make representations (whether in writing or orally) to that officer,

are requirements for the person or legal representative to be given an opportunity to make representations in a manner authorised by subsection (3).

(3) Representations are made in a manner authorised by this subsection if–

(a) where facilities exist for the immediate transmission of written representations to the officer carrying out the review – they are made either–

(i) orally by telephone to that officer; or

(ii) in writing to that officer by means of those facilities;

(b) in any other case - they are made orally by telephone to that officer.

Limits on period of detention without charge.

65.(1) Subject to this section and sections 66 and 67, a person must 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 Part referred to as the "relevant time") is–

(a) in the case of a person to whom this paragraph applies–

(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–

(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 police officer 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 - the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Subsection (2) has effect in relation to a person arrested under section 47 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 police detention is removed to hospital because he is in need of medical treatment–

(a) 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 is included in any period which falls to be calculated for the purposes of this Part; but

(b) any other time while he is in hospital or on his way there or back is not 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 must 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 66 or 67.

(7) A person released under subsection (5) must 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 71.

Authorisation of continued detention.

66.(1) If a police officer of the rank of Chief Inspector or above who is responsible for the police station at which a person is detained is satisfied that–

(a) the detention of the 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 an indictable offence; and

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

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

(2) If 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) An authorisation under subsection (1) must not be given in respect of a person–

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

(b) before the second review of his detention under section 63 has been carried out.

(4) If an officer authorises the keeping of a person in police detention under subsection (1), he must–

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

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

(5) Before deciding whether to authorise the keeping of a person in detention under subsection (1) or (2), an officer must give–

(a) that person; or

(b) any legal representative representing him who is available at the time when the officer has to decide whether to give the authorisation,

an opportunity to make representations to him about the detention.

(6) Subject to subsection (7), the person in detention or his legal representative may make representations under subsection (5) either orally or in writing.

(7) The officer who has to decide 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.

(8) If–

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

(b) at the time of the authorisation he has not yet exercised a right conferred on him by section 83 or 85,

the officer must–

(i) inform the person of that right;

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

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

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

(9) If an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2), the person must 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 67.

(10) A person released under subsection (9) must 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 71.

Warrants of further detention.

67.(1) If on an application on oath made by a police officer and supported by an information, 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 must not hear an application for a warrant of further detention unless the person to whom the application relates has been–

(a) provided with a copy of the information; and

(b) brought before the court for the hearing.

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

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

(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 68 if–

(a) his detention without charge is necessary–

(i) to secure or preserve evidence relating to an offence for which he is under arrest; or

(ii) to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is an indictable 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) if–

(i) it is not practicable for the Magistrates' Court 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 that 6 hours.

(6) If 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 must 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 must dismiss the application.

(8) If on an application such as is mentioned in subsection (1) the 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, the court must–

(a) refuse the application; or

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

(9) If the hearing of an application is adjourned under subsection (8)(b), the person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention issued under subsection (1) must–

(a) state the time at which it is issued; and

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

(11) The period stated in a warrant of further detention must be–

(a) a period the Magistrates' Court thinks fit, having regard to the evidence before it; but

(b) no longer than 36 hours.

(12) Any information submitted in support of an application under this section must 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 the 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 the person to be necessary for the purposes of such further inquiries.

(13) If an application under this section is refused, the person to whom the application relates must forthwith be charged or, subject to subsection (14), released, either on bail or without bail.

(14) A person need not be released under subsection (13)–

(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 66.

(15) If an application under this section is refused, no further application may 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.

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

(17) A person released under subsection (16) must 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 71.

Extension of warrants of further detention.

68.(1) On an application on oath made by a police officer and supported by an information, the Magistrates' Court may extend a warrant of further detention issued under section 67 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) The period for which a warrant of further detention may be extended is such as the court thinks fit, having regard to the evidence before it but must not–

(a) be longer than 36 hours; or

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

(3) If 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) applies to such further extensions as it applies to extensions under subsection (1).

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

(5) Subsections (2), (3) and (12) of section 67 apply to an application made under this section as they apply to an application made under that section.

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

(7) A person need not be released under subsection (6) 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.

69.(1) In sections 67 and 68 "Magistrates' Court" means a court consisting of the stipendiary magistrate or 2 or more magistrates 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.

Police detention - miscellaneous

Detention after charge.

70.(1) If 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 pursuant to arrangements made under section 61(7),

he must be brought before the Magistrates' Court as soon as practicable and in any event within 72 hours of his being charged with the offence.

(2) If the Magistrates' Court is not due to sit either on the day on which a person is charged or on the next day, the custody officer for the police station at which he was charged must inform the clerk of the court that there is a person to whom subsection (1) applies and the clerk must arrange for the court to sit within 72 hours of the person being charged.

(3) 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.

71.(1) A police officer may arrest without a warrant any person who, having been released on bail under this Part 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 has been released on bail under section 58 or 59(2)(b) may be arrested without warrant by a police officer if the police officer has reasonable grounds for suspecting that the person has broken any of the conditions of bail.

(3) For the purpose of–

(a) section 48 (Arrest elsewhere than at a police station); and

(b) section 53 (Arrest for further offence),

an arrest under this section is to be treated as an arrest for an offence.

Bail after arrest.

72.(1) Except as otherwise provided in this Part, and subject to this section–

(a) a release of a person on bail under this Part must be in accordance with Part 7 (Bail in Criminal Proceedings) as it applies to bail granted by the Magistrates' Court;

(b) the powers of the Magistrates' Court under that Part to impose conditions of bail are available to a custody officer who releases a person on bail under this Part.

(2) References in this Part to "bail" are references to bail subject to a duty–

(a) to appear before the Magistrates' Court at a time and place that the custody officer appoints; or

(b) to attend at a police station the custody officer appoints.

(3) If a custody officer grants bail to a person subject to a duty to appear before the Magistrates' Court, the officer must 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) if the officer is informed by the clerk of the court that the appearance cannot be accommodated until a later date - that later date.

(4) If 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 the person that his attendance at the police station is not required.

(5) If a person who has been granted bail under this Part and has either attended at a police station in accordance with the grant of bail or been arrested under section 71 is detained at a police station, any time during which he was in police detention prior to being granted bail is to be included as part of any period which fails to be calculated under this Part, and any time during which he was on bail is not to be so included.

Conditions of police bail.

73.(1) Part 7 applies to bail granted by a custody officer under this Part, subject to the following provisions of this section.

(2) If a police officer grants bail to a person no conditions may be imposed under paragraphs (a) to (d) of section 112(1) unless it appears to the officer that it is necessary to do so for the purpose of preventing that person from–

(a) failing to surrender to custody;

(b) committing an offence while on bail; or

(c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.

(3) If a custody officer has granted bail in relation to criminal proceedings, he or another custody officer serving at the same police station–

(a) may, at the request of the person to whom it was granted, vary the conditions of bail; and

(b) in doing so may impose conditions or more onerous conditions.

(4) Subsection (2) applies on any request to a custody officer under subsection (3) to vary the conditions of bail.

(5) If a custody officer, in relation to any person–

(a) imposes conditions when granting bail in relation to criminal proceedings; or

(b) varies any conditions of bail or imposes conditions in respect of bail in relation to criminal proceedings,

the custody officer must, with a view to enabling that person to consider requesting him or another custody officer, or making an application to the Magistrates' Court, to vary the conditions, give reasons for imposing or varying the conditions.

(6) A custody officer who is by virtue of subsection (5) required to give reasons for his decision must include a note of those reasons in the custody record and give a copy of that note to the person in relation to whom the decision was taken.

Re-arrest of persons on bail.

74.(1) Nothing in this Part or Part 7 prevents 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) If a person who was released on bail under this Part subject to a duty to attend at a police station is re-arrested, the provisions of this Part apply to him as they apply to a person arrested for the first time.

(3) Subsection (2) does not apply to a person–

(a) who is arrested under section 71; or

(b) who has attended a police station in accordance with the grant of bail (and who accordingly is deemed by section 55(7) to have been arrested for an offence).

Records of detention.

75.(1) The Commissioner of Police must 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 the person was charged or released without charge.

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

Saving for *habeas corpus.*

76. Nothing in this Part affects any right of a person in police detention to apply for a writ of *habeas corpus* or other prerogative remedy.

PART 6 - QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Questioning and search of persons

Interpretation of Part.

77.(1) In this Part–

"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;

"appropriate criminal intent" means an intent to commit an offence under–

(a) section 506(3) of the Crimes Act 2011; or

(b) section 80 of the Imports and Exports Act 1986;

"Class A drug" and "Class B drug" have the meanings assigned to them by section 502 of the Crimes Act 2011;

"DNA profile" means any information derived from a DNA sample;

"DNA sample" means any material that has come from a human body and consists of or includes human cells;

"drug offence search" means an intimate search for a Class A drug or Class B drug which an officer has authorised by virtue of section 81(1)(b);

"exempt conviction" has the meaning given to it by section 101(2);

"extradition arrest power" means a power of arrest under an enactment with a view to the extradition of the person arrested, and includes such powers conferred by the European Arrest Warrant Act 2004;

"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 the 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; or

(c) a swab taken from any part of a person's genitals (including pubic hair) or 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 other than a part from which a swab taken would be an intimate sample;

(d) saliva; or

(e) a skin impression;

"qualifying offence" means a sexual offence or an offence of violence;

"registered", in relation to a dentist, medical practitioner or nurse, means registered under the Medical and Health Act 1997;

"relevant time" has the meaning given to it by section 65(2);

"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 a check against other fingerprints or samples or against information derived from other samples such as is referred to in section 90(1);

"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;

"suitably qualified person" means–

(a) a registered medical practitioner; or

(b) a registered nurse.

(2) References in this Part to a sample's proving insufficient include references to cases in which, 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 a 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.

Abolition of certain powers of police officers to search persons.

78.(1) Any enactment in force before this Part comes into force ceases to have effect to the extent that it authorises–

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

(b) an intimate search of a person by a police officer.

(2) Any rule of common law which authorises a search such as is mentioned in subsection (1) is abolished.

Searches of detained person.

79.(1) The custody officer at a police station must 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 55(7).

(2) In the case of an arrested person, a record under subsection (1) must be made as part of his custody record.

(3) Subject to subsection (4), a custody officer may seize and retain anything as mentioned in subsection (1) or cause it to be seized and retained.

(4) 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.

(5) If anything is seized, the person from whom it is seized must 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.

(6) Subject to subsection (10), a person may be searched –

(a) if the custody officer considers it necessary to enable the officer to carry out his duty under subsection (1); and

(b) to the extent the custody officer considers necessary for that purpose.

(7) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a).

(8) Subject to subsection (9), a police officer may seize and retain, or cause to be seized and retained, anything found on a search authorised by this section.

(9) A police officer may only seize clothes and personal effects in the circumstances specified in subsection (4).

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

(11) A search under this section must be carried out only by a police officer.

(12) The police officer carrying out a search under this section must be of the same sex as the person searched.

Searches and examinations to ascertain identity.

80.(1) If an officer of the rank of Inspector or above so authorises, 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, must confirm it in writing as soon as practicable.

(5) Any identifying mark found on a search or examination under this section 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.

(6) A search or examination carried out, or a photograph taken, under this section may only be carried out or taken by a police officer.

(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 subsection (9)–

(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 place outside Gibraltar); or

(ii) is, or corresponds to, any conduct which, if it 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 place 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 are to 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.

(13) Nothing in this section applies to a person arrested under an extradition arrest power.

Intimate searches.

81.(1) Subject to this section, if an officer of the rank of Inspector or above 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 he–

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

(ii) 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 or Class B drug concealed on him; and

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

the officer 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 the person being intimately searched.

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

(4) A drug offence search must not be carried out unless the appropriate consent has been given in writing.

(5) If it is proposed that a drug offence search be carried out, an appropriate officer must inform the person to be searched–

(a) of the giving of the authorisation; and

(b) of the grounds for giving the authorisation.

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

(7) An intimate search other than a drug offence search must be by way of examination by a suitably qualified person unless an officer of the rank of Inspector or above considers that this is not practicable, in which case it must be carried out by a police officer.

(8) A police officer may not carry out an intimate search of a person of the opposite sex.

(9) An intimate search must not 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.

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

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

(b) why they were searched.

(11) If the intimate search of a person is a drug offence search, the custody record relating to the person must also state–

(a) the authorisation by virtue of which the search was carried out;

(b) the grounds for giving the authorisation; and

(c) the fact that the appropriate consent was given.

(12) The information required to be recorded by subsections (10) and (11) must be recorded as soon as practicable after the completion of the search.

(13) 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 the officer 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 the officer has reasonable grounds for believing that it may be evidence relating to an offence.

(14) If anything is seized under this section, the person from whom it is seized must 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.

(15) If the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence, the court or jury may draw such inferences from the refusal as appear proper.

(16) Every annual report made by the Commissioner of Police must contain information about searches under this section which have been carried out during the period to which it relates, including–

(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;

and, as separate items–

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

(f) the result of those searches.

X-rays and ultrasound scans.

82.(1) If a police officer of the rank of Inspector or above has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention–

(a) may have swallowed a Class A drug or Class B drug; and

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

the officer may authorise that an X-ray be taken of the person or an ultrasound scan be carried out on the person, or both.

(2) An X-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an X-ray be taken or an ultrasound scan be carried out, an appropriate officer must inform the person who is to be subject to it–

(a) of the giving of the authorisation for it; and

(b) of the grounds for giving the authorisation.

(4) An X-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at–

(a) a hospital;

(b) a registered medical practitioner's surgery; or

(c) some other place used for medical purposes.

(5) When an X-ray of a person is taken or an ultrasound scan on a person is carried out, the custody record of the person must also state–

(a) the authorisation by virtue of which the X-ray was taken or the ultrasound scan was carried out;

(b) the grounds for giving the authorisation; and

(c) the fact that the appropriate consent was given.

(6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the X-ray has been taken or ultrasound scan carried out, as the case may be.

(7) If the appropriate consent to an X-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence, the court or jury may draw such inferences from the refusal as appear proper.

(8) Every annual report made by the Commissioner of Police must contain information about X-rays which have been taken and ultrasound scans which have been carried out under this section during the period to which it relates, including–

(a) the total number of X-rays;

(b) the total number of ultrasound scans;

(c) the results of the X-rays;

(d) the results of the ultrasound scans.

Right to have someone informed when arrested.

83.(1) If a person has been arrested and is being held in custody in a police station or other premises, he is entitled, if he so requests, to have one named friend or relative or other person who is known to him or who is likely to take an interest in his welfare told that he has been arrested and is being detained there.

(2) Delay in telling a named person under subsection (1) is only permitted if–

(a) the detained person is detained for an indictable offence; and

(b) an officer of the rank of Inspector or above authorises a delay.

(3) Whether or not subsection (2) applies, the detained person must be permitted to exercise the right conferred by subsection (1) within 36 hours from the relevant time.

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

(5) Subject to subsection (6), an officer may only authorise delay in telling a named person under subsection (1) if he has reasonable grounds for believing that telling that person of the arrest will–

(a) lead to interference with or harm to evidence connected with an indictable offence;

(b) lead to interference with or physical injury to other persons;

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

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

(6) An officer may also authorise delay in telling a named person if he has reasonable grounds for believing that–

(a) the indictable offence committed by the detained person is also a drug trafficking offence, and the recovery of the value of that person's proceeds of drug trafficking will be hindered by telling the named person of the arrest; or

(b) the indictable offence committed by the detained person is one to which Part IV of the Crime (Money Laundering and Proceeds) Act 2007 applies and the recovery of the value of the property constituting the benefit to the detained person of the criminal conduct will be hindered by telling the named person of the arrest.

(7) If a delay in telling a named person is authorised–

(a) the detained person must as soon as practicable be told the reason for the delay; and

(b) the reason must as soon as practicable be noted on his custody record.

(8) 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.

(9) If delay in telling a named person has been authorised, there must be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

Additional rights of children and young persons who are arrested.

84.(1) If a juvenile is in police detention, all practicable steps must be taken to ascertain the identity of a person responsible for his welfare.

(2) If the identity of a person responsible for the welfare of the juvenile can be ascertained, the person must be informed, unless it is not practicable to do so–

(a) that the juvenile has been arrested;

(b) why he has been arrested; and

(c) where he is being detained.

(3) If information is to be given under subsection (2), it must be given as soon as practicable.

(4) For the purposes of this section the persons responsible for the welfare of a juvenile are–

(a) his parent or guardian; or

(b) any other person who has for the time being assumed responsibility for his welfare.

(5) If information is to be given to a person responsible for the welfare of the juvenile in accordance with subsection (2), it must be given to the person as soon as is reasonably practicable.

(6) The reference to a parent or guardian in subsection (4) is, in the case of a juvenile in the care of the Care Agency or a similar body, a reference to the Agency or body.

(7) The rights conferred on a juvenile by subsections (1) to (6) are in addition to his rights under section 83.

Access to legal advice.

85.(1) A person arrested and held in custody in a police station or other premises is entitled, if he so requests, to consult a legal representative privately at any time.

(2) A request under subsection (1), and the time of its making, must when it is made be recorded in the custody record unless it is made by a person while he is at a court being charged with an offence.

Fingerprints, samples, etc.

Fingerprinting.

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

(2) If consent is given when a person is at a police station, it must be in writing.

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

(a) is detained in consequence of his arrest for a recordable offence; or

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

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

(4) If a person detained at a police station has already had his fingerprints taken in the course of the investigation of the offence by the police, that fact is to be disregarded for the purposes of subsection (3) if–

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

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

(5) 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) a police officer of at least the rank of Inspector,

authorises them to be taken.

(6) A court or police officer may only give an authorisation under subsection (5) 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.

(7) A police officer may give an authorisation under subsection (5) orally or in writing but, if he gives it orally, must confirm it in writing as soon as practicable.

(8) The fingerprints of a person may be taken without the appropriate consent if he has been arrested for a recordable offence and released and–

(a) in the case of a person who is on bail - he has not had his fingerprints taken in the course of the investigation of the offence by the police; or

(b) in any case - he has had his fingerprints taken in the course of that investigation but subsection (4)(a) or (b) applies.

(9) The fingerprints of a person not detained at a police station may be taken without the appropriate consent if he has been charged with a recordable offence or informed that he will be reported for such an offence and–

(a) he has not had his fingerprints taken in the course of the investigation of the offence by the police; or

(b) he has had his fingerprints taken in the course of that investigation but subsection (4)(a) or (b) applies.

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

(a) he has been convicted of an indictable offence; or

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

and if–

(c) the person has not had his fingerprints taken since he was convicted or cautioned; or

(d) he has had his fingerprints taken since then but subsection (4)(a) or (b) applies.

(11) Fingerprints may only be taken as specified in subsection (10) with the authorisation of an officer of at least the rank of Inspector, who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime.

(12) A police officer may take a person's fingerprints without the appropriate consent if the officer reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence, and if–

(a) the name of the person is unknown to, and cannot be readily ascertained by, the officer; or

(b) the officer has reasonable grounds for doubting whether a name given by the person as his name is his real name.

(13) The taking of fingerprints by virtue of subsection (12) does not count for any of the purposes of this Act as taking them in the course of the investigation of an offence by the police.

(14) The fingerprints of a person may be taken without the appropriate consent if–

(a) under the law in force in a country or territory outside Gibraltar the person has been convicted of an offence under that law, whether or not he has been punished for it;

(b) the act constituting the offence would constitute a qualifying offence (as defined in section 101(6)) if done in Gibraltar,

and if–

(c) the person has not had his fingerprints taken on a previous occasion under this subsection; or

(d) he has had his fingerprints taken on a previous occasion under this subsection but subsection (4)(a) or (b) applies.

(15) Fingerprints may only be taken as specified in subsection (14) with the authorisation of an officer of at least the rank of Inspector, who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime.

(16) If a person's fingerprints are taken without the appropriate consent pursuant to this section–

(a) before the fingerprints are taken, he must be informed of–

(i) the reason for taking the fingerprints;

(ii) the power by virtue of which they are taken; and

(iii) if the authorisation of the court or an officer is required for the exercise of the power - the fact that the authorisation has been given; and

(b) those matters must be recorded as soon as practicable after the fingerprints are taken.

(17) If a person's fingerprints are taken pursuant to this section at a police station or elsewhere and whether with or without the appropriate consent–

(a) before the fingerprints are taken, a police officer must inform the person that they might be the subject of a speculative search; and

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

(18) If a person is detained at a police station when his fingerprints are taken, the matters referred to in subsection (16)(a) and, in a case within subsection (17), the fact referred to in paragraph (b) of that subsection, must be recorded on his custody record.

(19) If a person's fingerprints are taken electronically, they must be taken only in such manner, and using such devices, as the Minister has by regulations published in the Gazette approved for the purposes of electronic fingerprinting.

(20) The power to take the fingerprints of a person detained at a police station without the appropriate consent may be exercised by any police officer.

(21) Nothing in this section–

(a) affects any power conferred by section 8 of the Immigration, Asylum and Refugee Act;

(b) applies to a person arrested under an extradition arrest power.

Impressions of footwear.

87.(1) Except as provided by this section, no impression of a person's footwear may be taken without the appropriate consent.

(2) If consent is given when a person is at a police station, it must be in writing.

(3) If a person is detained at a police station, an impression of his footwear may be taken without the appropriate consent if he–

(a) is detained in consequence of his arrest for a recordable offence; and

(b) has not had an impression taken of his footwear in the course of the investigation of the offence by the police.

(4) If a person detained at a police station has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact is to be disregarded for the purposes of that subsection if the impression of his footwear taken previously is–

(a) incomplete; or

(b) not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at a police station, whether with or without the appropriate consent–

(a) before it is taken, a police officer must inform the person that it might be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility must be recorded as soon as practicable after the impression has been taken, and if he is detained at a police station, included on his custody record.

(6) If under subsection (3), an impression of a person's footwear is taken without the appropriate consent–

(a) he must be told the reason before it is taken; and

(b) the reason must be recorded on his custody record as soon as practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person detained at a police station without the appropriate consent may be exercised by any police officer.

(8) Nothing in this section applies to a person arrested under an extradition arrest power.

Intimate samples.

88.(1) Subject to section 90 an intimate sample may be taken from a person in police detention only if–

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

(b) 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, 2 or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient, if–

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

(b) the appropriate consent is given.

(3) A police officer may only give an authorisation under subsection (1) or (2) if the officer has reasonable grounds for–

(a) suspecting the involvement of the person from whom the sample is to be taken in a recordable offence; and

(b) believing that the sample will tend to confirm or disprove the person's involvement.

(4) An intimate sample may be taken from a person if–

(a) 2 or more non-intimate samples suitable for the same means of analysis have been taken from the person under section 89(10) (persons convicted of offences outside Gibraltar) but have proved insufficient;

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

(c) the appropriate consent is given.

(5) An officer may only give an authorisation under subsection (4) if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

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

(7) If consent is given, it must be in writing.

(8) Before an intimate sample is taken from a person, a police officer must inform him of–

(a) the reason for taking the sample;

(b) the fact that authorisation has been given and the provision of this section under which it has been given; and

(c) if the sample was taken at a police station - the fact that the sample may be the subject of a speculative search.

(9) The reason referred to in subsection (8)(a) must include, unless the sample is taken under subsection (4), a statement of the nature of the offence in which it is suspected that the person has been involved.

(10) After an intimate sample has been taken from a person, the following must be recorded as soon as practicable–

(a) the matters referred to in subsection (8)(a) and (b);

(b) if the sample was taken at a police station - the fact that the person has been informed as specified in subsection (8)(c); and

(c) the fact that the appropriate consent was given.

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

(a) before the sample is taken, a police officer must inform the person that it might be the subject of a speculative search; and

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

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

(13) 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.

(14) 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 nurse.

(15) If a person refuses to submit to the taking of an intimate sample without good cause, in proceedings against that person for an offence–

(a) the court, in deciding whether–

(i) to commit the person for trial; or

(ii) there is a case to answer; and

(b) the court or jury, in deciding whether the person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper, and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against a person in relation to which the refusal is material.

(16) Nothing in this section applies to the taking of a specimen for the purposes of any provisions of Part IV of the Traffic Act 2005.

Non-intimate samples.

89.(1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) If consent is given, it must be in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if–

(a) the person is in police detention in consequence of his arrest for a recordable offence; and

(b) the person–

(i) has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police; or

(ii) has had such a sample taken but it proved insufficient.

(4) A non-intimate sample may be taken from a person without the appropriate consent if he has been arrested for a recordable offence and released and–

(a) in the case of a person who is on bail - he has not had a non-intimate sample of the same type and from the same part of the body taken from him in the course of the investigation of the offence by the police; or

(b) in any case - he has had an non-intimate sample taken from him in the course of that investigation but–

(i) it was not suitable for the same means of analysis, or

(ii) it proved insufficient.

(5) A non-intimate sample may be taken from a person without the appropriate consent if–

(a) he is being held in custody by the police on the authority of a court; and

(b) a police officer of at least the rank of Inspector authorises the sample to be taken without the appropriate consent.

(6) A police officer may only give an authorisation under subsection (5) if he has reasonable grounds–

(a) to suspect that the involvement of the person from whom the sample is to be taken is a recordable offence; and

(b) to believe that the sample will tend to confirm or disprove the person's involvement.

(7) A non-intimate sample may be taken from a person (whether or not he is in police detention or held in custody by the police on the authority of a court) without the appropriate consent if he has been charged with a recordable offence or informed that he will be reported for such an offence and–

(a) he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police; or

(b) he has had a non-intimate sample taken from him in the course of that investigation but–

(i) it was not suitable for the same means of analysis; or

(ii) it proved insufficient; or

(c) he has had a non-intimate sample taken from him in the course of that investigation and–

(i) the sample has been destroyed pursuant to section 94 or any other enactment; and

(ii) it is disputed, in relation to any proceedings relating to the offence, whether a DNA profile relevant to the proceedings is derived from the sample.

(8) A non-intimate sample may be taken from a person without the appropriate consent if–

(a) he has been convicted of a recordable offence; or

(b) he has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted, and if–

(c) a non-intimate sample has not been taken from the person since he was convicted or cautioned; or

(d) such a sample has been taken from him since then but–

(i) it was not suitable for the same means of analysis; or

(ii) it proved insufficient.

(9) A non-intimate sample may only be taken as specified in subsection (8) with the authorisation of an officer of at least the rank of Inspector, who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(10) A non-intimate sample may be taken from a person without the appropriate consent if–

(a) under the law in force in a country or territory outside Gibraltar the person has been convicted of an offence under that law (whether or not he has been punished for it);

(b) the act constituting the offence would constitute a qualifying offence (as defined in section 101(6)) if done in Gibraltar,

and if–

(c) the person has not had a non-intimate sample taken from him on a previous occasion under this subsection; or

(d) he has had such a sample taken from him on a previous occasion under this subsection but–

(i) the sample was not suitable for the same means of analysis; or

(ii) it proved insufficient.

(11) A non-intimate sample may only be taken as specified in subsection (10) with the authorisation of an officer of at least the rank of Inspector, who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(12) A non-intimate sample may also be taken from a person without the appropriate consent if he is a person in respect of whom a special finding or verdict is returned under Part 28.

(13) An officer may give an authorisation under this section orally or in writing but, if he gives it orally, must confirm it in writing as soon as practicable.

(14) An officer must not give an authorisation under this section 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 has not proved insufficient.

(15) If a non-intimate sample is taken from a person without the appropriate consent pursuant to this section–

(a) before the sample is taken, a police officer must inform him of–

(i) the reason for taking the sample;

(ii) the power by virtue of which it is taken; and

(iii) in a case where the authorisation of an officer is required for the exercise of the power - the fact that the authorisation has been given; and

(b) those matters must be recorded as soon as practicable after the sample is taken.

(16) The reason referred to in subsection (15)(a)(i) must include, except in a case where the non-intimate sample is taken under subsection (8) or (10), a statement of the nature of the offence in which it is suspected that the person has been involved.

(17) 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, a police officer must inform the person that it might be the subject of a speculative search; and

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

(18) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (15)(b) must be recorded in his custody record.

(19) The power to take a non-intimate sample from a person without the appropriate consent may be exercised by any police officer.

(20) If a non-intimate sample consisting of a skin impression is taken electronically from a person, it must be taken only in such manner, and using such devices, as the Minister has approved for the purpose of the electronic taking of such an impression.

(21) Nothing in this section applies to a person arrested under an extradition arrest power.

Fingerprints and samples: Speculative searches.

90.(1) If a person has been–

(a) arrested on suspicion of being involved in a recordable offence;

(b) charged with such an offence; or

(c) informed that he will be reported for such an offence,

fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Part from the person may be checked against–

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

(e) 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 (d).

(2) Fingerprints taken by virtue of section 86(10) or (12) may be checked against other fingerprints to which the person seeking to check has access and which are held by or on behalf of a relevant law-enforcement authority or in connection with or as a result of an investigation of an offence.

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

(a) the Royal Gibraltar Police;

(b) any other public authority in Gibraltar whose functions include the investigation of crimes or the charging of offenders;

(c) any person with functions in any place 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 place, or the apprehension of persons guilty of such conduct;

(d) 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.

(4) If–

(a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but not in circumstances to which subsection (1) applies; and

(b) the person has given his consent in writing to the use in a speculative search of the fingerprints, impressions of footwear or of the samples and of information derived from them,

the fingerprints, impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in paragraph (d) or (e) of subsection (1).

(5) A consent given for the purposes of subsection (4) cannot be withdrawn.

(6) If fingerprints or samples have been taken from any person under section 86(10) or 89(8) (persons convicted, etc.), the fingerprints or samples, or information derived from the samples, may be checked against any of the fingerprints, samples or information mentioned in subsection (1)(d) or (e) of this section.

(7) If fingerprints or samples have been taken from any person under section 86(14), 88(4) or 89(10) (offences outside Gibraltar) the fingerprints or samples, or information derived from the samples, may be checked against any of the fingerprints, samples or information mentioned in subsection (1)(d) or (e) of this section.

(8) If 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 by their roots, so long as no more are plucked than the person taking the sample reasonably considers necessary for a sufficient sample.

(9) If there is power to take a sample in relation to any person, the sample may be taken in a prison.

(10) If–

(a) the power to take a non-intimate sample under section 89(3) is exercisable in relation to a person detained under Part III of the Mental Health Act; or

(b) the power to take a non-intimate sample under section 89(4) is exercisable in relation to any person,

the sample may be taken in the hospital in which the person is detained.

(11) Schedule 4 (Fingerprinting and samples: Attendance at police station) has effect.

(12) A person who without reasonable excuse fails to comply with a requirement under Schedule 4 commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine or both.

(13) Any police officer may arrest without warrant a person who has failed to comply with a requirement under Schedule 4.

Testing for presence of Class A drugs or Class B drugs.

91.(1) A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he has any Class A drug or Class B drug in his body if–

(a) either the arrest condition or the charge condition is met;

(b) both the age condition and the request condition are met; and

(c) the notification condition is met in relation to the arrest condition, the charge condition or the age condition (as the case may be).

(2) The arrest condition is that the person concerned has been arrested for an offence but has not been charged with that offence and either–

(a) the offence is a trigger offence; or

(b) a police officer of at least the rank of Inspector has reasonable grounds for suspecting that the misuse by that person of a Class A drug or Class B drug caused or contributed to the offence and has authorised the sample to be taken.

(3) The charge condition is that the person concerned–

(a) has been charged with a trigger offence; or

(b) has been charged with an offence and a police officer of at least the rank of Inspector, who has reasonable grounds for suspecting that the misuse by that person of any Class A drug or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

(4) The age condition is–

(a) if the arrest condition is met - that the person concerned has attained the age of 18;

(b) if the charge condition is met - that he has attained the age of 14.

(5) The request condition is that a police officer has requested the person concerned to give the sample.

(6) The notification condition is that–

(a) the Commissioner of Police has been notified by the Minister that appropriate arrangements have been made for the particular police station in which the person is in police detention; and

(b) the notice has not been withdrawn.

(7) For the purposes of subsection (6), appropriate arrangements are arrangements for the taking of samples under this section from whichever of the following is specified in the notification–

(a) persons in respect of whom the arrest condition is met;

(b) persons in respect of whom the charge condition is met;

(c) persons who have not attained the age of 18.

(8) Before requesting the person concerned to give a sample, an officer must–

(a) warn him that if, when requested to give a sample, he fails to do so without good cause he may be prosecuted; and

(b) in a case within subsection (2)(b) or (3)(b) - inform him of the giving of the authorisation and of the grounds in question.

(9) In the case of a person who has not attained the age of 17–

(a) the making of the request under subsection (5);

(b) the giving of the warning and (where applicable) the information under subsection (8); and

(c) the taking of the sample,

may not take place except in the presence of an appropriate adult.

(10) If a sample is taken under this section from a person in respect of whom the arrest condition is met, no other sample may be taken from him under this section during the same continuous period of detention, but–

(a) if the charge condition is also met in respect of him at any time during that period, the sample must be treated as a sample taken because the charge condition is met;

(b) the fact that the sample is to be so treated must be recorded in the person's custody record.

(11) Despite subsection (1)(a) (which requires certain conditions to be met for a sample to be taken from a person), a sample may be taken from a person under this section if–

(a) he was arrested for an offence (the first offence);

(b) the arrest condition is met but the charge condition is not met;

(c) before a sample is taken by virtue of subsection (1) he would (but for his arrest for an offence as mentioned in paragraph (d)) be required to be released from police detention;

(d) he continues to be in police detention by virtue of his having been arrested for an offence that is not a trigger offence; and

(e) the sample is taken no later than 24 hours after his detention by virtue of his arrest for the first offence began.

(12) A sample must not be taken from a person under this section if he is detained in a police station unless he has been brought before the custody officer.

(13) A sample, other than a urine sample, may be taken under this section only by a registered medical practitioner or a registered nurse.

(14) Information obtained from a sample taken under this section may be disclosed–

(a) for the purpose of informing any decision about granting bail in relation to criminal proceedings to the person concerned;

(b) if the person concerned is in police detention or remanded in or committed to custody by an order of a court, or has been granted bail, for the purpose of informing any decision about his supervision;

(c) if the person concerned is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about his supervision or release;

(d) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned; and

(e) for any other purpose prescribed by law.

Testing for presence of Class A or Class B drugs: Supplementary.

92.(1) A person who fails without good cause to give any sample which can lawfully be taken from him under section 91 commits an offence and is liable on summary conviction to imprisonment for 3 months, or to a fine at level 4 on the standard scale, or both.

(2) A police officer may give an authorisation under section 91 orally or in writing but, if he gives it orally, must confirm it in writing as soon as is practicable.

(3) If a sample is taken under section 91 by virtue of an authorisation, the authorisation and the grounds for the suspicion must be recorded as soon as practicable after the sample is taken.

(4) If the sample is taken from a person detained at a police station, the matters required to be recorded by subsection (3) must be recorded in his custody record.

(5) Section 88(16) applies for the purposes of section 91 as it does for the purposes of that section; and section 91 does not limit sections 88 and 89.

Retention and destruction of samples, etc.

Retention of samples and fingerprints, etc. generally.

93.(1) This section applies to the following material–

(a) fingerprints, samples or impressions of footwear–

(i) taken from a person under any power conferred by this Part; or

(ii) taken in connection with the investigation of an offence with the consent of the person from whom they were taken; and

(b) a DNA profile derived from a DNA sample falling within paragraph (a).

(2) Subject to sections 94 to 102, material to which this section applies may be retained after it has fulfilled the purpose for which it was taken or derived.

(3) Nothing in this section, or sections 94 to 106, affects any power conferred by or under the Immigration, Asylum and Refugee Act to take reasonable steps to identify a person detained or to disclose information to the Government for use for immigration purposes.

Destruction of samples.

94.(1) A DNA sample to which section 93 applies must be destroyed–

(a) as soon as a DNA profile has been derived from the sample; or

(b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(2) Any other sample to which section 93 applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

Destruction of data given voluntarily.

95.(1) This section applies to–

(a) fingerprints or impressions of footwear taken in connection with the investigation of an offence with the consent of the person from whom they were taken; and

(b) a DNA profile derived from a DNA sample taken in connection with the investigation of an offence with the consent of the person from whom the sample was taken.

(2) Material to which this section applies must be destroyed as soon as it has fulfilled the purpose for which it was taken or derived, unless it is–

(a) material relating to a person who is convicted of the offence;

(b) material relating to a person who has previously been convicted of a recordable offence, other than a person who has only one exempt conviction,

(c) material in relation to which any of sections 96 to 100 applies, or

(d) material which is not required to be destroyed by virtue of consent given under section 104.

(3) If material to which this section applies leads to the person to whom the material relates being arrested for or charged with an offence other than the offence under investigation–

(a) the material is not required to be destroyed by virtue of this section; and

(b) sections 96 to 100 have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from material taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.

Destruction of data relating to persons not convicted.

96.(1) This section applies to material falling within subsection (2) relating to a person who–

(a) has no previous convictions or only one exempt conviction;

(b) is arrested for or charged with a recordable offence; and

(c) is aged 18 or over at the time of the alleged offence.

(2) Material falls within this subsection if it is–

(a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence; or

(b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed–

(a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken;

(b) in the case of a DNA profile, before the end of the period of 6 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) If, before the material is required to be destroyed by virtue of this section, the person is arrested for or charged with a recordable offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.

(5) This section ceases to have effect in relation to the material if the person is convicted of a recordable offence before the material is required to be destroyed by virtue of this section.

Destruction of data relating to persons under 18 not convicted: Recordable offences other than qualifying offences.

97.(1) This section applies to material falling within subsection (2) relating to a person who–

(a) has no previous convictions or only one exempt conviction;

(b) is arrested for or charged with a recordable offence other than a qualifying offence; and

(c) is aged under 18 at the time of the alleged offence.

(2) Material falls within this subsection if it is–

(a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence; or

(b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed–

(a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken;

(b) in the case of a DNA profile, before the end of the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) If, before the material is required to be destroyed by virtue of this section, the person is arrested for or charged with a recordable offence–

(a) if the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(b) if–

(i) the alleged offence is not a qualifying offence; and

(ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge;

(c) if–

(i) the alleged offence is a qualifying offence; and

(ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(d) if–

(i) the alleged offence is a qualifying offence; and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(e) if–

(i) the person is convicted of the offence;

(ii) the offence is not a qualifying offence;

(iii) the person is aged under 18 at the time of the offence; and

(iv) the person has no previous convictions,

the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

(5) This section ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this section, the person–

(a) is convicted of a recordable offence and is aged 18 or over at the time of the offence;

(b) is convicted of a qualifying offence; or

(c) having a previous exempt conviction, is convicted of a recordable offence.

Destruction of data relating to persons under 16 not convicted: Qualifying offences.

98.(1) This section applies to material falling within subsection (2) relating to a person who–

(a) has no previous convictions or only one exempt conviction;

(b) is arrested for or charged with a qualifying offence; and

(c) is aged under 16 at the time of the alleged offence.

(2) Material falls within this subsection if it is–

(a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence; or

(b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed–

(a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken;

(b) in the case of a DNA profile, before the end of the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) In cases where, before the material is required to be destroyed by virtue of this section, the person is arrested for or charged with a recordable offence–

(a) if the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(b) if–

(i) the alleged offence is not a qualifying offence; and

(ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge;

(c) if–

(i) the alleged offence is a qualifying offence; and

(ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge;

(d) if–

(i) he alleged offence is a qualifying offence; and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(e) if–

(i) the person is convicted of the offence;

(ii) the offence is not a qualifying offence;

(iii) the person is aged under 18 at the time of the offence; and

(iv) the person has no previous convictions,

the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

(5) This section ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this section, the person–

(a) is convicted of a recordable offence and is aged 18 or over at the time of the offence;

(b) is convicted of a qualifying offence; or

(c) having a previous exempt conviction, is convicted of a recordable offence.

Destruction of data relating to persons aged 16 or 17 not convicted: Qualifying offences.

99.(1) This section applies to material falling within subsection (2) relating to a person who–

(a) has no previous convictions or only one exempt conviction;

(b) is arrested for or charged with a qualifying offence; and

(c) is aged 16 or 17 at the time of the alleged offence.

(2) Material falls within this subsection if it is–

(a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence; or

(b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed–

(a) in the case of fingerprints or impressions of footwear - before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken;

(b) in the case of a DNA profile - before the end of the period of 6 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) In cases where, before the material is required to be destroyed by virtue of this section, the person is arrested for or charged with a recordable offence–

(a) if the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(b) if–

(i) the alleged offence is not a qualifying offence; and

(ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge;

(c) if–

(i) the alleged offence is a qualifying offence; and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(d) if–

(i) the person is convicted of the offence;

(ii) the offence is not a qualifying offence;

(iii) the person is aged under 18 at the time of the offence; and

(iv) the person has no previous convictions,

the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

(5) This section ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this section, the person–

(a) is convicted of a recordable offence and is aged 18 or over at the time of the offence;

(b) is convicted of a qualifying offence; or

(c) having a previous exempt conviction, is convicted of a recordable offence.

Destruction of data relating to persons under 18 convicted of a recordable offence other than a qualifying offence.

100.(1) This section applies to material falling within subsection (2) relating to a person who–

(a) has no previous convictions;

(b) is convicted of a recordable offence other than a qualifying offence; and

(c) is aged under 18 at the time of the offence.

(2) Material falls within this subsection if it is–

(a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence; or

(b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed–

(a) in the case of fingerprints or impressions of footwear - before the end of the period of 5 years beginning with the date on which the fingerprints or impressions were taken;

(b) in the case of a DNA profile - before the end of the period of 5 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) In cases where, before the material is required to be destroyed by virtue of this section, the person is arrested for or charged with a recordable offence–

(a) if the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge;

(b) if–

(i) the alleged offence is not a qualifying offence; and

(ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge;

(c) if–

(i) the alleged offence is a qualifying offence; and

(ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge;

(d) if–

(i) the alleged offence is a qualifying offence; and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.

(5) This section ceases to have effect in relation to the material if the person is convicted of a further recordable offence before the material is required to be destroyed by virtue of this section.

Sections 95 to 100: Supplementary provision.

101.(1) Any reference in section 95 to 100 to a person being charged with an offence includes a reference to a person being informed that he will be reported for an offence.

(2) For the purposes of those sections–

(a) a person has no previous convictions if the person has not previously been convicted of a recordable offence; and

(b) if the person has been previously convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence other than a qualifying offence, committed when the person is aged under 18.

(3) For the purposes of those sections, a person is to be treated as having been convicted of an offence if he has been given a caution in respect of the offence which, at the time of the caution, he has admitted.

(4) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purpose of any provision of those sections relating to an exempt, first or subsequent conviction.

(5) Subject to the completion of any speculative search that the Commissioner of Police considers necessary or desirable, material falling within any of sections 95 to 100 must be destroyed immediately if it appears to him that–

(a) the arrest was unlawful;

(b) the taking of the fingerprints, impressions of footwear or DNA sample concerned was unlawful;

(c) the arrest was based on mistaken identity; or

(d) other circumstances relating to the arrest or the alleged offence mean that it is appropriate to destroy the material.

(6) In sections 95 to 100, "qualifying offence" means a sexual offence or an offence of violence.

Destruction of fingerprints taken under section 86(12).

102. Fingerprints taken from a person by virtue of section 86(12) (taking fingerprints for the purposes of identification) must be destroyed as soon as they have fulfilled the purpose for which they were taken.

Retention for purposes of security.

103.(1) Subsection (2) applies if the Commissioner of Police determines that it is necessary for–

(a) a DNA profile to which section 93 applies; or

(b) fingerprints to which section 93 applies, other than fingerprints taken under section 86(12),

to be retained for the purposes of the security of Gibraltar.

(2) If this subsection applies–

(a) the material is not required to be destroyed in accordance with sections 95 to 100; and

(b) section 106(2) does not apply to the material,

for as long as the determination has effect.

(3) A determination under subsection (1) has effect for a maximum of 2 years beginning with the date on which the material would otherwise be required to be destroyed, but a determination may be renewed.

Retention with consent.

104.(1) If a person consents in writing to the retention of fingerprints, impressions of footwear or a DNA profile to which section 93 applies, other than fingerprints taken under section 86(12)–

(a) the material is not required to be destroyed in accordance with sections 95 to 100; and

(b) section 106(2) does not apply to the material.

(2) It is immaterial for the purposes of subsection (1) whether the consent is given at, before or after the time when the entitlement to the destruction of the material arises.

(3) Consent given under this section can be withdrawn at any time.

Destruction of copies, and notification of destruction.

105.(1) If fingerprints or impressions of footwear are required to be destroyed by virtue of any of sections 95 to 102, any copies of the fingerprints or impressions of footwear must also be destroyed.

(2) If a DNA profile is required to be destroyed by virtue of any of those sections, no copy may be kept except in a form which does not include information which identifies the person to whom the DNA profile relates.

(3) If a person makes a request to the Commissioner of Police to be notified when anything relating to the person is destroyed under any of sections 95 to 102, the Commissioner of Police or a person authorised by him must within 3 months of the request issue the person with a certificate recording the destruction.

Use of retained material.

106.(1) Any material to which section 93 applies which is retained after it has fulfilled the purpose for which it was taken or derived must not be used except–

(a) in the interests of the security of Gibraltar;

(b) for the purposes of a terrorist investigation;

(c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; or

(d) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required to be destroyed by virtue of any of sections 94 to 102 or 105 must not at any time after it is required to be destroyed be used–

(a) in evidence against the person to whom the material relates; or

(b) for the purposes of the investigation of any offence.

(3) In this section–

(a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person;

(b) 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

(c) 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.

Photographing of suspects, etc.

Photographing of suspects, etc.

107.(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 falling within subsection (3) may, on the occasion of the relevant event referred to in subsection (3), be photographed elsewhere than at a police station–

(a) with the appropriate consent; or

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

(3) A person falls within this subsection if he has been–

(a) arrested by a police officer for an offence; or

(b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer.

(4) A person proposing to take a photograph of any person under this section–

(a) may 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) if the requirement is not complied with - may remove the item or substance.

(5) Only a police officer may take a photograph under this section.

(6) A photograph taken under this section–

(a) may be used by, or disclosed to, any person for any purpose related to–

(i) the prevention or detection of crime;

(ii) the investigation of an offence;

(iii) the conduct of a prosecution; or

(iv) the enforcement of a sentence; and

(b) after being so used or disclosed, may–

(i) be retained; but

(ii) not be used or disclosed except for a purpose so related.

(7) In subsection (6)–

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

(i) constitutes one or more criminal offences under the law of Gibraltar or of a place 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;

(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 place outside Gibraltar; and

(c) "sentence" includes any order made by a court in Gibraltar when dealing with an offender in respect of his offence.

(8) 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 are to be construed accordingly.

PART 7 – BAIL IN CRIMINAL PROCEEDINGS

Interpretation of Part.

108.(1) In this Part "bail in criminal proceedings" means–

(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence; or

(b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued,

whether under an enactment or at common law.

(2) Subsection (1) applies–

(a) whether the offence was committed in Gibraltar or elsewhere; and

(b) whether it is an offence under the law of Gibraltar, or of some other country or territory.

(3) In this Part, unless the context otherwise requires–

"conviction" includes–

(a) a finding that a person is not guilty by reason of mental disorder;

(b) a finding under section 660 or section 664 that the person in question did the act or made the omission charged; and

(c) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally,

and "convicted" is to be construed accordingly;

"court" includes a judge of a court or a magistrate;.

"offence" includes an alleged offence;

"surrender to custody" means, in relation to a person released on bail, surrendering himself into the custody of the court or of the police officer (according to the requirements of the grant of bail) at the time and place for the time being appointed for him to do so;

"vary", in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions.

(4) In this Part, references to a defendant being kept in custody or being in custody include (if the defendant is a juvenile) references to his being kept or being in the care of the Care Agency pursuant to an enactment.

(5) In reckoning for the purposes of this Part any period of 24 or 48 hours, Saturdays, Sundays and public holidays are to be excluded.

Principles for bail decisions

Remand in custody or on bail.

109.(1) If a court has power to remand any person, then, subject to any enactment modifying that power, the court may–

(a) remand him in custody to be brought before the court at the end of the period of remand or at any earlier time the court may require; or

(b) remand him on bail by taking from him a recognizance, with or without sureties, conditioned as provided in subsection (3).

(2) If the Magistrates' Court has power to commit or send an offender to the Supreme Court for trial or sentence, the court may instead of committing him in custody commit him on bail as described in subsection (1)(b).

(3) When the court remands or commits a person under subsection (1) or (2), it may, instead of taking recognizances in accordance with subsection (1)(b), fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 122 and in the meantime commit him to custody in accordance with subsection (1)(a).

(4) 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.

(5) If the recognizance is conditioned as provided in subsection (4)(b), the fixing at any time of the time for the next appearance is deemed to be a remand, but nothing in this subsection deprives the court of power at any subsequent hearing to remand a person afresh.

Right to bail.

110.(1) A person to whom this section applies must be granted bail except as provided in this Part.

(2) This section applies to a person who is accused of an offence when–

(a) he appears or is brought before a court in the course of or in connection with proceedings for the offence; or

(b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

(3) Subsection (2) does not apply in relation to proceedings on or after a person's conviction of the offence or proceedings against a fugitive offender for the offence.

(4) This section also applies to a person–

(a) who, having been convicted of an offence, appears or is brought before the Magistrates' Court to be dealt with under Part 22 for a breach of a community sentence; or

(b) who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(5) This section is subject to section 129 (Bail in cases of treason, etc.) and 130 (Bail in cases of murder).

(6) In taking any decisions required by this Part, the considerations to which the court is to have regard include, so far as relevant, any misuse by the defendant of controlled drugs.

Reasons for not granting bail.

111.(1) Section 110 does not require the 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 122 a proper recognizance and to produce sufficient and satisfactory sureties if required to do so.

(2) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would–

(a) fail to surrender to custody;

(b) commit an offence while on bail; or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3) If the defendant is aged 18 or over, and it appears to the court that he was on bail in criminal proceedings on the date of the offence, he must not be granted bail unless the court is satisfied that there is no significant risk of his committing another offence while on bail.

(4) The defendant need not be granted bail if–

(a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and

(b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

(5) The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a juvenile, for his own welfare.

(6) The defendant need not be granted bail if he is in custody pursuant to the sentence of a court.

(7) The defendant need not be granted bail if the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part because of lack of time since the institution of the proceedings against him.

(8) The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence, he has been arrested pursuant to section 126.

(9) If the case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

(10) Without limiting subsections (2) to (9) of this section, section 110 does not require the court to remand or commit a person on bail if–

(a) he is charged with an offence punishable by imprisonment for not less than 6 months and it appears to the court that he has been previously sentenced to imprisonment;

(b) 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) the court is satisfied that he should be kept in custody for his own protection or, if he is a juvenile, for his own welfare;

(d) it appears to the court that it is necessary to detain him to establish his identity or address;

(e) it appears to the court that he has no fixed abode or that he is ordinarily resident outside Gibraltar;

(f) 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 16 years.

(11) If the Magistrates' Court refuses bail to any person who has attained the age of 18 years, the court must–

(a) if he is not legally represented, inform him that he may apply to the Supreme Court to be admitted to bail;

(b) if he is so represented and his legal representative so requests, give him a written notice stating the reason for the refusal.

Conditions of bail.

112.(1) A person granted bail may be required to comply, before release on bail or later, with any requirements that the court considers necessary to ensure that–

(a) he surrenders to custody;

(b) he does not commit an offence while on bail;

(c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;

(d) he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(2) If a person is remanded or released on bail by a court, the recognizance may be conditioned to the effect that his passport or other travel document is to be deposited with the court until the conclusion of the proceedings against him.

(3) If a court when admitting, or directing the admission of, any person to bail imposes a condition under subsection (1) or (2), it may not require him to find sureties in respect of that condition.

(4) No conditions may be imposed under subsection (1) unless it appears to the court–

(a) that conditions as mentioned in paragraphs (a), (b) and (c) of that subsection are necessary to prevent the occurrence of any of the events mentioned in section 111(2); or

(b) that a condition as mentioned in paragraph (d) of that subsection is necessary for the purpose of enabling inquiries or a report to be made.

(5) Subsection (1) also applies on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

(6) If the Magistrates' Court has granted bail in criminal proceedings that court or, if that court has committed or sent a person on bail to the Supreme Court for trial or to be sentenced or otherwise dealt with, that court or the Supreme Court, may on application–

(a) by or on behalf of the person to whom bail was granted; or

(b) by the prosecutor or a police officer,

vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.

(7) In taking any decisions about conditions of bail required by this Part, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant, and for the purpose of this section "misuse" has the same meaning as in Part 21 of the Crimes Act 2011.

Basis for bail decisions.

113.(1) In taking a decision required by section 111 or 112, the court must have regard to such of the following considerations as appear to it to be relevant–

(a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it);

(b) the character, antecedents, associations and community ties of the defendant;

(c) the defendant's record in relation to the fulfilment of his obligations under previous grants of bail in criminal proceedings;

(d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted,

as well as to any others which appear to be relevant.

(2) If the court is considering remanding the defendant in custody for more than 8 clear days, it must have regard to the total length of time which the defendant would spend in custody if it were to exercise the power.

(3) If the court decides not to grant the defendant bail–

(a) the court must consider, at each subsequent hearing, whether he ought to be granted bail;

(b) at the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously);

(c) at subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.

Record of reasons for bail decisions.

114.(1) Subject to subsection (2), if–

(a) a court or police officer grants bail in criminal proceedings;

(b) a court withholds bail in criminal proceedings from a person pursuant to section 111;

(c) a court, officer of a court or police officer appoints a time or place or a court or officer of a court appoints a different time or place for a person granted bail in criminal proceedings to surrender to custody; or

(d) a court or police officer varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

the court, officer or police officer must make a record of the decision in the manner prescribed by rules of court and containing the particulars so prescribed and, if requested to do so by the person in relation to whom the decision was taken, must give him a copy of the record of the decision as soon as practicable after the record is made.

(2) If bail in criminal proceedings is granted by endorsing a warrant of arrest for bail, the police officer who releases on bail the person arrested must make the record required by subsection (1).

(3) If a court grants bail in criminal proceedings to a person to whom section 111 applies after hearing representations from the prosecutor in favour of withholding bail, the court must give reasons for granting bail.

(4) A court on giving reasons for a decision pursuant to subsection (3) must include a note of the reasons in the record of its decision and, if so requested by the prosecutor, must give the prosecutor a copy of the record of the decision as soon as practicable after the record is made.

(5) If a court, pursuant to sections 111 and 112–

(a) withholds bail in criminal proceedings;

(b) imposes conditions in granting bail in criminal proceedings; or

(c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

the court must, with a view to enabling the person to consider making an application in the matter to another court, give reasons for the decision.

(6) A court on giving reasons for a decision as required by subsection (5) must include a note of the reasons in the record of its decision and must (subject to subsection (7)) give a copy of the note to the person in relation to whom the decision was taken.

(7) The court need not give a copy of the note of the reasons for its decision to the person in relation to whom the decision was taken if that person is legally represented unless his legal representative requests the court to do so.

(8) If the Magistrates' Court remands a person in custody under any powers in that behalf after hearing full argument on an application for bail from him, and–

(a) has not previously heard such argument on an application for bail from him in those proceedings; or

(b) has previously heard full argument from him on such an application but is satisfied that there has been a change in his circumstances or that new considerations have been placed before the court,

the court must issue a certificate that it heard full argument on his application for bail before it refused the application, and give a copy to the person to whom it refuses bail.

(9) If a court issues a certificate under subsection (8) in a case to which paragraph (b) of that subsection applies, it must state in the certificate the nature of the change of circumstances or the new considerations which caused it to hear a further fully argued bail application.

Bail when juvenile charged.

115.(1) If a juvenile is charged before a court with an offence then, if the court adjourns the trial and remands him, it may remand him on bail 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 court, secure his attendance upon the hearing of the charge.

(2) The court must release a juvenile on bail unless–

(a) the charge is one of treason, murder, manslaughter, rape or other grave crime;

(b) it is necessary in his interest to remove him from association with persons with recorded convictions for serious crime; or

(c) the court has reason to believe that his release would defeat the ends of justice, whether by reference to the matters set out in section 112(1) or otherwise.

(3) If a parent or guardian of a juvenile consents to be surety for the juvenile for the purposes of this section, the parent or guardian may be required to ensure that the juvenile complies with any requirement imposed on him by virtue of section 112(1) but–

(a) no requirement may be imposed on the parent or guardian of a juvenile by virtue of this subsection if it appears that the juvenile will attain the age of 18 before the time to be appointed for him to surrender to custody; and

(b) the parent or guardian must not be required to ensure compliance with any requirement to which his consent does not extend.

Further remand.

116.(1) If a 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 period.

(2) The power of the court under subsection (1) to remand a person on bail for a further period may be exercised by enlarging his recognizance and those of his sureties, if any, to a later time.

(3) If a person remanded on bail is bound to appear before a court at any time, and the court has no power to remand him under subsection (1), the court may in his absence appoint a later time as the time at which he is to appear and may enlarge the recognizances of any sureties for him to that time.

Reconsideration of decisions on granting of bail.

117.(1) If the Magistrates' Court has granted bail in criminal proceedings in connection with an offence, or proceedings for an offence, to which this section applies, or if a police officer has granted bail in criminal proceedings in connection with proceedings for such an offence, the court may, on application by the prosecutor for the decision to be reconsidered-

(a) vary the conditions of bail;

(b) impose conditions in respect of bail which has been granted unconditionally; or

(c) withhold bail.

(2) The offences to which this section applies are offences triable on indictment and offences triable either way.

(3) No application for the reconsideration of a decision under this section may be made unless it is based on information which was not available to the court or police officer when the decision was taken.

(4) Whether or not the person to whom the application relates appears before it, the court must make a decision in accordance with this Part.

(5) If the decision of the court on a reconsideration under this section is to withhold bail from the person to whom it was originally granted, the court must–

(a) if that person is before the court - remand him in custody; and

(b) if that person is not before the court - order him to surrender himself forthwith into the custody of the court.

(6) If a person surrenders himself into the custody of the court in compliance with an order under subsection (5), the court must remand him in custody.

(7) A person who has been ordered to surrender to custody under subsection (5) may be arrested without warrant by a police officer if he fails without reasonable cause to surrender to custody in accordance with the order.

(8) A person arrested pursuant to subsection (7) must be brought as soon as practicable, and in any event within 24 hours after his arrest, before a magistrate, who must remand him in custody.

(9) If the court, on a reconsideration under this section, refuses to withhold bail from a person after hearing representations from the prosecutor in favour of withholding bail, the court must–

(a) give reasons for refusing to withhold bail;

(b) include a note of those reasons in any record of its decision; and

(c) if requested to do so by the prosecutor, provide a copy of the record to the prosecutor as soon as practicable after it is made.

(10) Notice of an application under this section and of the grounds for it must be given to the person affected and must include notice of the powers available to the court under this Part.

(11) Any representations made by the person affected (whether in writing or orally) must be considered by the court before making its decision.

Bail on appeal or case stated.

118.(1) If 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 10 days after the judgment of the Supreme Court has been given, unless the decision in respect of which the case is stated is reversed by that judgment.

(2) Subsection (1) does not apply to a person who has been committed to the Supreme Court for sentence, but section 109 applies.

Prosecution appeal against the grant of bail.

119.(1) If the Magistrates' Court grants bail to a person who is charged with or convicted of an offence punishable by a term of imprisonment of 5 years or more, the prosecution may appeal to the Supreme Court against the granting of bail.

(2) 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.

(3) In the event of the prosecution wishing to exercise the right of appeal set out in subsection (1), oral notice of appeal must 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.

(4) Written notice of appeal must thereafter be served on the Magistrates' Court and the person concerned within 2 hours of the conclusion of the proceedings.

(5) Upon receipt from the prosecution of oral notice of appeal from its decision to grant bail, the Magistrates' Court must remand in custody the person concerned until the appeal is decided or otherwise disposed of.

(6) If the prosecution fails, within the period of 2 hours mentioned in subsection (4), to serve one or both of the notices required by that subsection, the appeal is deemed to have been disposed of.

(7) The hearing of an appeal under subsection (1) against the decision of the Magistrates' Court to grant bail must be commenced within 48 hours from the date on which oral notice of appeal is given.

(8) At the hearing of an appeal by the prosecution under this section, the appeal is by way of rehearing and the judge hearing the appeal may remand the person concerned in custody or may grant bail subject to such conditions, if any, as the judge thinks fit.

(9) In relation to a juvenile–

(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 (5) 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 18 years.

(10) Rules of court may be made for the purpose of giving effect to this section.

Bail by the Supreme Court.

120.(1) The Supreme Court may grant bail to any person who–

(a) has been committed in custody for appearance before the Supreme Court under Part 9 or who has been sent in custody to the Supreme Court for trial under that Part;

(b) is in custody pursuant to a sentence imposed by the Magistrates' Court, and has appealed to the Supreme Court against his conviction or sentence;

(c) is in custody pending the disposal of his case by the Supreme Court;

(d) has been granted a certificate by the Supreme Court under section 9(1) of the Court of Appeal Act; or

(e) has been remanded in custody by the Magistrates' Court on adjourning a case under any provision of this Act.

(2) A certificate under subsection (1)(d) is a certificate that a case is fit for appeal on a ground which involves a question of law alone.

(3) The power conferred by subsection (1)(e) does not extend to a case to which section 658 (Finding of unfitness to be tried) or 660 (Finding that the defendant did the act or made the omission charged against him) applies.

(4) The power to grant bail under subsection (1)(d) must be exercised within 28 days from the date of the conviction appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.

(5) The power under subsection (1)(d) may not be exercised if the appellant has made an application to the Court of Appeal for bail in respect of the offence or offences to which the appeal relates.

(6) It is a condition of bail granted in the exercise of the power under subsection (1)(d) that, unless a notice of appeal has previously been lodged in accordance with section 11 of the Court of Appeal Act–

(a) such a notice must be so lodged within the period prescribed under that section; and

(b) not later than 14 days from the end of that period, the appellant must lodge with the Supreme Court a certificate from the Registrar that a notice of appeal was given within that period.

(7) If the Supreme Court grants bail to a person in the exercise of the power under subsection (1)(d), it may direct him to appear–

(a) if notice of appeal is given within the period specified under section 11 of the Court of Appeal Act - at a time the Court of Appeal specifies;

(b) if no such notice is given within that period - at a time the Supreme Court specifies.

(8) If the Supreme Court grants a person bail under subsection (1)(e) it may direct him to appear at a time and place which the Magistrates' Court could have directed and the recognizance of any surety must be conditioned accordingly.

(9) The Supreme Court may only grant bail to a person under subsection (1)(e) if the Magistrates' Court has stated in its reasons for refusing bail that it heard full argument on his application for bail before it refused the application.

(10) A person in custody pursuant to a warrant issued by the Supreme Court with a view to the person's appearance before that court must be brought forthwith before either the Supreme Court or the Magistrates' Court.

(11) Provision may be made by rules of court with regard to the powers of the Supreme Court relating to bail, including provision–

(a) allowing the court to direct that a recognizance must not be entered into or other security given before the Magistrates' Court or a magistrate by a person of a specified description;

(b) prescribing the manner in which a recognizance is to be entered into or other security given, and the persons by whom and the manner in which the recognizance or security may be enforced;

(c) authorising the recommittal, in specified cases and by specified courts or magistrates, of persons released from custody pursuant to the powers;

(d) corresponding to section 175 (Varying or dispensing with requirements as to sureties).

Extension of power of Supreme Court to grant bail or vary conditions.

121.(1) If 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–

(a) admit him or direct his admission to bail; or

(b) if he has been admitted to bail - 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 must be included in a recognizance entered into by him are the conditions that 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 do not affect any other powers of the Supreme Court to admit or direct the admission of persons to bail.

Recognizances and sureties

Mode of entering into recognizance.

122(1) If a court admits or directs the admission of a person to bail on his entering into a recognizance–

(a) the recognizance must be in such reasonable sum as the court thinks appropriate; and

(b) the court may require the recognizance to be entered into with or without sureties, or, in lieu of requiring a person to enter into a recognizance, consent to his giving other security.

(2) If a 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 person prescribed.

(3) If as a condition of the release of any person he is required to enter into a recognizance with sureties–

(a) the recognizances of the sureties may be taken separately and either before or after the recognizance of the principal; and

(b) if so taken, the recognizances of the principal and sureties are as binding as if they had been taken together and at the same time.

(4) The Supreme Court may, in exercising any power conferred upon it by this Part to release a person from custody, direct that a recognizance is to be entered into or other security given before the Magistrates' Court or a magistrate.

(5) Nothing in this section enables the Magistrates' Court to alter the amount of a recognizance fixed by the Supreme Court.

Bail with sureties.

123.(1) This section applies if a person is granted bail in criminal proceedings on condition that he provides one or more sureties for the purpose of securing that he surrenders to custody.

(2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to–

(a) the surety's financial resources;

(b) his character and any previous convictions of his; and

(c) his proximity (whether in point of kinship, place of residence or otherwise) to the person for whom he is to be surety.

(3) If a court grants a person bail in criminal proceedings on a condition referred to in subsection (1) but is unable to release him because no surety or no suitable surety is available, the court must fix the amount in which the surety is to be bound and the following subsections apply for the purpose of enabling the recognizance of the surety to be entered into subsequently.

(4) The recognizance of the surety may be entered into before any of the following persons–

(a) if the decision was by the Magistrates' Court - before a magistrate, the clerk of the court or a police officer who is of the rank of Inspector or above or is in charge of a police station;

(b) if the decision was by the Supreme Court or the Court of Appeal - before any of the persons specified in paragraph (a) or a person of any other description prescribed by rules of court.

(5) Rules of court may prescribe the manner in which a recognizance is to be entered into and the persons by whom and the manner in which the recognizance may be enforced.

(6) If a surety seeks to enter into his recognizance before any person in accordance with subsection (4) but that person declines to take his recognizance because he is not satisfied of the surety's suitability, the surety may apply to–

(a) the court which fixed the amount of the recognizance in which the surety was to be bound; or

(b) the Magistrates' Court,

for that court to take his recognizance and that court must, if satisfied of his suitability, take his recognizance.

(7) If, pursuant to subsection (4), a recognizance is entered into otherwise than before the court that fixed the amount of the recognizance, the same consequences follow as if it had been entered into before that court.

Forfeiture of security.

124.(1) If a defendant or other person has given security pursuant to this Part and a court is satisfied that the defendant failed to surrender to custody then, unless it appears that he had reasonable cause for his failure, the court may order the forfeiture of the security, or of any lesser amount the court thinks fit.

(2) An order under subsection (1), unless revoked, takes effect after 21 days.

(3) A court that has ordered the forfeiture of a security under subsection (1) may, if satisfied on an application made by or on behalf of the person who gave it that the defendant had reasonable cause for his failure to surrender to custody, remit the forfeiture or any part of it.

(4) An application under subsection (3) may be made before or after the order for forfeiture has taken effect, but must not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.

(5) A security that has been ordered to be forfeited by a court under subsection (1) must, to the extent of the forfeiture–

(a) if it consists of money - be accounted for and paid in the same manner as a fine imposed by that court;

(b) if it does not consist of money - be enforced by the Magistrates' Court as a civil debt.

(6) If an order is made under subsection (3) after forfeiture of the security in question has occurred, any money which has been overpaid must be repaid.

Offences

Offence of absconding.

125.(1) A person granted bail under this Part or Part 5 is under a duty to surrender to custody in accordance with the provisions of this Part.

(2) A person who–

(a) has been released on bail; and

(b) fails without reasonable cause to surrender to custody,

commits an offence.

(3) A person who–

(a) has been released on bail;

(b) with reasonable cause has failed to surrender to custody; but

(c) fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable,

commits an offence.

(4) It is for the defendant to prove that he had reasonable cause for his failure to surrender to custody or, that having a reasonable cause for failure, he surrendered to custody as soon as reasonably practicable.

(5) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision is not a reasonable cause for that person's failure to surrender to custody.

(6) Subject to subsection (7), an offence under subsection (2) or (3) committed after bail was granted by a court is punishable either on summary conviction or as if it were a contempt of court.

(7) If the Magistrates' Court convicts a person of an offence under subsection (2) or (3), the court, if it considers–

(a) that the circumstances of the offence are such that a higher penalty should be imposed for the offence than the court has power to impose; or

(b) if it commits the 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 (2) or (3) by the Supreme Court,

may 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 (2) or (3) is liable–

(a) if not committed to the Supreme Court for sentence - to imprisonment for 3 months or a fine at level 3 on the standard scale, or both;

(b) if committed for sentence to the Supreme Court, or dealt with by the Supreme Court as for a contempt - to imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(9) In any proceedings for an offence under subsection (2) or (3) a document purporting–

(a) to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody; and

(b) to be duly certified to be a true copy of that part of the record,

is evidence of the time and place appointed for that person to surrender to custody.

(10) For the purposes of subsection (9)–

(a) "prescribed record" means the record of the decision of the court, officer or police officer made pursuant to section 114(1);

(b) the copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the police officer who took the decision or a police officer designated for the purpose by the officer in charge of the police station from which the person to whom the record relates was released;

(c) "the appropriate officer" of the court is–

(i) in the case of the Magistrates' Court - the clerk of the court;

(ii) in the case of the Supreme Court or the Court of Appeal – the Registrar.

Liability to arrest for absconding or breaking conditions of bail.

126.(1) If a person who has been released on bail by a court and is under a duty to surrender into the custody of the court fails to surrender to custody at the place and time appointed for him to do so, the court may issue a warrant for his arrest, unless the person is absent in accordance with leave given to him by an officer of the court.

(2) If a person who has been released on bail by a court 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, unless the person is absent in accordance with leave given to him by an officer of the court.

(3) A person who has been released on bail by a court 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 the person is not likely to surrender to custody;

(b) if the police officer has reasonable grounds for believing that the person is likely to break any of the conditions of his bail or has reasonable grounds to suspect that the person has broken any of those conditions; or

(c) if the person is released on bail with one or more sureties and a surety notifies the police officer in writing that–

(i) the person is unlikely to surrender to custody; and

(ii) for that reason the surety wishes to be relieved of his obligations as surety.

(4) A person arrested pursuant to subsection (3) must be brought as soon as practicable, and in any event within 24 hours after his arrest, before the Magistrates' Court or a magistrate.

(5) A court or magistrate before whom a person is brought under subsection (4)–

(a) if of the opinion that the person–

(i) is not likely to surrender to custody; or

(ii) has broken or is likely to break any conditions of his or her bail,

may remand the person in custody or commit the person to custody as the case may require, or may grant the person bail subject to the same or to different conditions; but–

(b) if not of that opinion, must grant the person bail subject to the same conditions, if any, as were originally imposed.

(6) Nothing in this section affects the liability to arrest of a person who is released from police detention on bail under Part 5.

Offence of agreeing to indemnify sureties in criminal proceedings.

127.(1) If a person ('A') agrees with another person ('B') to indemnify B against any liability which B may incur as a surety to ensure the surrender to custody of a person granted bail, A and B both commit an offence.

(2) An offence under subsection (1) is committed–

(a) whether the agreement is made before or after B becomes a surety;

(b) whether or not B becomes a surety; and

(c) whether the agreement contemplates compensation in money or money's worth.

(3) If the Magistrates' Court convicts a person for an offence under subsection (1), the court, if it considers–

(a) that the circumstances of the offence are such that a higher penalty should be imposed for the offence than the court has power to impose; or

(b) if it commits the 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,

may commit the person in custody or on bail to the Supreme Court for sentence.

(4) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for 3 months or a fine at level 3 on the standard scale, or both;

(b) on conviction on indictment, or if sentenced by the Supreme Court on committal for sentence under subsection (3), to imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(5) No proceedings for an offence under subsection (1) may be instituted except by, or with the consent of, the Attorney-General.

Miscellaneous provisions

Calculating terms of imprisonment.

128. For the purpose of calculating a term of imprisonment–

(a) the time during which a person is admitted to bail under this Part does not count as part of any term of imprisonment under his sentence; and

(b) if a person is admitted to bail after a sentence of imprisonment has been imposed on him, the term is 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 cases of treason, etc.

129.(1) A person charged with or convicted of treason may not be admitted to bail except by order of the Chief Justice, and other provisions of this Part apply in such a case with necessary modifications.

(2) A person who in any proceedings has been charged with or convicted of an offence listed in subsection (3) in circumstances mentioned in subsection (4) may be granted bail in those proceedings only if the court or, as the case may be, the police officer considering the grant of bail is satisfied that there are exceptional circumstances which justify it.

(3) The offences referred to in subsection (2) are–

(a) attempted murder;

(b) manslaughter;

(c) an offence under section 213 of the Crimes Act 2011 (rape);

(d) an offence under section 213 of that Act (assault by penetration);

(e) an offence under section 216 of that Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;

(f) an offence under section 217 of that Act (rape of a child under 13);

(g) an offence under section 218 of that Act (assault of a child under 13 by penetration);

(h) an offence under section 220 of that Act (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration with subsection (2)(a) to (d) of that section was caused;

(i) an offence under section 241 of that Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;

(j) an offence under section 242 of that Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;

(k) an attempt to commit an offence within any of paragraphs (c) to (j).

(4) The circumstances first referred to in subsection (2) are that the person has been previously convicted by or before a court in Gibraltar, or in a member State of the European Union, of an offence listed in subsection (3) and, in the case of a previous conviction of manslaughter, that he was sentenced to imprisonment or, if he was then a juvenile, to long-term detention under any relevant enactment.

(5) This section applies whether or not an appeal is pending against conviction or sentence.

Bail in cases of murder.

130.(1) A person charged with murder must not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.

(2) A person charged with murder may not be granted bail except by order of a judge.

(3) If a person appears before the Magistrates' Court charged with murder–

(a) the court must commit the person to custody to be brought before a judge; and

(b) the judge must make a decision about bail in respect of the person as soon as reasonably practicable and, in any event, within 48 hours of the person appearing before the Magistrates' Court.

(4) In this section a reference to a person charged with murder includes a person charged with murder and one or more other offences.

(5) In the case of a person accused of murder the court granting bail must, unless it considers that satisfactory reports on his mental condition have already been obtained, impose as conditions of bail–

(a) a requirement that the accused undergoes examination by 2 medical practitioners for the purpose of enabling such reports to be prepared; and

(b) a requirement that for that purpose he attends an institution or place that the court directs and complies with any other directions given him for that purpose by either of those practitioners.

(6) Of the medical practitioners referred to in subsection (5), at least one must be a practitioner with experience in the diagnosis and treatment of mental disorder (as defined in the Mental Health Act 2016).

Warrant of arrest may be endorsed for bail.

131. Whenever a warrant is issued for the arrest of any person, the court, magistrate or judge issuing the warrant may (if in all the circumstances it appears just and reasonable so to do) incorporate in it a direction that the officer executing the warrant may, instead of bringing the person arrested before the court, release the person on bail to appear before the court at a time and place specified in the direction.

PART 8 - MAGISTRATES' COURT PROCEEDINGS

Sittings of the court

Sittings of the court.

132.(1) The Magistrates' Court must not–

(a) try summarily an information for an indictable offence or hear a complaint; or

(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 582 or impose imprisonment,

except when sitting in a court house.

(2) Subject to any law to the contrary, if the Magistrates' Court is required by this section to sit in a court house, it must sit in open court.

(3) Subject to subsections (4) and (5), the magistrates composing the court before which any proceedings take place must be present during the whole of the proceedings.

(4) If during the course of the proceedings any magistrate absents himself, he must not act further in the proceedings and, if the remaining magistrates are enough to satisfy the requirements of this Act, the proceedings may continue before a court composed of those magistrates.

(5) If the trial of an information is adjourned after the defendant has been convicted and before he is sentenced or otherwise dealt with–

(a) the court which sentences or deals with him need not be composed of the same magistrates as that which convicted him; but

(b) if among the magistrates 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 must before doing so make such inquiry into the facts and circumstances of the case as will enable the magistrates who were not sitting when the offender was convicted to be fully acquainted with those facts and circumstances.

Institution of proceedings

Manner of instituting proceedings.

133.(1) Criminal proceedings before the Magistrates' Court may be instituted by–

(a) laying an information before a magistrate; or

(b) bringing before the court 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 an information of it before a magistrate.

Issue of summons or warrant for arrest.

134.(1) Upon an information being laid before a magistrate that any person has, or is suspected of having, committed an offence, the magistrate may, in any of the events mentioned in subsection (3)–

(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.

(2) A magistrate must not issue a warrant of arrest unless the information is in writing.

(3) A magistrate may issue a summons or warrant under this section–

(a) if the offence was committed or is suspected to have been committed in Gibraltar;

(b) if under any law the Magistrates' Court has jurisdiction to try the offence although it was committed outside Gibraltar; or

(c) if an indictment for the offence may legally be preferred in Gibraltar, although it was committed outside Gibraltar.

(4) If the offence charged is an indictable offence, a warrant under this section may be issued at any time even if a summons has previously been issued.

(5) No warrant may be issued under this section for the arrest of any person who has attained the age of 18 years unless–

(a) the offence to which the warrant relates is an indictable offence or is punishable with imprisonment; or

(b) the person's address is not sufficiently established for a summons to be served on him.

(6) If 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.

(7) A magistrate may issue a summons or warrant under this section upon an information being laid before him despite any law requiring the information to be laid before 2 or more magistrates.

Service of summons after failure to prove service by post.

135. If–

(a) any law requires, expressly or by implication, that a summons in respect of an offence must be issued or served within a specified period after the commission of the offence; and

(b) 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 a time to enable it to be delivered in the ordinary course of post within that period–

(c) a second summons may be issued on the same information; and

(d) that law has effect, in relation to that summons, as if the specified period ran from the return day of the original summons.

Proceedings invalid if defendant did not know of them.

136.(1) If a summons has been issued under section 139 and the Magistrates' Court has begun to try the information to which it relates, then if–

(a) the defendant, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to try the information; and

(b) within 21 days of that date the declaration is served on the clerk of the court,

without affecting the validity of the information, the summons and all subsequent proceedings are void.

(2) For the purposes of subsection (1) a statutory declaration is duly served on the clerk of the court if it is delivered to him, or left at his office, or is sent in a registered letter or by the recorded delivery service addressed to him at his office.

(3) If on the application of the defendant it appears to the Magistrates' Court (which for this purpose may be composed of a single magistrate) that it was not reasonable to expect the defendant to serve a statutory declaration as mentioned in subsection (1) within the period allowed by that subsection–

(a) the court may accept service of such a declaration by the defendant after that period has expired; and

(b) a statutory declaration accepted under this subsection is deemed to have been served as required by that subsection.

(4) If any proceedings have become void by virtue of subsection (1), the information must not be tried again by any of the same magistrates.

Defect in process.

137.(1) No objection will be allowed to any information or complaint, or to any summons or warrant to procure the presence of the defendant, for any defect in it in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecutor or complainant at the hearing of the information or complaint.

(2) If it appears to the Magistrates' Court that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor or complainant is such that the defendant has been misled by the variance, the court must, on the application of the defendant, adjourn the hearing.

Remaining in force of process.

138.(1) A warrant or summons issued by a magistrate does not cease to have effect by reason of his death or his ceasing to be a magistrate.

(2) A warrant of arrest issued by a magistrate remains in force until it is executed or withdrawn or it ceases to have effect in accordance with this Act.

Construction of references to "complaints".

139. In any law conferring power on the Magistrates' Court–

(a) to deal with an offence; or

(b) to issue a summons or warrant against a person suspected of an offence, on the complaint of any person,

references to a complaint are to be read as references to an information.

Offences triable on indictment or summarily

Initial procedure: Defendant to indicate intention as to plea.

140.(1) This section has effect if a person who has attained the age of 18 years appears or is brought before the Magistrates' Court on an information charging him with an offence triable either way.

(2) Everything that the court is required to do under the following provisions of this section must be done with the defendant present in court.

(3) The court must cause the charge to be written down, if this has not already been done, and to be read to the defendant.

(4) The court must then explain to the defendant in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty–

(a) the court must proceed as mentioned in subsection (6); and

(b) he may be committed for sentence to the Supreme Court under section 217 if the court is of the opinion as mentioned in subsection (3) of that section.

(5) The court must then ask the defendant whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

(6) If the defendant indicates that he would plead guilty the court must proceed as if–

(a) the proceedings constituted from the beginning the summary trial of the information; and

(b) section 159 (Procedure at trial) was complied with and he pleaded guilty under it.

(7) If the defendant indicates that he would plead not guilty, section 143 applies.

(8) If the defendant fails to indicate how he would plead, for the purposes of this section and section 143(1) he must be taken to indicate that he would plead not guilty.

(9) Subject to subsection (6), the following do not for any purpose constitute the taking of a plea–

(a) asking the defendant under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;

(b) an indication by the defendant under this section of how he would plead.

Intention as to plea: Absence of defendant.

141.(1) This section has effect if–

(a) a person who has attained the age of 18 years appears or is brought before the Magistrates' Court on an information charging him with an offence triable either way;

(b) the defendant is legally represented;

(c) the court considers that by reason of the defendant's disorderly conduct before the court it is not practicable for proceedings under section 140 to be conducted in his presence; and

(d) the court considers that it should proceed in the absence of the defendant.

(2) In such a case–

(a) the court must cause the charge to be written down, if this has not already been done, and to be read to the defendant's legal representative;

(b) the court must ask the defendant's legal representative whether (if the offence were to proceed to trial) the defendant would plead guilty or not guilty;

(c) if the legal representative indicates that the defendant would plead guilty the court must proceed as if the proceedings constituted from the beginning the summary trial of the information, and as if section 159 (Procedure at trial) was complied with and the defendant pleaded guilty under it;

(d) if the legal representative indicates that the defendant would plead not guilty section 143 applies.

(3) If the defendant's legal representative fails to indicate how the defendant would plead, for the purposes of this section and section 143(1) he is to be taken to indicate that the defendant would plead not guilty.

(4) Subject to subsection (2)(c), the following do not for any purpose constitute the taking of a plea–

(a) asking a legal representative under this section whether (if the offence were to proceed to trial) the defendant would plead guilty or not guilty;

(b) an indication by a legal representative under this section of how the defendant would plead.

Intention as to plea: Adjournment.

142.(1) The Magistrates' Court when proceeding under section 140 or 141 may adjourn the proceedings at any time, and on doing so on any occasion when the defendant is present may remand the defendant, and must remand him if–

(a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) he has been remanded at any time in the course of proceedings on the information.

(2) If the court remands the defendant, the time fixed for the resumption of proceedings must be that at which he is required to appear or be brought before the court pursuant to the remand.

Initial procedure on information against adult for offence triable either way.

143.(1) Sections 144 to 149 have effect if a person who has attained the age of 18 years appears or is brought before the Magistrates' Court on an information charging him with an offence triable either way and–

(a) he indicates under section 140 that (if the offence were to proceed to trial) he would plead not guilty; or

(b) his legal representative indicates under section 141 that (if the offence were to proceed to trial) he would plead not guilty.

(2) Without affecting section 162 (Non-appearance of defendant) everything that the court is required to do under sections 144 to 149 must be done before any evidence is called and, subject to subsection (3) and section 149, with the defendant present in court.

(3) The court may proceed in the absence of the defendant, in accordance with such of the provisions of sections 144 to 148 as are applicable in the circumstances, if the court considers that by reason of his disorderly conduct before the court it is not practicable for the proceedings to be conducted in his presence.

(4) Subsections (3) to (5) of section 149, so far as applicable, have effect in relation to proceedings conducted in the absence of the defendant by virtue of subsection (3).

(5) The Magistrates' Court when proceeding under sections 144 to 149 may adjourn the proceedings at any time, and on doing so on any occasion when the defendant is present may remand the defendant, and must remand him if–

(a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) he has been remanded at any time in the course of proceedings on the information.

(6) If the court remands the defendant, the time fixed for the resumption of the proceedings must be that at which he is required to appear or be brought before the court pursuant to the remand.

Decision as to allocation.

144.(1) The court must decide whether the offence appears to be more suitable for summary trial or for trial on indictment.

(2) Before making a decision under this section, the court–

(a) must give the prosecution an opportunity to inform the court of the defendant's previous convictions (if any); and

(b) must give the prosecution and the defendant an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.

(3) In making a decision under this section, the court must consider–

(a) the nature of the case;

(b) whether the circumstances make the offence one of a serious character;

(c) whether the sentence which the Magistrates' Court would have power to impose for the offence would be adequate;

(d) any representations made by the prosecution or the defendant under subsection (2)(b); and

(e) any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other.

(4) If–

(a) the defendant is charged with 2 or more offences; and

(b) it appears to the court that the charges for the offences could be joined in the same indictment or that the offences arise out of the same or connected circumstances,

subsection (3)(c) has effect as if references to the sentence which the Magistrates' Court would have power to impose for the offence were a reference to the maximum aggregate sentence which the court would have power to impose for all of the offences taken together.

(5) If, in respect of the offence, the court receives a notice under section 198(2) (Relevant offences), the preceding provisions of this section and sections 145, 146 and 147 do not apply, and the court must proceed in relation to the offence in accordance with section 195 or 196.

Procedure if summary trial appears more suitable.

145.(1) If the court decides under section 144 that the offence appears to be more suitable for summary trial, the following provisions of this section apply (unless they are excluded by section 149).

(2) The court must explain to the defendant in ordinary language–

(a) that it appears to the court more suitable for him to be tried summarily for the offence; and

(b) that he can either consent to be so tried or, if he wishes, be tried on indictment.

(3) The defendant may then request an indication ("an indication of sentence") of whether a custodial sentence or non-custodial sentence would be more likely to be imposed if he were to be tried summarily for the offence and to plead guilty.

(4) If the defendant requests an indication of sentence, the court may, but need not, give such an indication.

(5) If the defendant requests and the court gives an indication of sentence, the court must ask the defendant whether he wishes, on the basis of the indication, to reconsider the indication of plea which was given, or is taken to have been given, under section 140 or 141.

(6) If the defendant indicates that he wishes to reconsider the indication under section 140 or 141, the court must ask the defendant whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

(7) If the defendant indicates that he would plead guilty the court must proceed as if–

(a) the proceedings constituted from that time the summary trial of the information; and

(b) section 159(1) was complied with and he pleaded guilty under it.

(8) Subsection (9) applies if–

(a) the court does not give an indication of sentence (whether because the defendant does not request one or because the court does not agree to give one);

(b) the defendant either–

(i) does not indicate, in accordance with subsection (5), that he wishes; or

(ii) indicates, in accordance with subsection (5), that he does not wish, to reconsider the indication of plea under section 140 or 141; or

(c) the defendant does not indicate, in accordance with subsection (6), that he would plead guilty.

(9) The court must ask the defendant whether he consents to be tried summarily or wishes to be tried on indictment and–

(a) if he consents to be tried summarily, must proceed to the summary trial of the information; and

(b) if he does not so consent, must proceed in relation to the offence in accordance with Part 9.

Procedure if summary trial appears more suitable: Supplementary.

146.(1) If the case is dealt with in accordance with section 145(7), a court may not impose a custodial sentence for the offence unless such a sentence was indicated in the indication of sentence referred to in section 145.

(2) Except as provided in subsection (1)–

(a) an indication of sentence is not binding on any court; and

(b) no sentence may be challenged or be the subject of appeal in any court on the ground that it is not consistent with an indication of sentence.

(3) If the court gives an indication of sentence under section 145, it must cause each such indication to be entered in the register.

Procedure if trial on indictment appears more suitable.

147. If the court decides under section 144 that the offence appears to be more suitable for trial on indictment, the court must tell the defendant that the court has decided that it is more suitable for him to be tried on indictment, and must proceed in relation to the offence in accordance with Part 9.

Certain offences to be tried summarily if value involved is small.

148.(1) If the offence charged by the information is one of those listed in Schedule 6 (a "relevant offence"), the court must, before proceeding in accordance with section 144, consider whether, having regard to any representations made by the prosecutor or the defendant, the value involved (as defined in subsection (9)) appears to the court to exceed £2,000.

(2) If, when subsection (1) applies, it appears to the court that, for the offence charged, the value involved does not exceed £2,000, the court must proceed as if the offence were triable only summarily, and sections 144 to 147 do not apply.

(3) If, when subsection (1) applies, it appears to the court that, for the offence charged, the value involved exceeds £2,000, the court must proceed in accordance with section 144 in the ordinary way without further regard to the provisions of this section.

(4) If, when subsection (1) applies, it is for any reason not clear to the court whether, for the offence charged, the value involved does or does not exceed £2,000, subsections (5) and (6) apply.

(5) The court must cause the charge to be written down, if this has not already been done, and read to the defendant, and must explain to him in ordinary language–

(a) that he can, if he wishes, consent to be tried summarily for the offence and that if he consents to be so tried, he will be tried in that way; and

(b) that if he is tried summarily and is convicted by the court, his liability to imprisonment or a fine will be limited as provided in this section.

(6) After explaining to the defendant as provided by subsection (5) the court must ask him whether he consents to be tried summarily and–

(a) if he so consents - must proceed in accordance with subsection (2) as if that subsection applied;

(b) if he does not so consent - must proceed in accordance with subsection (3) as if that subsection applied.

(7) If a person is convicted by the Magistrates' Court of a relevant offence, it is not open to him to appeal to the Supreme Court against the conviction on the ground that the convicting court's decision as to the value involved was mistaken.

(8) If, when subsection (1) applies, the offence charged is one with which the defendant is charged jointly with a person who has not attained the age of 18 years, the reference in that subsection to any representations made by the defendant is to be read as including any representations made by the person under 18.

(9) In this section "the value involved", in relation to any relevant offence, means the value indicated in Schedule 6 and "the material time" means the time of the alleged offence.

(10) If–

(a) the defendant is charged on the same occasion with 2 or more relevant offences and it appears to the court that they constitute or form part of a series of 2 or more offences of the same or a similar character; or

(b) the offence charged consists of incitement to commit 2 or more relevant offences,

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

(11) If, pursuant to this section, the Magistrates' Court proceeds to the summary trial of an information and the defendant is summarily convicted of the offence–

(a) the court may not impose a sentence of imprisonment of more than 3 months or a fine greater than level 4 on the standard scale, except for an offence under section 409 of the Crimes Act 2011 (aggravated vehicle-taking);

(b) section 217 does not apply to the offence;

(c) in paragraph (a), "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

(12) Section 409(8) of the Crimes Act 2011 (which decides when a vehicle is recovered) applies for the purposes of this section as it applies for the purposes of that section.

Power of court, with consent of legally represented defendant, to proceed in his absence.

149.(1) If–

(a) the defendant is legally represented by a person who in his absence signifies to the court the defendant's consent to the proceedings for determining how he is to be tried for the offence being conducted in his absence; and

(b) the court is satisfied that there is good reason for proceeding in the absence of the defendant,

the following provisions of this section apply.

(2) Subject to the following subsections, the court may proceed in the absence of the defendant in accordance with such of the provisions of sections 144 to 148 as are applicable in the circumstances.

(3) If, when subsection (1) of section 148 applies, it appears to the court as mentioned in subsection (4) of that section, subsections (5) and (6) of that section do not apply and the court–

(a) if the defendant's consent to be tried summarily has been or is signified by his legal representative - must proceed in accordance with subsection (2) of that section as if that subsection applied; or

(b) if that consent has not been and is not so signified - must proceed in accordance with subsection (3) of that section as if that subsection applied.

(4) If the court decides under section 144 that the offence appears to be more suitable for summary trial, then–

(a) if the defendant's consent to be tried summarily has been or is signified by the person representing him, section 145 does not apply, and the court must proceed to the summary trial of the information; or

(b) if that consent has not been and is not so signified, section 147 does not apply and the court must proceed to inquire into the information as examining magistrates and may adjourn the proceedings without remanding the defendant.

(5) If the court decides under section 144 that the offence appears to it more suitable for trial on indictment, section 147 does not apply and the court must proceed in relation to the offence in accordance with Part 9.

Summary trial of information against juvenile for either-way offence.

150.(1) If a juvenile appears or is brought before the Magistrates' Court on an information charging him with an either-way offence he must, subject to sections 141 and 142, be tried summarily, unless subsection (2) applies.

(2) The Magistrates' Court may commit a juvenile for trial for an either-way offence if–

(a) the offence is such as is mentioned in section 630 (detention of juveniles for specified period) and the court considers that if he is found guilty of the offence it would be appropriate to sentence him pursuant to subsection (2) of that section;

(b) the juvenile is charged jointly with a person who has attained the age of 18 years and the court considers it necessary in the interests of justice to commit or send them both for trial; or

(c) he is charged with an indictable-only offence at the same time (whether jointly with a person who has attained the age of 18 or not) if the charges for both offences could be joined in the same indictment.

(3) If on trying a person summarily pursuant to subsection (1) the court finds him guilty, it may impose a fine of an amount not exceeding £1000 or may exercise the same powers as it could have exercised if he had been found guilty of an offence for which, but for any provision in Part 21, it could have sentenced him to imprisonment for a term not exceeding–

(a) the maximum term of imprisonment for the offence on conviction on indictment; or

(b) 6 months,

whichever is the less.

(4) In relation to a person under the age of 14 subsection (3) has effect as if for the words "£1000" there were substituted the words "£250".

Juvenile to indicate intention as to plea in certain cases.

151.(1) This section applies if–

(a) a juvenile appears or is brought before the Magistrates' Court on an information charging him with an offence to which section 196 applies; and

(b) but for the application of the following provisions of this section, the court would be required at that stage, by virtue of Part 9 to decide, in relation to the offence, whether to send the person to the Supreme Court for trial (or to decide any matter, the effect of which would be to decide whether he is sent to the Supreme Court for trial).

(2) If this section applies, the court must, before proceeding to make a decision as referred to in subsection (1)(b) (the "relevant decision"), follow the procedure set out in this section.

(3) Everything that the court is required to do under the following provisions of this section must be done with the defendant in court.

(4) The court must cause the charge to be written down, if this has not already been done, and to be read to the defendant.

(5) The court must then explain to the defendant in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty, the court will proceed as described in subsection (7).

(6) The court must then ask the defendant whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

(7) If the defendant indicates that he would plead guilty, the court must proceed as if–

(a) the proceedings constituted from the beginning the summary trial of the information; and

(b) section 159 (Procedure at trial) was complied with and he pleaded guilty under it,

and, accordingly, the court must not proceed to make the relevant decision or to proceed further under Part 9 in relation to the offence.

(8) If the defendant indicates that he would plead not guilty, the court must proceed to make the relevant decision and this section ceases to apply.

(9) If the defendant fails to indicate how he would plead, for the purposes of this section he is to be taken to indicate that he would plead not guilty.

(10) Subject to subsection (7), the following do not for any purpose constitute the taking of a plea–

(a) asking the defendant under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;

(b) an indication by the defendant under this section of how he would plead.

Intention as to plea by juvenile: Absence of defendant.

152.(1) This section has effect if–

(a) a juvenile appears or is brought before the Magistrates' Court on an information charging him with an offence to which section 196 applies;

(b) but for the application of the following provisions of this section, the court would be required at that stage to make one of the decisions referred to in paragraph (b) of section 151(1) ("the relevant decision");

(c) the defendant is legally represented;

(d) the court considers that by reason of the defendant's disorderly conduct before the court it is not practicable for proceedings under section 151 to be conducted in his presence; and

(e) the court considers that it should proceed in the absence of the defendant.

(2) In such a case–

(a) the court must cause the charge to be written down, if this has not already been done, and to be read to the legal representative;

(b) the court must ask the defendant's legal representative whether (if the offence were to proceed to trial) the defendant would plead guilty or not guilty;

(c) if the legal representative indicates that the defendant would plead guilty the court must proceed as if the proceedings constituted from the beginning the summary trial of the information, and as if section 159 (Procedure at trial) was complied with and the defendant pleaded guilty under it;

(d) if the legal representative indicates that the defendant would plead not guilty the court must proceed to make the relevant decision and this section ceases to apply.

(3) If the defendant's legal representative fails to indicate how the defendant would plead, for the purposes of this section he is to be taken to indicate that the defendant would plead not guilty.

(4) Subject to subsection (2)(c), the following do not constitute the taking of a plea–

(a) asking a legal representative under this section whether (if the offence were to proceed to trial) the defendant would plead guilty or not guilty;

(b) an indication by a legal representative under this section of how the defendant would plead.

Intention as to plea by juvenile: Adjournment.

153.(1) The Magistrates' Court when proceeding under section 151 or 152 may adjourn the proceedings at any time, and on doing so on any occasion when the defendant is present may remand the defendant.

(2) If the court remands the defendant, the time fixed for the resumption of proceedings must be that at which he is required to appear or be brought before the court pursuant to the remand.

Power to change from summary trial to committal or sending proceedings.

154.(1) Subsections (2) to (5) have effect if a person who has attained the age of 18 years appears or is brought before the Magistrates' Court on an information charging him with an offence triable either way.

(2) If the court is required under section 145(9) to proceed to the summary trial of the information, the prosecution may apply to the court for the offence to be tried on indictment instead.

(3) An application under subsection (2) must–

(a) be made before the summary trial begins; and

(b) be dealt with by the court before any other application or issue in relation to the summary trial is dealt with.

(4) The court may grant an application under subsection (2) but only if it is satisfied that the sentence which the court would have power to impose for the offence would be inadequate.

(5) If–

(a) the defendant is charged on the same occasion with 2 or more offences; and

(b) it appears to the court that they constitute or form part of a series of 2 or more offences of the same or a similar character,

subsection (4) has effect as if references to the sentence which the court would have power to impose for the offence were a reference to the maximum aggregate sentence which the court would have power to impose for all of the offences taken together.

(6) If the court grants an application under subsection (2), it must proceed in relation to the offence in accordance with Part 9.

(7) If the court adjourns the hearing under subsection (2) it may (if it thinks fit) do so without remanding the defendant.

Power to issue summons to defendant in certain circumstances.

155.(1) If, in the circumstances mentioned in section 149(1)(a), the court is not satisfied that there is good reason for proceeding in the absence of the defendant, the court may issue a summons directed to the defendant requiring his presence before the court.

(2) In a case within subsection (1), if the defendant is not present at the time appointed for the proceedings under section 144 or 148, the court may issue a warrant for his arrest.

Effect of dismissal of information.

156.(1) If on the summary trial of an information for an offence triable either way the court dismisses the information, the dismissal has the same effect as an acquittal on indictment.

(2) If, on the summary trial of an information for an offence that would, apart from the provisions of this Part, be an indictable-only offence, the court dismisses the information, the dismissal has the same effect as an acquittal on indictment, without affecting the right of any party to appeal to the Supreme Court by way of case stated.

Duty of magistrates in relation to indictable-only offences.

157. If on the trial of an information for an offence the court becomes aware that the offence is an indictable-only offence or a relevant offence for the purposes of Part 9, the court must cease to enquire into the offence as examining magistrates and must send the case to the Supreme Court for trial in accordance with Part 9.

Summary trial

Time limitation.

158.(1) Except as otherwise expressly provided by any law, the Magistrates' Court must not try an information or hear a complaint on a criminal matter unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed or the matter of complaint arose.

(2) Nothing in–

(a) subsection (1); or

(b) any other provision of an enactment (other than subsection (3) of this section) which, as regards any offence to which it applies, would but for this section impose a time-limit on the power of the Magistrates' Court to try an information summarily or impose a limitation on the time for taking summary proceedings,

applies in relation to any indictable offence.

(3) If, as regards any indictable offence, there is imposed by any enactment a limitation on the time for taking proceedings on indictment for that offence, no summary proceedings for that offence may be taken after the latest time for taking proceedings on indictment.

Procedure at trial.

159.(1) On the summary trial of an information, the court must, 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, must either convict the defendant or dismiss the information.

(3) If the defendant pleads guilty, the court may convict him without hearing evidence.

Adjournment.

160.(1) The Magistrates' Court may adjourn a trial–

(a) at any time, whether before or after beginning to try an information;

(b) despite anything in this Act - when composed of a single magistrate.

(2) When adjourning a case the court may–

(a) fix the time and place at which the trial is to be resumed; or

(b) unless it remands the defendant, leave the time and place to be decided later by the court;

but the trial must not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice of the time and place.

(3) The Magistrates' Court may, for the purpose of enabling inquiries to be made or 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.

(4) An adjournment under subsection (3) must not be for more than 3 weeks at a time.

(5) On adjourning the trial of an information the court may remand the defendant and, if the defendant is an adult, must do so if the offence is triable either way and–

(a) when the defendant first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) the defendant has been remanded at any time in the course of proceedings on the information.

(6) If the court remands the defendant, the time fixed for the resumption of the trial must be that at which he is required to appear or be brought before the court pursuant to the remand.

(7) A Juvenile Court is not required to adjourn any proceedings for an offence at any stage by reason only of the fact–

(a) that the court commits the defendant for trial for another offence; or

(b) that the defendant is charged with another offence.

Non-appearance of prosecutor.

161.(1) If 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–

(a) dismiss the information; or

(b) if evidence has been received on a previous occasion - proceed in the absence of the prosecutor.

(2) If, instead of dismissing the information or proceeding in the absence of the prosecutor, the court adjourns the trial, it must not remand the defendant in custody unless he–

(a) has been brought from custody; or

(b) cannot be remanded on bail by reason of his failure to enter into a recognizance or to find sureties.

Non-appearance of defendant: General provisions.

162.(1) If 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 this section–

(a) if the defendant is a juvenile - proceed in his absence; and

(b) if the defendant is an adult - proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so.

(2) The court must not proceed in the absence of the defendant if it considers that there is an acceptable reason for his failure to appear.

(3) In proceedings to which this subsection applies, the court must not begin to try the information in the absence of the defendant unless–

(a) it is proved to the satisfaction of the court, on oath or in some other prescribed manner**,** 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

(b) the defendant has appeared on a previous occasion to answer to the information.

(4) In proceedings to which this subsection applies, the court must not in a person's absence–

(a) sentence him to imprisonment or any other form of detention;

(b) order that a suspended sentence passed on him is to take effect; or

(c) impose any disqualification on him.

(5) Subsections (3) and (4) apply to–

(a) proceedings instituted by an information, where a summons has been issued; and

(b) proceedings instituted by a written charge.

(6) Nothing in this section requires the court to enquire into the reasons for the defendant's failure to appear before deciding whether to proceed in his absence.

(7) The court must–

(a) state in open court its reasons for not proceeding under this section in the absence of an adult defendant; and

(b) enter the reasons in the register.

Non-appearance of defendant: Issue of warrant.

163.(1) Subject to this section, if the court, instead of proceeding in the absence of the defendant, adjourns or further adjourns the trial, the court may issue a warrant for his arrest.

(2) If a summons has been issued, the court must not issue a warrant under this section unless the condition in either subsection (3) or (4) is fulfilled.

(3) The condition in this subsection is that it is proved to the satisfaction of the court, on oath or in some other prescribed manner, 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.

(4) The condition in this subsection is that–

(a) the adjournment now being made is a second or subsequent adjournment of the trial;

(b) the defendant was present on the last (or only) occasion when the trial was adjourned; and

(c) on that occasion the court fixed the time for the hearing at which the adjournment is now being made.

(5) A warrant for the arrest of an adult must not be issued under this section unless–

(a) the offence to which the warrant relates is a recordable offence; or

(b) the court, having convicted the defendant, proposes to impose a disqualification on him.

(6) A warrant for the arrest of a juvenile must not be issued under this section unless the court, having convicted the defendant, proposes to impose a disqualification on him.

(7) This section does not apply to an adjournment on the occasion of the defendant's conviction in his absence under section 165 or to an adjournment required by subsection (3) of that section.

Non-appearance of both parties.

164.(1) If 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–

(a) dismiss the information; or

(b) if evidence has been received on a previous occasion - proceed in their absence.

(2) This section is subject to section 162.

Plea of guilty in absence of defendant.

165.(1) This section applies if a summons has been issued requiring a person to appear before the Magistrates' Court to answer an information as described in subsection (2) and the clerk of the court is notified by or on behalf of the prosecutor that–

(a) a notice containing a prescribed statement of the effect of this section; and

(b) a concise statement in the prescribed form of the facts relating to the charge that will be placed before the court by or on behalf of the prosecutor if the defendant pleads guilty without appearing before the court,

have been served upon the defendant with the summons.

(2) The information must be for a summary offence that is not an offence triable also on indictment.

(3) If the clerk of the court receives written notice from the defendant or a legal representative acting on his behalf that the defendant wishes to plead guilty without appearing before the court–

(a) the clerk must inform the prosecutor of the receipt of the notice; and

(b) if at the time and place appointed for the trial or adjourned trial of the information the defendant 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–

(i) 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, as if both parties had appeared and the defendant had pleaded guilty; or

(ii) if the court decides not to proceed as in paragraph (i), the court must adjourn or further adjourn the trial for the purpose of dealing with the information as if the notification had not been given.

(4) If at any time before the hearing the clerk of the court receives a written notice by or on behalf of the defendant that the defendant wishes to withdraw the notification, the clerk must inform the prosecutor and the court must deal with the information as if this section were not in force.

(5) Before accepting the plea of guilty and convicting the defendant in his absence under this section, the court must 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.

(6) If the court proceeds under this section to hear and dispose of the case in the absence of the defendant, the court–

(a) must 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 mentioned in subsection (1) except on a resumption of the trial after an adjournment under subsection (3); and

(b) must not without adjourning under subsection (3) sentence him to any term of imprisonment or to any other form of detention, or order him to be subject to any disqualification.

(7) Section 160(4) does not apply to an adjournment pursuant to subsection (3)(b) of this section or to an adjournment when the defendant is convicted in his absence under subsection (3), but, in relation to such an adjournment, the notice required by section 160(2) must include notice of the reason for the adjournment.

(8) This section does not apply to proceedings in the Juvenile Court.

Application of section 165 if defendant appears.

166.(1) If the clerk of the court has received a notification as mentioned in section 165(3) but the defendant nonetheless appears before the court at the time and place appointed for the trial or adjourned trial, the court may, if he consents, proceed under subsection (5) of that section as if he were absent.

(2) If the clerk of the court has not received such a notification and the defendant appears before the court at that time and place and informs the court that he desires to plead guilty, the court may, if he consents, proceed under section 165(5) as if he were absent and the clerk had received such a notification.

(3) For the purposes of subsections (1) and (2), subsections (5) and (6) of section 165 apply with the modifications mentioned in subsection (4) or (5), as the case may be, of this section.

(4) The modifications for the purposes of subsection (1) are that–

(a) before accepting the plea of guilty and convicting the defendant under subsection (3) of section 165, the court must give the defendant an opportunity to make an oral submission with a view to mitigation of sentence; and

(b) if he makes such a submission, subsection (6)(b) of that section does not apply.

(5) The modifications for the purposes of subsection (2) are that–

(a) subsection (3) of section 165 applies as if any reference to the notification under subsection (1) of that section were a reference to the consent under subsection (2) of this section; and

(b) before accepting the plea of guilty and convicting the defendant under subsection (3) of that section, the court must give the defendant an opportunity to make an oral submission with a view to mitigation of sentence.

Remands by the Magistrates' Court

Remand: General principles.

167.(1) If the Magistrates' Court has power to remand any person, then, subject to Part 7 and to any other enactment modifying that power, the court may–

(a) remand him in custody to be brought before the court, subject to section 168, at the end of the period of remand or at any earlier time the court requires;

(b) if it is inquiring into or trying an offence alleged to have been committed by that person or has convicted him of an offence–

(i) remand him on bail in accordance with Part 7, by directing him to appear as provided in section 169; or

(ii) remand him on bail by taking from him a recognizance (with or without sureties) conditioned as provided in that section.

(2) In a case falling within subsection (1)(b)(ii), the court may, instead of taking recognizances in accordance with that paragraph, fix the amount of the recognizances with a view to their being taken subsequently.

(3) If–

(a) on adjourning a case under this Part the court proposes to remand or further remand a person in custody;

(b) he is before the court; and

(c) he is legally represented,

the court must–

(a) explain the effect of sections 168(1) and (2) to him in ordinary language; and

(b) inform him in ordinary language that, despite the procedure for a remand without his being brought before the court, he will be brought before the court for the hearing and decision of at least every fourth application for his remand, and of every application for his remand if it appears to the court that he has no legal representative acting for him in the case.

(4) After explaining to the defendant as provided by subsection (3) the court must ask him whether he consents to the hearing and decision of such applications in his absence.

(5) If the court fixes the amount of a recognizance with a view to its being taken subsequently, the court must in the meantime commit the person so remanded to custody in accordance with subsection (1)(a).

(6) If a person is brought before the court after remand, the court may further remand him.

(7) The provisions of this Part as to remand are in addition to and do not derogate from the provisions as to remand in Part 28.

Remand in custody.

168.(1) Subject to subsection (2), if a person has been remanded in custody and the remand was not a remand under section 170 for a period exceeding 8 clear days, the Magistrates' Court may further remand him (otherwise than in the exercise of the power conferred by that section) on an adjournment under this Part without his being brought before it if it is satisfied–

(a) that he gave his consent to the hearing and decision in his absence of any application for his remand on an adjournment of the case under this Part;

(b) that he has not by virtue of this subsection been remanded without being brought before the court on more than 2 such applications immediately preceding the application which the court is hearing; and

(c) that he has not withdrawn his consent to their being so heard and decided.

(2) The court may not exercise the power conferred by subsection (1) if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates has no legal representative in the case.

(3) If–

(a) a person has been remanded in custody on an adjournment of a case under this Part;

(b) an application is subsequently made for his further remand on such an adjournment; and

(c) the court is not satisfied as mentioned in subsection (1),

the court must adjourn the case and remand him in custody for the period for which it stands adjourned.

(4) An adjournment under subsection (3) must be for the shortest period that appears to the court to make it possible for the defendant to be brought before it.

(5) If–

(a) on an adjournment of a case under this Part a person has been remanded in custody without being brought before the court; and

(b) it subsequently appears to the court that he ought not to have been remanded in custody in his absence,

the court must require him to be brought before it at the earliest time that appears to the court to be possible.

Remand on bail.

169.(1) If a person is remanded on bail under section 167(1) the Magistrates' Court may direct him to appear, or direct that his recognizance be conditioned for his appearance–

(a) before the court at the end of the period of remand; or

(b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned.

(2) If the court remands a person on bail conditionally on his providing a surety during an inquiry into an offence alleged to have been committed by him, it may direct that the recognizance of the surety be conditioned to ensure that the person so bailed appears–

(a) at every time to which during the course of the proceedings the hearing is from time to time adjourned; and

(b) before the Supreme Court if the person is committed or sent for trial there.

(3) If a person is directed to appear or a recognizance is conditioned for a person's appearance in accordance with subsection (1) or (2), the fixing of the time for him next to appear is a remand; but nothing in this subsection or those subsections deprives the court of power at any subsequent hearing to remand him afresh.

(4) Subject to sections 170 and 171, the Magistrates' Court must not remand a person for a period exceeding 8 clear days, except that–

(a) if the court remands him on bail, it may remand him for a longer period if he and the prosecutor consent;

(b) if the court adjourns a trial under section 160(3) or section 665 (Remand for report), the court may remand him for the period of the adjournment;

(c) if a person is charged with an offence triable either way, then, if it falls to the court to try the case summarily but the court is not at the time constituted so as to be able to proceed with the trial, the court may remand him until the next occasion on which it can be so constituted, even if the remand is for a period exceeding 8 clear days.

(5) If a remand is for a period not exceeding 3 clear days, the court may commit him to detention at a designated police station, but–

(a) he must only be kept in such detention if there is a need for him to be so detained for the purposes of inquiries into other offences;

(b) if kept in such detention, he must be brought back before the Magistrates' Court as soon as that need ceases;

(c) he must be treated as a person in police detention to whom the duties under section 62 (Responsibilities in relation to persons detained) relate;

(d) his detention is subject to periodic review at the times set out in section 63 (Review of police detention).

Remands in custody for more than 8 days.

170.(1) The Magistrates' Court may remand a defendant in custody for a period exceeding 8 clear days if–

(a) it has previously remanded him in custody for the same offence; and

(b) he is before the court,

but only if, after affording the parties an opportunity to make representations, the court has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place.

(2) A further remand under this section may only be–

(a) for a period ending not later than the date set under subsection (1); or

(b) for a period of 28 clear days,

whichever is the less.

(3) This section does not affect the right of a defendant to apply for bail during the period of the remand.

Further remand.

171.(1) If the Magistrates' Court is satisfied that a 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, section 116(1) and (2) apply.

(2) If a person remanded on bail in criminal proceedings is bound to appear before the Magistrates' Court at any time and the court has no power to remand him under subsection (1), section 116(3) applies.

(3) If the Magistrates' Court commits a person for trial on bail and the recognizance of any surety for him has been conditioned in accordance with section 169(2)(a), the court may, in the absence of the surety, enlarge the surety's recognizance so that he is bound to ensure that the person so committed for trial appears also before the Supreme Court.

Remand of defendant already in custody.

172.(1) If the Magistrates' Court remands a defendant in custody and he is already detained under a custodial sentence, the period for which he is remanded may be up to 28 clear days, subject to subsection (2).

(2) If the Magistrates' Court is considering remanding a person pursuant to subsection (1)–

(a) it must inquire as to the expected date of his release from the current detention; and

(b) if it appears that it will be before 28 clear days have expired, the court must not remand the person in custody for more than 8 clear days or (if longer) a period ending with that date.

Recognizances for good behaviour

Binding over.

173.(1) The power of the Magistrates' Court on the complaint of any person to order 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 must be exercised by order on complaint.

(2) If a 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 up to 6 months or until he sooner complies with the order.

Discharge of recognizance on complaint of surety.

174.(1) On complaint being made to a magistrate 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 magistrate may issue–

(a) a warrant to arrest the principal and bring him before the Magistrates' Court; or

(b) a summons requiring the principal to appear before the court.

(2) A magistrate must not issue a warrant under subsection (1) unless the complaint is in writing and substantiated on oath.

(3) When the principal appears or is brought before the Magistrates' Court pursuant to a summons or warrant under subsection (1), the court may, unless it orders 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.

175.(1) If 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–

(a) reduce the amount in which it is proposed that any surety should be bound; or

(b) dispense with any of the sureties or otherwise deal with the case as it thinks just.

(2) Subsection (1) does not apply in relation to a person granted bail in criminal proceedings.

Postponement of taking recognizance.

176.(1) If 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, after which the recognizance may be taken by any person prescribed.

(2) This section does not enable the Magistrates' Court to alter the amount of a recognizance fixed by the Supreme Court.

Forfeiture of recognizance.

177.(1) If–

(a) a recognizance to keep the peace or to be of good behaviour has been entered into before the Magistrates' Court; or

(b) 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

(c) the recognizance appears to the court to be forfeited,

the court may, subject to subsection (2), declare the recognizance to be forfeited and order the persons bound by it, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound.

(2) If a recognizance is conditioned to keep the peace or to be of good behaviour, the court must not declare it forfeited except by order made on complaint.

(3) The court which declares the recognizance to be forfeited may, instead of ordering a person to pay the whole sum in which he is bound–

(a) order him to pay part only of the sum; or

(b) remit the sum.

(4) Subject to subsection (5), payment of any sum ordered to be paid under this section, including any costs awarded against the defendant, may be enforced, and any such sum must be applied, as if it were a fine and as if the adjudication were a summary conviction.

(5) At any time before–

(a) the issue of a warrant of commitment to enforce payment of the sum under subsection (4); or

(b) the sale of goods under a warrant of distress to satisfy the sum,

the court may reduce or remit the sum absolutely or on conditions the court thinks just.

Proceedings against corporations

Representatives of corporations.

178.(1) On the trial by the Magistrates' Court of an information against a corporation, a legal representative may on behalf of the corporation enter a plea of guilty or not guilty.

(2) A notice for the purposes of section 165(3) or (4) may be given on behalf of the corporation by a director or the secretary of the corporation, and that subsection applies in relation to a notice so given as it applies to a notice given by an individual defendant.

(3) A legal representative may on behalf of a corporation–

(a) make before examining magistrates any representations that could be made by a defendant who is not a corporation;

(b) consent to the corporation being tried summarily;

(c) enter a plea of guilty or not guilty on the trial by the Magistrates' Court of an information.

(4) If a legal representative appears, any requirement of this Act that anything must be done in the presence of the defendant, or be read or said to the defendant, is to be construed as a requirement that that thing is to be done in the presence of the representative or read or said to the representative.

(5) If a legal representative does not appear, any requirement referred to in subsection (4) and any requirement that the consent of the defendant must be obtained for summary trial, does not apply.

(6) If a corporation and an individual who has attained the age of 18 are jointly charged before the Magistrates' Court with an offence triable either way, the court must not try either defendant summarily unless each of them consents to be so tried.

Committal for trial of a corporation.

179.(1) The Magistrates' Court may commit a corporation for trial by an order in writing empowering the prosecutor to prefer a bill of indictment in respect of the offence named in the order.

(2) An order under subsection (1) does not prohibit the inclusion in the indictment of counts that under this Act may be included in the indictment in substitution for or in addition to counts charging the offence named in the order.

(3) The provisions of this Act relating to committal to the Supreme Court for sentence do not apply to a corporation.

(4) Subject to the preceding subsections, the provisions of this Act relating to the inquiry into and trial of indictable offences and the trial by jury of certain summary offences apply to a corporation as they apply to an adult.

(5) Section 178 as to the powers of and appearance by a legal representative applies to a legal representative for the purposes of this section as it applies to a legal representative for the purposes of that section.

(6) This section does not affect the provisions of Part 9 which relate to the sending for trial of a corporation.

Miscellaneous provisions

Power of the court to re-open cases to rectify mistakes, etc.

180.(1) The Magistrates' Court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so, including replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

(2) The power conferred on the Magistrates' Court by subsection (1) is not exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if–

(a) the Supreme Court has decided an appeal against–

(i) that sentence or order;

(ii) the conviction in respect of which that sentence or order was imposed or made; or

(iii) any other sentence or order imposed or made by the Magistrates' Court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or

(b) the Supreme Court has decided a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

(3) If a person is convicted by the Magistrates' Court and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different magistrates, the court may so direct.

(4) The power conferred on the Magistrates' Court by subsection (3) is not exercisable in relation to a conviction if–

(a) the Supreme Court has decided an appeal against–

(i) the conviction; or

(ii) any sentence or order imposed or made by the Magistrates' Court when dealing with the offender in respect of the conviction; or

(b) the Supreme Court has decided a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.

(5) If a court gives a direction under subsection (3)–

(a) the conviction and any sentence or other order imposed or made in consequence of it is of no effect; and

(b) section 160 (Adjournment) applies as if the trial of the person in question had been adjourned.

(6) If a sentence or order is varied under subsection (1), the sentence or other order, as so varied, takes effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

Functions of the court when a person is brought before it for appearance before the Supreme Court.

181. If a person in custody pursuant to a warrant issued by the Supreme Court with a view to his appearance before the Supreme Court is brought before the Magistrates' Court pursuant to section 120–

(a) the Magistrates' Court must commit him in custody or release him on bail until he can be brought or appear before the Supreme Court at the time appointed by the Supreme Court;

(b) if the warrant is endorsed for bail, but the person in custody is unable to satisfy the conditions endorsed, the Magistrates' Court may vary those conditions, if satisfied that it is proper to do so.

Application of fines, etc.

182.(1) The clerk of the Magistrates' Court must apply moneys received by him on account of a sum ordered to be paid on a summary conviction as follows–

(a) in the first place in payment of any costs ordered on the conviction to be paid to the prosecutor;

(b) in the second place in payment of any damages or compensation so ordered 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.

(2) Subject to any enactment relating to customs or excise, anything other than money forfeited on a conviction by the Magistrates' Court, or the forfeiture of which may be enforced by the Magistrates' Court, must be sold or otherwise disposed of in a manner the court directs, and the proceeds applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded.

Magistrates' power to summon witnesses, etc.

183.(1) If a magistrate is satisfied that–

(a) any person in Gibraltar is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the summary trial of an information or hearing of a complaint by the Magistrates' Court; and

(b) that person will not voluntarily attend as a witness or will not voluntarily produce the document or thing,

the magistrate must issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) If a magistrate is satisfied by evidence on oath of the matters mentioned in subsection (1), and also that it is probable that a summons under that subsection would not procure the attendance of the person in question, the magistrate may instead of issuing a summons issue a warrant to arrest that person and bring him before the Magistrates' Court at a time specified in the warrant.

(3) A summons may also be issued under subsection (1) if the magistrate is satisfied that the person in question is outside Gibraltar, but no warrant may be issued under subsection (2) unless the magistrate is satisfied by evidence on oath that the person in question is in Gibraltar.

(4) A magistrate may refuse to issue a summons under subsection (1) in relation to the summary trial of an information if he is not satisfied that an application for the summons was made by a party to the case as soon as reasonably practicable after the defendant pleaded not guilty.

(5) In relation to the summary trial of an information, subsection (2) has effect as if the reference to the matters mentioned in subsection (1) included a reference to the matter mentioned in subsection (4).

(6) On the failure of any person to attend before the Magistrates' Court in answer to a summons under this section, if–

(a) the court is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and

(b) it is proved on oath, or in some other prescribed manner, that he has been duly served with the summons, and that a sum calculated in accordance with rules of court has been paid or tendered to him for costs and expenses; and

(c) it appears to the court that there is no just excuse for the failure,

the court may issue a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

(7) If any person attending or brought before the Magistrates' Court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may–

(a) commit him to custody for up to 28 days or until he sooner gives evidence or produces the document or thing;

(b) impose on him a fine at level 4 on the standard scale; or

(c) commit him to custody under paragraph (a) and fine him under paragraph (b).

(8) A fine imposed under subsection (7) is, for the purposes of any enactment, a sum adjudged to be paid on a conviction.

PART 9 – COMMITTAL OR SENDING FOR TRIAL

Committal for trial to the Supreme Court

Proceedings before examining magistrates.

184.(1) Examining magistrates must sit in open court unless–

(a) an enactment contains an express provision to the contrary;

(b) 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) Except as otherwise provided by any enactment, evidence given before examining magistrates must be given in the presence of the defendant.

(3) Examining magistrates may allow evidence to be tendered before them in the absence of the defendant if–

(a) they consider that by reason of his disorderly conduct before them it is not practicable for the evidence to be tendered in his presence; or

(b) he cannot be present for reasons of health but is legally represented and has consented to the evidence being tendered in his absence.

(4) The functions of the Magistrates' Court under this Part may be discharged by a single magistrate.

Adjournments.

185.(1) The Magistrates' Court may, before beginning to inquire into an offence as examining magistrates, or at any time during the inquiry, adjourn the hearing, and if it does so must remand the defendant.

(2) The court must, when adjourning, fix the time and place at which the hearing is to be resumed, and the time fixed must be that at which the defendant is required to appear or be brought before the court pursuant to the remand.

Evidence which is admissible.

186. Evidence is only admissible by the Magistrates' Court inquiring into an offence as examining magistrates if it is tendered by or on behalf of the prosecutor, and consists of–

(a) written statements complying with section 187;

(b) the documents or other exhibits (if any) referred to in such statements;

(c) depositions complying with section 188;

(d) the documents or other exhibits (if any) referred to in such depositions;

(e) statements complying with section 189;

(f) documents falling within section 190.

Written statements.

187.(1) For the purposes of section 186 a written statement complies with this section if–

(a) the conditions falling within subsection (2) are met; and

(b) such of the conditions falling within subsection (3) as apply are met.

(2) The conditions falling within this subsection are that–

(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 prosecutor, to each of the defendants.

(3) The conditions falling within this subsection are that–

(a) if the statement is made by a person under 18 years old, it gives his age;

(b) if it is made by a person who cannot read it, it is read to him before he signs it and is accompanied by a declaration by the person who so read the statement to the effect that it was so read;

(c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.

(4) So much of any statement as is admitted in evidence by virtue of this section must, unless the court commits the defendant for trial by virtue of section 193 or the court otherwise directs, be read aloud at the hearing; and if the court so directs an account must be given orally of so much of any statement as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section is to be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

Depositions.

188.(1) For the purposes of section 186 a deposition complies with this section if–

(a) a copy of it is sent to the prosecutor;

(b) the condition falling within subsection (2) is met; and

(c) the condition falling within subsection (3) is met, in a case where it applies.

(2) The condition falling within this subsection is that before the court begins to inquire into the offence concerned as examining magistrates a copy of the deposition is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.

(3) The condition falling within this subsection is that, if the deposition refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2) is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.

(4) So much of any deposition as is admitted in evidence by virtue of this section must, unless the court commits the defendant for trial by virtue of section 193 or the court otherwise directs, be read aloud at the hearing; and if the court so directs an account must be given orally of so much of any deposition as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this section is to be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition.

Statements.

189.(1) For the purposes of section 186 a statement complies with this section if–

(a) it is admissible in evidence under Part 17; and

(b) before the committal proceedings begin, the prosecutor notifies the court and the defendant or defendants that he believes the statement is so admissible.

(2) In a notice under subsection (1)(b) the prosecutor must–

(a) state that his belief is based on information available to him at the time he makes the notification,

(b) state that he has reasonable grounds for his belief; and

(c) give the reasons for his belief.

(3) When the court or a defendant is notified as mentioned in subsection (1)(b) a copy of the statement must be given, by or on behalf of the prosecutor, to the court and the defendant.

(4) So much of any statement as is in writing and is admitted in evidence by virtue of this section must, unless the court commits the defendant for trial by virtue of section 193 or the court otherwise directs, be read aloud at the hearing; and if the court so directs an account must be given orally of so much of any statement as is not read aloud.

Other documents.

190.(1) The following documents fall within this section–

(a) any document which by virtue of any enactment is evidence in proceedings before the Magistrates' Court inquiring into an offence as examining magistrates;

(b) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings;

(c) any document which by virtue of any enactment may be considered in such proceedings;

(d) any document whose production constitutes proof in such proceedings by virtue of any enactment;

(e) any document by the production of which evidence may be given in such proceedings by virtue of any enactment.

(2) In subsection (1)–

(a) references to evidence include references to *prima facie* evidence;

(b) references to any enactment include references to any provision of this Act.

(3) So much of any document as is admitted in evidence by virtue of this section must, unless the court commits the defendant for trial by virtue of section 193 or the court otherwise directs, be read aloud at the

hearing; and if the court so directs an account must be given orally of so much of any document as is not read aloud.

Proof by production of copy.

191.(1) If a statement, deposition or document is admissible in evidence by virtue of section 187, 188, 189, or 190 it may be proved by the production of–

(a) the statement, deposition or document; or

(b) a copy of it or the material part of it.

(2) Subsection (1)(b) applies whether or not the statement, deposition or document is still in existence.

(3) It is immaterial for the purposes of this section how many removes there are between a copy and the original.

Committal or discharge.

192.(1) Subject to this Act and any other law relating to the summary trial of indictable offences, if the Magistrates' Court inquiring into an offence as examining magistrates is of opinion, on consideration of the evidence, that there is sufficient evidence to put the defendant upon trial by jury for an indictable offence, the court must commit him to the Supreme Court for trial.

(2) If the court inquiring as mentioned in subsection (1) is not of the opinion mentioned in that subsection, it must, if the defendant is not in custody for any other cause than the offence under inquiry, discharge him.

(3) The court may commit a defendant for trial–

(a) in custody, by committing him to custody there to be safely kept until delivered in due course of law; or

(b) subject to Part 7 on bail, 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.

(4) If the court commits a defendant on bail it may, instead of taking recognizances in accordance with subsection (3)(b)–

(a) fix the amount of the recognizances with a view to their being taken subsequently; and

(b) in the meantime commit the defendant to custody in accordance with subsection (3)(a).

(5) If the court has committed a person to custody in accordance with subsection (3)(a) 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 a recognizance as mentioned in subsection (3)(b).

Committal without consideration of evidence.

193.(1) If the Magistrates' Court inquiring into an offence as examining magistrates is satisfied that all the evidence tendered by or on behalf of the prosecutor falls within section 186, it may commit the defendant for trial for the offence without consideration of the contents of any statements, depositions or other documents, and without consideration of any exhibits which are not documents, unless–

(a) the defendant or one of the defendants has no legal representative acting for him in the case; or

(b) a legal representative for the defendant or one of the defendants, as the case may be, has requested the court to consider a submission that there is insufficient evidence to put that defendant on trial by jury for the offence.

(2) Section 192(1) does not apply to a committal for trial under this section.

Public notice of outcome.

194.(1) If the Magistrates' Court acting as examining magistrates commits any person for trial or decides to discharge him, the clerk of the court must, 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) if the court so commits him - stating the charge or charges on which he is committed;

(c) if the court decides to discharge him - describing the offence charged and stating that it has so decided.

(2) This section has effect subject to section 204, section 466 (Restriction on reporting of identity of victims of sexual offences) and section 469 (Witness anonymity orders).

(3) A notice displayed pursuant to subsection (1) must not contain the name or address of any person under the age of 18 years unless the examining magistrates have stated that in their opinion he should be mentioned in it for the purpose of avoiding injustice to him.

(4) The Magistrates' Court must send a notice (a "notice of committal") of the offence or offences for which a person is committed under sections 184 to 193 to the defendant and to the Supreme Court, together with the depositions or statements, and section 199 applies to such a notice to the extent practicable.

Sending for trial to the Supreme Court

Sending for trial: Adults.

195.(1) If an adult appears or is brought before the Magistrates' Court charged with an offence to which this section applies (a "relevant offence"), the court must, subject to section 198(4), send him forthwith to the Supreme Court for trial–

(a) for that offence; and

(b) for any other offence with which he is charged which fulfils the requisite conditions.

(2) If an adult who has been sent for trial under subsection (1) subsequently appears or is brought before the Magistrates' Court charged with an offence which fulfils the requisite conditions, the court may send him forthwith to the Supreme Court for trial for that offence.

(3) If–

(a) the court sends an adult for trial under subsection (1);

(b) another adult appears or is brought before the court on the same or a subsequent occasion charged jointly with him with an either-way offence; and

(c) that offence appears to the court to be related to the relevant offence,

the court must if it is the same occasion, and may if it is a subsequent occasion, send the other adult forthwith to the Supreme Court for trial for the either-way offence.

(4) If a court sends an adult for trial under subsection (3), it must at the same time send him to the Supreme Court for trial for any other offence with which he is charged which fulfils the requisite conditions.

Sending for trial: Juveniles.

196.(1) If a juvenile appears or is brought before the Magistrates' Court charged with a relevant offence, the court must, subject to section 198(4), send him forthwith to the Supreme Court for trial for the offence.

(2) If a court sends a juvenile for trial under subsection (1), it may at the same time send him to the Supreme Court for trial for any other offence with which he is charged which fulfils the requisite conditions.

(3) If–

(a) the court sends an adult for trial under section 195 on a relevant offence; and

(b) a juvenile appears or is brought before the court on the same or a subsequent occasion charged jointly with the adult with an indictable offence which appears to the court to be related to that offence,

the court must, if it considers it necessary in the interests of justice to do so, send the juvenile to the Supreme Court for trial for the indictable offence.

(4) If a juvenile who has been sent for trial under subsection (1) or (2) subsequently appears or is brought before the Magistrates' Court charged with an offence which fulfils the requisite conditions, the court may send him forthwith to the Supreme Court for trial for that offence.

(5) Subsections (1) to (4) are subject to section 150 (which provides for certain cases involving juveniles to be tried summarily).

(6) If–

(a) the court sends a juvenile ('A') for trial under subsection (1); and

(b) an adult appears or is brought before the court on the same or a subsequent occasion charged jointly with A with an either-way offence for which A is sent for trial under subsection (2), or an either-way offence which appears to the court to be related to that offence,

the court must if it is the same occasion, and may if it is a subsequent occasion, send the adult forthwith to the Supreme Court for trial for the either-way offence.

(7) If the court sends an adult for trial under subsection (6), it must at the same time send him to the Supreme Court for trial for any either-way or summary offence with which he is charged and which fulfils the requisite conditions.

Sending for trial: Supplementary.

197.(1) An offence fulfils the requisite conditions if–

(a) it appears to the court to be related to the relevant offence; and

(b) in the case of a summary offence, it is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.

(2) The trial of the information charging any summary offence for which a person is sent for trial under this section is to be treated as if the court had adjourned it under section 160 and had not fixed the time and place for its resumption.

(3) The court must treat as an indictable offence for the purposes of section 195 or 196 an offence which is mentioned in Schedule 6 unless it is clear to the court, having regard to any representations made by the prosecutor or the defendant, that the value involved does not exceed the relevant sum.

(4) The functions of the Magistrates' Court under this Part may be discharged by a single magistrate.

(5) For the purposes of this Part–

(a) references to an adult include references to a corporation;

(b) an either-way offence is related to a relevant offence if the charge for the either-way offence could be joined in the same indictment as the charge for the indictable-only offence;

(c) a summary offence is related to a relevant offence if it arises out of circumstances which are the same as or connected with those giving rise to the relevant offence.

(6) For the purposes of any law relating to the attendance of witnesses–

(a) the Magistrates' Court is to be treated as examining magistrates; and

(b) a person indicated in the notice of sending as a proposed witness is to be treated as a person who has been examined by the court.

Relevant offences.

198.(1) The offences to which sections 195 and 196 apply are–

(a) indictable-only offences;

(b) complex financial offences;

(c) vulnerable child witness offences.

(2) A complex financial offence is a financial offence (as defined in Schedule 4 to the Supreme Court Act) which in the opinion of the Attorney-General is of such seriousness and complexity that it is appropriate that the management of the case should without delay be taken over by the Supreme Court.

(3) A vulnerable child witness offence is one which involves a child who is alleged–

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

(b) to have witnessed the commission of the offence,

being called as a witness at the trial, and in which, in the opinion of the Attorney-General, for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Supreme Court.

(4) For a case to be sent as a complex fraud or vulnerable child witness case, before the Magistrates' Court begins to inquire into the case as examining magistrates the Attorney-General must gives the court a notice (in

this Part referred to as a "notice of transfer") certifying the opinion mentioned in subsection (2) or (3) as the case may be.

(5) The Attorney-General's decision to give notice of transfer is not subject to appeal or liable to be questioned in any court.

Notice of sending and other documents.

199.(1) The Magistrates' Court must send a notice (a "notice of sending") of the offence or offences for which a person is sent for trial under section 195 or 196 to the defendant and to the Supreme Court.

(2) The notice of sending must specify for each offence–

(a) the nature of the charge or charges;

(b) the provision of this Part under which the person is so sent; and

(c) if applicable, the offence to which that offence appears to the court to be related.

(3) Copies of the documents containing the evidence on which the charge or charges are based must–

(a) be served on the person who is sent for trial; and

(b) be given to the Supreme Court,

within 70 days of the date on which the person was sent for trial or, in the case of a person remanded in custody, 50 days after that date.

(4) The judge may at his discretion extend or further extend the period specified in subsection (3).

(5) There is no requirement for copies of documents to accompany the copy of the notice of sending if they are referred to, in documents sent with the notice of sending, as having already been supplied.

(6) The Chief Justice may by rules of court–

(a) require the documents referred to in subsection (3) to be sent to other persons specified in the rules;

(b) require additional material to be sent with a notice of sending;

(c) make provision as to the procedure for an application for the extension or further extension of a period under subsection (4); and

(d) make such further provision in relation to notices of sending as he considers appropriate.

Committal or sending for trial: Supplementary

Remand on committal or sending.

200.(1) The court may commit or send a person for trial under this Part in custody, or on bail granted in accordance with Part 7.

(2) The Magistrates' Court may adjourn any committal or sending proceedings, and if it does so must remand the defendant in custody or on bail.

(3) If–

(a) a person's release on bail under subsection (1) is conditional on his providing one or more sureties; and

(b) the court fixes the amount in which a surety is to be bound with a view to his entering into his recognizance subsequently,

the court must in the meantime make an order for his appearance at the Supreme Court for trial.

(4) If the conditions specified in subsection (5) are satisfied, a court may exercise the powers conferred by subsection (3) in relation to a person charged without his being brought before it in any case in which it would have power further to remand him on an adjournment.

(5) The conditions mentioned in subsection (5) are that–

(a) the person has given his written consent to the powers conferred by subsection (3) being exercised without his being brought before the court; and

(b) the court is satisfied that, when he gave his consent, he knew that the notice of committal or sending had been issued under section 194 or section 199 respectively.

(6) If notice of committal or sending is given after a person to whom it relates has been remanded on bail to appear before the Magistrates' Court on an appointed day, the requirement that he so appear ceases on the giving of the notice, unless the notice states that it is to continue.

(7) If the requirement that a person to whom the notice of committal or sending relates should appear before the Magistrates' Court ceases by virtue of subsection (6), he must appear before the Supreme Court at the time specified in the notice.

(8) If the notice states that the requirement mentioned in subsection (6) is to continue and the person to whom the notice relates appears before the Magistrates' Court, the court has–

(a) the powers and duties conferred on it under subsection (3); and

(b) power to enlarge, in the surety's absence, a recognizance conditioned so that the surety is bound to ensure that the person charged appears before the Supreme Court.

Application for dismissal.

201.(1) A person who is committed or sent for trial under this Part on any charge or charges may, at any time–

(a) after he is served with copies of the documents containing the evidence on which the charge or charges are based; and

(b) before he is arraigned (and whether or not an indictment has been preferred against him),

apply orally or in writing to the Supreme Court for the charge, or any of the charges, in the case to be dismissed.

(2) On an application under subsection (1) a judge must dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.

(3) No oral application may be made under subsection (1) unless the applicant has given the Supreme Court written notice of his intention to make the application.

(4) Oral evidence may be given on such an application only with the leave of the judge or by his order; and the judge must give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.

(5) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but the person does not do so, the judge may disregard any document indicating the evidence that he might have given.

(6) If the charge, or any of the charges, against the applicant is dismissed –

(a) no further proceedings may be brought on the dismissed charge or charges except by means of the preferment of a voluntary bill of indictment; and

(b) unless the applicant is in custody otherwise than on the dismissed charge or charges, he must be discharged.

(7) If the notice of sending relates to a vulnerable child witness offence, no leave or order under subsection (4) may be given or made in relation to oral evidence from a child who is alleged–

(a) to be a person against whom an offence to which the notice of sending relates was committed; or

(b) to have witnessed the commission of such an offence.

(8) Rules of court may make provision for the purposes of this section including, but without limiting the power, provision with regard to–

(a) the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);

(b) the contents and form of notices or other documents;

(c) the manner in which evidence is to be submitted; and

(d) the persons to be served with notices or other material.

Taking of depositions

Taking of depositions by a magistrate.

202.(1) Subsection (2) applies if a magistrate is satisfied that–

(a) any person in Gibraltar ("the witness") is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings for an offence for which a person has been committed or sent for trial under this Part by the Magistrates' Court; and

(b) the witness will not voluntarily make the statement or produce the document or other exhibit.

(2) In such a case the magistrate must issue a summons directed to the witness requiring him to attend before a magistrate at the time and place appointed in the summons, and to have his evidence taken as a deposition or to produce the document or other exhibit.

(3) If a magistrate is satisfied by evidence on oath–

(a) of the matters mentioned in subsection (1); and

(b) that it is probable that a summons under subsection (2) would not procure the result required by it,

he may instead of issuing a summons issue a warrant to arrest the witness and to bring him before a magistrate at the time and place specified in the warrant.

(4) A summons may also be issued under subsection (2) if the magistrate is satisfied that the witness is outside Gibraltar, but no warrant may be issued under subsection (3) unless the magistrate is satisfied by evidence on oath that the witness is in Gibraltar.

(5) If–

(a) the witness fails to attend before a magistrate in answer to a summons under this section;

(b) the magistrate is satisfied by evidence on oath that the witness is likely to be able to make a statement or produce a document or other exhibit as mentioned in subsection (1)(a);

(c) it is proved on oath, or in some other prescribed manner, that the witness has been duly served with the summons and that a reasonable sum has been paid or tendered to him for costs and expenses; and

(d) it appears to the magistrate that there is no just excuse for the failure,

the magistrate may issue a warrant to arrest the witness and to bring him before a magistrate at the time and place specified in the warrant.

(6) If–

(a) a summons is issued under subsection (2) or a warrant is issued under subsection (3) or (5); and

(b) the summons or warrant is issued with a view to securing that the witness has his evidence taken as a deposition,

the time appointed in the summons or specified in the warrant must be such as to enable the evidence to be taken as a deposition before the date prescribed in section 199(3).

(7) If any person attending or brought before a magistrate pursuant to this section refuses without just excuse to have his evidence taken as a deposition, or to produce the document or other exhibit, the magistrate may do one or both of the following–

(a) commit him to custody until the expiration of a period, not exceeding one month, specified in the summons or warrant or until he sooner has his evidence taken as a deposition or produces the document or other exhibit;

(b) impose on him a fine not exceeding £2,500.

(8) A fine imposed under subsection (7) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid on a conviction.

(9) If pursuant to this section a person has his evidence taken as a deposition, the clerk of the Magistrates' Court must as soon as is reasonably practicable send a copy of the deposition to the prosecutor and the Supreme Court.

(10) If pursuant to this section a person produces an exhibit which is a document, the clerk of the Magistrates' Court must as soon as is reasonably practicable send a copy of the document to the prosecutor and the Supreme Court.

(11) If pursuant to this section a person produces an exhibit which is not a document, the clerk of the Magistrates' Court must as soon as is reasonably practicable inform the prosecutor and the Supreme Court of that fact and of the nature of the exhibit.

Use of depositions as evidence.

203.(1) Subject to subsection (3), subsection (2) applies if, pursuant to section 202, a person has his evidence taken as a deposition.

(2) If this subsection applies the deposition may without further proof be read as evidence on the trial of the defendant, whether for an offence for which he was committed or sent for trial under this Part or for any other offence arising out of the same transaction or set of circumstances.

(3) Subsection (2) does not apply if–

(a) it is proved that the deposition was not signed by the magistrate by whom it purports to have been signed;

(b) the court of trial at its discretion orders that subsection (2) is not to apply; or

(c) a party to the proceedings objects to subsection (2) applying.

(4) If a party to the proceedings objects to subsection (2) applying, the court of trial may order that the objection has no effect, if the court considers it to be in the interests of justice so to order.

Reporting restrictions

Reporting restrictions: Allocation, committal and sending proceedings.

204.(1) Except as provided by this section, no person may publish in Gibraltar a written report, or include in a relevant programme broadcast in Gibraltar a report, of any allocation proceedings, committal proceedings or sending proceedings in Gibraltar containing any matter that is not permitted by subsection (8).

(2) The Magistrates' Court may, with reference to any allocation, committal or sending proceedings, on an application for the purpose made by the prosecutor or any of the defendants, order that subsection (1) does not apply to reports of those proceedings.

(3) If there is only one defendant and he objects to the making of an order under subsection (2), the court may make the order only if it is satisfied, after hearing the representations of the prosecutor and defendant, that it is in the interests of justice to do so.

(4) If in the case of 2 or more defendants one of them objects to the making of an order under subsection (2), the court may make the order only if it is satisfied, after hearing the representations of the prosecutor and all the defendants, that it is in the interests of justice to do so.

(5) An order under subsection (2) must not be made in respect of reports of proceedings under subsection (3) or (4), but any decision of the court to make or not to make such an order may be contained in reports published or included in a relevant programme before the time authorised by subsection (6).

(6) It is not unlawful under this section to publish or include in a relevant programme a report of allocation, committal or sending proceedings containing matter other than that permitted by subsection (8)–

(a) if the Magistrates' Court decides not to commit or send the defendant, or any of the defendants for trial - after it so decides;

(b) if the court commits or sends the defendant or any of the defendants for trial - after the conclusion of the trial or, as the case may be, the trial of the last defendant to be tried.

(7) If at any time during the inquiry the court proceeds to try summarily the case of one or more of the defendants under Part 8, while committing the other defendant or one or more of the other defendants for trial, it is not unlawful under this section to publish or include in a relevant programme, as part of a report of the summary trial after the court decides so to proceed, a report, containing matter that is not permitted by subsection (8), of the part of the committal proceedings that takes place before the decision.

(8) The following matters may be contained in a report of allocation, committal or sending proceedings published or included in a relevant programme without an order under subsection (2) before the time authorised by subsection (6) or (7)–

(a) the identity of the court and the name of the examining magistrates;

(b) the name, age, home address and occupation of each of the defendants;

(c) the names, addresses and occupations of the witnesses;

(d) in the case of a defendant charged with a complex fraud offence - any relevant business information;

(e) the offence or offences, or a summary of them, with which the defendant or defendants is or are charged;

(f) the names of legal representatives engaged in the proceedings;

(g) if the court commits or sends the defendant or any of the defendants for trial - the charge or charges, or a summary of them, on which he is committed or sent;

(h) any decision of the court on the disposal of the case of any defendants not committed or sent;

(i) if the proceedings are adjourned - the date and place to which they are adjourned;

(j) the arrangements as to bail; and

(k) whether the defendant or any defendant was granted legal aid;

(9) The addresses that may be published or included in a relevant programme under subsection (8) are addresses–

(a) at any relevant time; and

(b) at the time of their publication or inclusion in a relevant programme.

(10) The following is relevant business information for the purposes of subsection (8)(d)–

(a) any address used by the defendant for carrying on a business on his own account;

(b) the name of any business which he was carrying on on his own account at any relevant time;

(c) the name of any firm in which he was a partner at any relevant time or by which he was engaged at any such time;

(d) the address of any such firm;

(e) the name of any company of which he was a director at any relevant time or by which he was otherwise engaged at any such time;

(f) the address of the registered or principal office of any such company;

(g) any working address of the defendant in his capacity as a person engaged by any such company under a contract of service or a contract for services.

(11) This section is in addition to, and does not derogate from, the provisions of any other enactment with respect to the publication of reports of court proceedings.

(12) In this section–

"allocation, committal or sending proceedings" means, in relation to an information charging an indictable offence–

(a) any proceedings in the Magistrates' Court at which matters are considered under–

(i) sections 140 to 157;

(ii) sections 184 to 193; or

(iii) sections 195 or 196; and

(b) any proceedings in the Magistrates' Court before the court proceeds to consider any matter mentioned in paragraph (a);

"commit" and "send" mean to commit or send a person for trial in the Supreme Court in accordance with this Part.

Reporting restrictions: Application for dismissal.

205.(1) Except as provided by this section, it is not lawful–

(a) to publish in Gibraltar a written report of an application under section 201; or

(b) to include in a relevant programme for reception in Gibraltar a report of such an application.

(2) An order that subsection (1) does not apply to reports of an application under section 201 may be made on application to the judge by the prosecutor or any defendant.

(3) If there is only one defendant and he objects to the making of an order under subsection (2), the judge may make the order only if he is satisfied, after hearing the representations of the prosecutor and defendant, that it is in the interests of justice to do so.

(4) If in the case of 2 or more defendants one of them objects to the making of an order under subsection (2), the judge may make the order only if he is satisfied, after hearing the representations of the prosecutor and all defendants, that it is in the interests of justice to do so.

(5) It is not unlawful under this section to publish or include in a relevant programme–

(a) a report of an application under section 201 containing any matter other than that permitted by subsection (7) if the application is successful;

(b) a report of an unsuccessful application at the conclusion of the trial of the person charged, or of the last of the persons charged to be tried.

(6) If–

(a) 2 or more persons were jointly charged; and

(b) applications under section 201 are made by more than one of them,

subsection (5)(a) has effect as if for the words "the application is" there were substituted the words "all the applications are".

(7) The following matters may be contained in a report published or included in a relevant programme without an order under subsection (2)–

(a) the identity of the court and the name of the judge;

(b) the names, ages, home addresses and occupations 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 legal representatives engaged in the proceedings;

(e) if the proceedings are adjourned - the date and place to which they are adjourned;

(f) the arrangements as to bail;

(g) whether legal aid was granted to the defendant or any of the defendants;

(h) the decision on the application.

Offences in connection with reporting.

206.(1) If a report is published or included in a relevant programme in contravention of section 204 or 205, each of the following commits an offence–

(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 it;

(c) in the case of the broadcast of a relevant programme–

(i) any corporate body which transmits or provides the programme in which the report is broadcast; and

(ii) any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical.

(2) A person who commits an offence under this section is liable on summary conviction to the statutory maximum fine.

(3) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney-General.

(4) This section is in addition to, and does not derogate from, the provisions of any other enactment with respect to the publication of reports of court proceedings.

Miscellaneous procedure provisions

Avoidance of delay.

207.(1) If a notice of committal or sending has been given in relation to any case, the Supreme Court and the Magistrates' Court, when exercising functions in relation to the case, must in exercising those functions, have regard to the desirability of avoiding prejudice to the welfare of any relevant child witness that may be occasioned by unnecessary delay in bringing the case to trial.

(2) In this section "relevant child witness" means a child who will be called as a witness at the trial and who is alleged–

(a) to be a person against whom an offence to which the notice of transfer relates was committed; or

(b) to have witnessed the commission of such an offence.

Power of Supreme Court to deal with summary offence.

208.(1) If the Magistrates' Court commits or sends a person to the Supreme Court for trial on indictment for an offence triable either way, or a number of such offences, it may also commit or send him for trial for any summary offence with which he is charged and which–

(a) is punishable by imprisonment or involves obligatory or discretionary disqualification from driving; and

(b) arises out of circumstances which appear to the court to be the same as or connected with those giving rise to the offence, or one of the offences, triable either way,

whether or not evidence relating to that summary offence appears on the depositions or written statements in the case.

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

(3) This section applies if the Magistrates' Court has committed or sent a person for trial for offences which include a summary offence, whether under subsection (1) or any other power under this Act.

(4) If subsection (3) applies, the trial of the information charging the summary offence is to be treated as if the Magistrates' Court had adjourned it under section 160 and had not fixed the time and place for its resumption.

(5) If the person is convicted on the indictment, the Supreme Court must consider whether the summary offence is related to the indictable offence for which he was sent for trial or, as the case may be, any of the indictable offences for which he was so sent.

(6) If it considers that the summary offence is so related, the court must state to the person the substance of the offence and ask him whether he pleads guilty or not guilty.

(7) If the person pleads guilty, the Supreme Court must convict him, but may deal with him in respect of the summary offence only in a manner in which the Magistrates' Court could have dealt with him.

(8) If he does not plead guilty, the Supreme Court may try him for the offence, but may deal with him only in a manner in which the Magistrates' Court could have dealt with him.

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

(10) If the Court of Appeal allows an appeal against conviction of an indictable offence which is related to a summary offence of which the appellant was convicted under this section, the court–

(a) must set aside the conviction of the summary offence; and

(b) may direct that no further proceedings in relation to the offence are to be undertaken,

and the proceedings before the Supreme Court in relation to the offence must thereafter be disregarded for all purposes, without affecting the right of the prosecution to commence fresh proceedings.

(11) The Supreme Court or the Court of Appeal, as the case may be, must inform the clerk of the Magistrates' Court of the outcome of any proceedings under this section, and a notice by the Court of Appeal must include particulars of any direction given under subsection (1)(b) in relation to the offence.

(12) An offence is related to another offence for the purposes of this section if it arises out of circumstances which are the same as or connected with those giving rise to the other offence.

(13) The committal of a person under this section in respect of a summary offence does not preclude the exercise in relation to the offence of the power conferred by section 14 of the Crimes Act 2011 (Alternative verdicts), but if he is tried on indictment for such an offence, the functions of the Supreme Court under this section in relation to the offence cease.

(14) If the summary offence is one to which section 175(3) of the Crimes Act 2011 applies (common assault), the Supreme Court may exercise in relation to the offence the power conferred by that section; but if the person is tried on indictment for such an offence, the functions of the Supreme Court under this section in relation to the offence cease.

Procedure if no main offence remains.

209.(1) Subject to section 210, this section applies if–

(a) a person has been committed or sent for trial under this Part but has not been arraigned; and

(b) he is charged on an indictment which (following amendment of the indictment, or as a result of an application under section 201, or for any other reason) includes no main offence.

(2) Everything that the Supreme Court is required to do under the following provisions of this section must be done with the defendant present in court.

(3) The court must cause to be read to the defendant each remaining count of the indictment that charges an offence triable either way.

(4) The court must then explain to the defendant in ordinary language that, in relation to each of those offences, he may indicate whether (if it were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty the court must proceed as mentioned in subsection (6).

(5) The court must then ask the defendant whether (if the offence in question were to proceed to trial) he would plead guilty or not guilty.

(6) If the defendant indicates that he would plead guilty the court must proceed as if he had been arraigned on the count in question and had pleaded guilty.

(7) If the defendant indicates that he would plead not guilty, or fails to indicate how he would plead, the court must decide whether the offence is more suitable for summary trial or for trial on indictment.

(8) Subject to subsection (6), the following do not for any purpose constitute the taking of a plea–

(a) asking the defendant under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;

(b) an indication by the defendant under this section of how he would plead.

(9) In this section, "main offence" means an offence for which the person has been committed or sent to the Supreme Court for trial under this Part.

Procedure in case of disorderly conduct.

210.(1) Subject to section 211, this section applies if–

(a) a person has been committed or sent for trial under this Part but has not been arraigned;

(b) he is charged on an indictment which (following amendment of the indictment, or as a result of an application under section 201, or for any other reason) includes no main offence, as defined in section 209(9);

(c) he is legally represented;

(d) the Supreme Court considers that by reason of his disorderly conduct before the court it is not practicable for proceedings under section 209 to be conducted in his presence; and

(e) the court considers that it should proceed in his absence.

(2) In such a case–

(a) the court must cause to be read to the defendant's legal representative each remaining count of the indictment that charges an offence triable either way;

(b) the court must ask the defendant's legal representative whether (if the offence in question were to proceed to trial) the defendant would plead guilty or not guilty;

(c) if the legal representative indicates that the defendant would plead guilty the court must proceed as if the defendant had been arraigned on the count in question and had pleaded guilty;

(d) if the legal representative indicates that the defendant would plead not guilty, or fails to indicate how the defendant would plead, the court must decide whether the offence is more suitable for summary trial or for trial on indictment.

(3) Subject to subsection (2)(c), the following do not for any purpose constitute the taking of a plea–

(a) asking a legal representative under this section whether (if the offence were to proceed to trial) the defendant would plead guilty or not guilty;

(b) an indication by a legal representative under this section of how the defendant would plead.

Decision on whether summary trial or trial on indictment more suitable.

211.(1) This section applies if the Supreme Court is required by section 209(7) or 210(2)(d) to decide the question whether an offence is more suitable for summary trial or for trial on indictment.

(2) Before deciding the question, the court must–

(a) give the prosecution an opportunity to inform the court of the defendant's previous convictions (if any); and

(b) give the prosecution and the defendant an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.

(3) In deciding the question, the court must consider–

(a) whether the sentence which the Magistrates' Court would have power to impose for the offence would be adequate; and

(b) any representations made by the prosecution or the defendant under subsection (2)(b).

(4) If–

(a) the defendant is charged on the same occasion with 2 or more offences; and

(b) it appears to the court that they constitute or form part of a series of 2 or more offences of the same or a similar character,

subsection (3)(a) has effect as if references to the sentence which the Magistrates' Court would have power to impose for the offence were a reference to the maximum aggregate sentence which that court would have power to impose for all of the offences taken together.

(5) In this section any reference to a previous conviction is a reference to a previous conviction by a court in Gibraltar.

Procedure if case more suitable for summary trial.

212.(1) This section applies (unless excluded by section 214) if the Supreme Court considers that an offence is more suitable for summary trial.

(2) The court must explain to the defendant in ordinary language that–

(a) it appears to the court more suitable for him to be tried summarily for the offence; and

(b) he can either consent to be so tried or, if he wishes, be tried on indictment.

(3) After explaining to the defendant as provided by subsection (2) the court must ask him whether he wishes to be tried summarily or on indictment, and–

(a) if he indicates that he wishes to be tried summarily - must remit him for trial to the Magistrates' Court;

(b) if he does not give such an indication - must retain its functions in relation to the offence and proceed accordingly.

Procedure if case more suitable for trial on indictment.

213. If the Supreme Court considers that an offence is more suitable for trial on indictment, the court must–

(a) tell the defendant that it has decided that it is more suitable for him to be tried for the offence on indictment; and

(b) retain its functions in relation to the offence and proceed accordingly.

Procedure in case of a juvenile.

214.(1) This section applies, in place of sections 208 to 212, in the case of a juvenile who–

(a) has been sent for trial under section 196 but has not been arraigned; and

(b) is charged on an indictment which (following amendment of the indictment, or as a result of an application under section 201, or for any other reason) includes no main offence.

(2) The Supreme Court must remit the juvenile for trial to the Magistrates' Court.

(3) In this section "main offence" means an offence for which the juvenile has been sent to the Supreme Court for trial under section 196(1).

Procedure for deciding whether offences of criminal damage, etc. are summary offences.

215.(1) This section applies if the Supreme Court has to decide, for the purposes of this Part, whether an offence which is listed in Schedule 6 (offences for which the value involved is relevant to the mode of trial) is a summary offence.

(2) The court must have regard to any representations made by the prosecutor or the defendant.

(3) If it appears to the court that the value involved does not exceed the relevant sum, it must treat the offence as a summary offence.

(4) If it appears to the court that the value involved exceeds the relevant sum, it must treat the offence as an indictable offence.

(5) If it is not clear to the court whether the value involved does or does not exceed the relevant sum, the court must ask the defendant whether he wishes the offence to be treated as a summary offence and–

(a) if the defendant indicates that he wishes the offence to be treated as a summary offence - the court must so treat it;

(b) if the defendant does not give such an indication - the court must treat the offence as an indictable offence.

Power of Supreme Court to proceed in defendant's absence.

216.(1) Subject to this section, the Supreme Court may, on the application of the Attorney-General, proceed in the absence of the defendant in accordance with applicable provisions of sections 211 to 215 if–

(a) the defendant is represented by a legal representative who signifies to the court the defendant's consent to the proceedings in question being conducted in his absence; and

(b) the court is satisfied that there is good reason for proceeding in the absence of the defendant.

(2) If, pursuant to section 209(7) or 210(2)(d), the court decides that an offence is more suitable for summary trial, section 213 does not apply and–

(a) if the defendant's legal representative indicates that the defendant wishes to be tried summarily, the court must remit the defendant for trial to the Magistrates' Court;

(b) if the legal representative does not give such an indication, the court must retain its functions and proceed accordingly.

(3) If, pursuant to section 209(7) or 210(2)(d), the court decides that an offence is more suitable for trial on indictment, section 213 applies with the omission of paragraph (a).

(4) If section 215 applies and it is not clear to the court whether the value involved does or does not exceed the relevant sum, subsections (5) and (6) of that section do not apply and–

(a) the court must ask the defendant's legal representative whether the defendant wishes the offence to be treated as a summary offence;

(b) if the legal representative indicates that the defendant wishes the offence to be treated as a summary offence, the court must so treat it;

(c) if the legal representative does not give such an indication, the court must treat the offence as an indictable offence.

PART 10 – COMMITTAL FOR SENTENCE

Committal for sentence on conviction of serious offence triable either way.

217.(1) Subject to subsection (4) this section applies if–

(a) an adult appears or is brought before the Magistrates' Court on an information charging him with an offence triable either way; and

(b) the court convicts him of the offence.

(2) This section does not apply in respect of an offence in relation to which section 148 (Certain offences to be tried summarily if value involved is small) applies.

(3) If the court is of the opinion that–

(a) the offence; or

(b) the combination of the offence and one or more offences associated with it,

is so serious that the Supreme Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment, the court may commit him in custody or on bail to the Supreme Court for sentence in accordance with section 219(1).

(4) If the court commits a person under subsection (3), section 220 (which enables the Magistrates' Court, if it commits a person under this section in respect of an offence, also to commit him to the Supreme Court to be dealt with in respect of certain other offences) applies.

(5) This Part applies in relation to a corporation as if–

(a) the corporation were an individual aged 18 or over; and

(b) the words "in custody or on bail" were omitted wherever they appear.

Committal for sentence on indication of guilty plea to offence triable either way.

218.(1) Subject to subsection (2), this section applies if–

(a) an adult appears or is brought before the Magistrates' Court on an information charging him with an offence triable either way;

(b) he or his legal representative indicates under section 140 or 141 that he would plead guilty if the offence were to proceed to trial; and

(c) proceeding as if section 159 were complied with and he pleaded guilty under it, the court convicts him of the offence.

(2) This section does not apply to an offence in relation to which this section is excluded by section 148 (Certain offences to be tried summarily if value involved is small).

(3) If the court has committed the offender to the Supreme Court for trial for one or more related offences, that is to say, one or more offences which, in its opinion, are related to the offence, it may commit him in custody or on bail to the Supreme Court to be dealt with in respect of the offence in accordance with section 219(1).

(4) If the power conferred by subsection (3) is not exercisable but the court is still to inquire, as examining magistrates, into one or more related offences–

(a) it must adjourn the proceedings relating to the offence until after the conclusion of its inquiries; and

(b) if it commits the offender to the Supreme Court for trial for one or more related offences, it may then exercise that power.

(5) If the power conferred by subsection (3) is not exercisable but the court is still to decide to, or to decide whether to, send the offender to the Supreme Court for trial under section 195 or 196 for one or more related offences–

(a) it must adjourn the proceedings relating to the offence until after it has made that decision; and

(b) if it sends the offender to the Supreme Court for trial for one or more related offences, it may then exercise that power.

(6) If the court–

(a) under subsection (3) commits the offender to the Supreme Court to be dealt with in respect of the offence; and

(b) does not state that, in its opinion, it also has power so to commit him under section 217(2),

section 220(1) does not apply unless he is convicted before the Supreme Court of one or more of the related offences.

(7) If section 220(1) does not apply, the Supreme Court may deal with the offender in respect of the offence in any way in which the Magistrates' Court could deal with him if it had just convicted him of the offence.

(8) If the court commits a person under subsection (2), section 221, which enables the Magistrates' Court, if it commits a person under this section in respect of an offence, also to commit him to the Supreme Court to be dealt with in respect of certain other offences, applies.

(9) For the purposes of this section, one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.

(10) In reaching any decision under or taking any step contemplated by this section–

(a) neither the Magistrates' Court nor the Supreme Court is bound by any indication of sentence given in respect of the offence under section 145 (Procedure if summary trial appears more suitable); and

(b) nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is not consistent with an indication of sentence.

Power of Supreme Court on committal for sentence under section 217 or 218.

219.(1) If an offender is committed by the Magistrates' Court for sentence under section 217 or 218, the Supreme Court must inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.

(2) In relation to committals under section 218, subsection (1) of this section has effect subject to section 218(5) and (6).

Committal for sentence if offender committed in respect of another offence.

220.(1) This section applies if the Magistrates' Court commits a person in custody or on bail to the Supreme Court to be sentenced or otherwise dealt with in respect of an offence.

(2) If this section applies and the relevant offence is an indictable offence, the Magistrates' Court may also commit the offender, in custody or on bail as the case may require, to the Supreme Court to be dealt with in respect of any other offence in respect of which the Magistrates' Court has power to deal with him (being an offence of which he has been convicted by that court).

(3) If this section applies and the relevant offence is a summary offence, the Magistrates' Court may commit the offender, in custody or on bail, to the Supreme Court to be dealt with in respect of–

(a) any other offence of which the court has convicted him, being an offence punishable with imprisonment;

(b) any suspended sentence in respect of which the Magistrates' Court has power to deal with him.

Power of Supreme Court on committal for sentence under section 220.

221.(1) If under section 220 the Magistrates' Court commits a person to be dealt with by the Supreme Court in respect of an offence, the Supreme Court may, after inquiring into the circumstances of the case, deal with him in any way in which the Magistrates' Court could deal with him if it had just convicted him of the offence.

(2) Subsection (1) does not apply if under section 220 the Magistrates' Court commits a person to be dealt with by the Supreme Court in respect of a suspended sentence, but in such a case the powers under section 509 (Power of court on conviction for further offence) are exercisable by the Supreme Court.

(3) Without affecting subsections (1) and (2), if under section 220 the Magistrates' Court commits a person to be dealt with by the Supreme Court, any duty or power which, apart from this subsection, would fall to be discharged or exercised by the Magistrates' Court must not be discharged or exercised by that court but must instead be discharged or may instead be exercised by the Supreme Court.

(4) If under section 220 the Magistrates' Court commits a person to be dealt with by the Supreme Court in respect of an offence triable only on indictment, the Supreme Court's powers under subsection (1) in respect of the offender are powers to do either or both of the following–

(a) to impose a fine not exceeding £5,000;

(b) to deal with the offender in respect of the offence in any way in which the Magistrates' Court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding 6 months.

Supplementary provisions.

222.(1) If a person is committed to the Supreme Court for sentence pursuant to section 217, 218 or 220, the Registrar must give notice to the prosecutor and the Superintendent of the date on which the case will be dealt with.

(2) Part I of the Legal Aid and Assistance Act applies if 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–

(a) in section 3(2)(b) the words "after reading the depositions" are omitted; and

(b) in section 9, paragraph (a) is omitted and paragraph (b) amended by inserting immediately after the word "sentence" the words "or any order committing him for sentence to the Supreme Court".

PART 11 – CONTROL OF PROSECUTIONS

Control of prosecutions generally

Power of Attorney-General to enter *nolle prosequi.*

223.(1) In any criminal case, at any stage 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 are not to continue.

(2) If the Attorney-General enters a *nolle prosequi* –

(a) the defendant must be at once discharged in respect of the charge for which the *nolle prosequi* is entered;

(b) if the defendant has been committed to prison he must be released, or if on bail, his recognizances must be discharged;

(c) the discharge of the defendant does not operate as a bar to any subsequent proceedings against him on account of the same facts.

(3) If the defendant is not before the court when a *nolle prosequi* is entered, the registrar or clerk of the court must forthwith cause notice in writing of the entry of the *nolle prosequi* to be given–

(a) if the defendant is in prison - to the Superintendent;

(b) if the defendant has been committed for trial - to the Supreme Court;

(c) if the trial is a summary one - to the Magistrates' Court.

(4) Upon the entry of a *nolle prosequi* the court must forthwith cause a notice of it to be given in writing to any witnesses bound over to prosecute and give evidence and to their sureties, if any, and also to the defendant and his sureties if he has been admitted to bail.

(5) 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 is admissible as *prima facie* evidence without further proof.

Power to appoint prosecuting counsel.

224.(1) The Attorney-General may appoint any counsel to be a prosecuting counsel for the purposes of any case.

(2) 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.

(3) If any private person instructs counsel to prosecute in any case in any court, a prosecuting counsel may conduct the prosecution and the counsel so instructed must act therein under the prosecuting counsel's directions.

Conduct of prosecutions in the Magistrates' Court.

225. In any trial or inquiry in the Magistrates' Court–

(a) if the proceedings have been instituted by a police officer, any police officer may appear and conduct the prosecution, and

(b) if the proceedings have been instituted by a customs officer, any customs officer may appear and conduct the prosecution,

whether or not he is the officer who laid the information.

Prosecutors subject to directions of Attorney-General.

226. Every prosecuting counsel and every police or customs officer conducting a prosecution pursuant to section 225 is subject to the directions of the Attorney-General.

Consents to prosecutions.

227.(1) A requirement for the consent of any person to a prosecution–

(a) does not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence; and

(b) is subject to any enactment concerning the apprehension of children or young persons.

(2) Any document purporting to be the consent of the Attorney-General to–

(a) the institution of any criminal proceedings; or

(b) the institution of criminal proceedings in any particular form,

and to be signed by the Attorney-General is admissible as *prima facie* evidence without further proof.

Time limits in relation to preliminary stages of criminal proceedings.

228.(1) The Chief Justice may by rules make provision, with respect to any specified preliminary stage of proceedings for an offence, as to the maximum period–

(a) to be allowed to the prosecution to complete that stage (an 'overall time limit');

(b) during which the defendant may, while awaiting completion of that stage, be–

(i) in the custody of the Magistrates' Court; or

(ii) in the custody of the Supreme Court,

in relation to that offence (a "custody time limit".)

(2) The rules may, in particular–

(a) be made so as to apply only in relation to proceedings of, or against persons of, specified classes or descriptions;

(b) make different provision with respect to proceedings of, or against persons of, different classes or descriptions;

(c) make such provision with respect to the procedure to be followed in criminal proceedings as the Chief Justice considers appropriate in consequence of any other provision of the rules;

(d) provide for Part 5 (Police detention) or Part 7 (Bail in Criminal proceedings) to apply in relation to cases to which custody or overall time limits apply (subject to specified modifications which the Chief Justice considers necessary in consequence of any provision made by the rules); and

(e) make transitional provisions in relation to proceedings instituted before the commencement of any provision of the rules.

(3) The court may, at any time before the expiry of a time limit imposed by the rules, extend, or further extend, that limit if it is satisfied that–

(a) the need for the extension is due to–

(i) the illness or absence of the defendant, a necessary witness, a judge or a magistrate;

(ii) a postponement which is occasioned by the court ordering separate trials in the case of 2 or more defendants or 2 or more offences; or

(iii) some other good and sufficient cause; and

(b) the prosecution has acted with all due diligence and expedition.

(4) If, in relation to any proceedings for an offence, an overall time limit has expired before the completion of the stage of the proceedings to which the limit applies, the court must stay the proceedings.

(5) If–

(a) a person escapes from the custody of a court before the expiry of a custody time limit which applies in his case; or

(b) a person who has been released on bail in consequence of the expiry of a custody time limit–

(i) fails to surrender himself into the custody of the court at the appointed time; or

(ii) is arrested by a police officer on a ground mentioned in section 126(3) (Liability to arrest for absconding or breaking conditions of bail),

the rules are, so far as they provide for any custody time limit in relation to the preliminary stage in question, to be disregarded.

(6) Subsection (7) applies if–

(a) a person escapes from the custody of a court; or

(b) a person who has been released on bail fails to surrender himself into the custody of the court at the appointed time;

and is accordingly unlawfully at large for any period.

(7) The following periods–

(a) the period for which the person is unlawfully at large; and

(b) such additional period (if any) as the court may direct, having regard to the disruption of the prosecution occasioned by–

(i) the person's escape or failure to surrender; and

(ii) the length of the period mentioned in paragraph (a),

are to be disregarded, so far as the offence in question is concerned, for the purposes of the overall time limit which applies in his case in relation to the stage which the proceedings have reached at the time of the escape or, as the case may be, at the appointed time.

(8) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under this Act is to be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned.

(9) If the Magistrates' Court decides to extend, or further extend, a custody or overall time limit, or to give a direction under subsection (7)(b), the defendant may appeal against the decision to the Supreme Court.

(10) If the Magistrates' Court refuses to extend, or further extend, a custody or overall time limit, or to give a direction under subsection (7)(b), the prosecution may appeal against the refusal to the Supreme Court.

(11) An appeal under subsection (9) or (10) may not be commenced after the expiry of the limit in question; but if the appeal is commenced before the expiry of the limit the limit is deemed not to have expired before the determination or abandonment of the appeal.

(12) If a person is convicted of an offence in any proceedings, the exercise, in relation to any preliminary stage of those proceedings, of the power conferred by subsection (3) may not be called into question in any appeal against that conviction.

(13) In this section, "preliminary stage", in relation to any proceedings, does not include any stage after the start of the trial, as defined by subsection (14);

(14) For the purposes of this section–

(a) proceedings for an offence begin when the defendant is charged with the offence or, as the case may be, an information is laid charging him with the offence;

(b) the start of a trial on indictment occurs at the time when a jury is sworn to consider the issue of guilt or fitness to plead or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted;

(c) the start of a summary trial occurs–

(i) when the court begins to hear evidence for the prosecution at the trial or to consider whether to exercise its power to make a hospital order without convicting the defendant; or

(ii) if the court accepts a plea of guilty without proceeding as mentioned above - when that plea is accepted.

(15) For the purposes of the application of any custody time limit in relation to a person who is in the custody of a court–

(a) all periods during which he is in the custody of the Magistrates' Court in respect of the same offence are to be aggregated and treated as a single continuous period; and

(b) all periods during which he is in the custody of the Supreme Court in respect of the same offence are to be aggregated and treated similarly.

Additional time limits for persons under 18.

229.(1) The Chief Justice may by rules make provision–

(a) with respect to a person under the age of 18 at the time of his arrest in connection with an offence - as to the maximum period to be allowed for the completion of the stage beginning with his arrest and ending with the date fixed for his first appearance in court in connection with the offence ("the initial stage");

(b) with respect to a person convicted of an offence who was under that age at the time of his arrest for the offence or (where he was not arrested for it) the laying of the information charging him

with it - as to the period within which the stage between his conviction and his being sentenced for the offence should be completed.

(2) Subsection (2) of section 228 applies for the purposes of rules under subsection (1) of this section as if–

(a) the reference in paragraph (d) to custody or overall time limits were a reference to time limits imposed by the rules; and

(b) the reference in paragraph (e) to proceedings instituted before the commencement of any provisions of the rules were a reference to a stage begun before that commencement.

(3) The Magistrates' Court may, at any time before the expiry of the time limit imposed by the rules under subsection (1)(a) ("the initial stage time limit"), extend, or further extend, that limit; but must not do so unless satisfied–

(a) that the need for the extension is due to some good and sufficient cause; and

(b) that the investigation has been conducted, and (where applicable) the prosecution has acted, with all due diligence and expedition.

(4) If the initial stage time limit (whether as originally imposed or as extended or further extended under subsection (3)) expires before the person arrested is charged with the offence, he must not be charged with it unless further evidence relating to it is obtained, and–

(a) if he is then under arrest - he must be released;

(b) if he is then on bail under Part 5 - his bail (and any duty or conditions to which it is subject) must be discharged.

(5) If the initial stage time limit (whether as originally imposed or as extended or further extended under subsection (3)) expires after the person arrested is charged with the offence but before the date fixed for his first appearance in court in connection with it, the court must stay the proceedings.

(6) If–

(a) a person escapes from arrest; or

(b) a person who has been released on bail under Part 5 fails to surrender himself at the appointed time,

and is accordingly unlawfully at large for any period, that period is to be disregarded, so far as the offence in question is concerned, for the purposes of the initial stage time limit.

(7) Subsections (7) to (9) of section 228 apply for the purposes of this section, at any time after the person arrested has been charged with the offence in question, as if any reference (however expressed) to a custody or overall time limit were a reference to the initial stage time limit.

(8) If a person is convicted of an offence in any proceedings, the exercise of the power conferred by subsection (3) is not to be called into question in any appeal against that conviction.

(9) Any reference in this section (however expressed) to a person being charged with an offence includes a reference to the laying of an information charging him with it.

Re-institution of proceedings stayed under section 228 or 229.

230.(1) If proceedings for an offence ("the original proceedings") are stayed by a court under section 228(4) or 229(5) and the Attorney-General so directs, fresh proceedings for the offence may be instituted within a period of 3 months (or such longer period as the court allows) after the date on which the original proceedings were stayed by the court.

(2) Fresh proceedings are instituted–

(a) if the original proceedings were stayed by the Supreme Court - by preferring a bill of indictment;

(b) if the original proceedings were stayed by the Magistrates' Court - by laying an information (regardless of any limit of time provided in any other enactment.)

(3) If fresh proceedings are instituted, anything done in relation to the original proceedings is to be treated as done in relation to the fresh proceedings if the court so directs or it was done by the prosecutor or the defendant in compliance or purported compliance with this Act.

(4) If a person is convicted of an offence in fresh proceedings under this section, the institution of those proceedings may not be called into question in any appeal against that conviction.

Discontinuance of proceedings in the Magistrates' Court.

231.(1) If the Attorney-General has the conduct of proceedings for an offence, this section applies in relation to the preliminary stages of those proceedings.

(2) In this section, "preliminary stage" in relation to proceedings for an offence does not include any stage of the proceedings–

(a) after the court has begun to hear evidence for the prosecution at a summary trial of the offence; or

(b) after the defendant has been sent for trial for the offence.

(3) If, at any time during the preliminary stages of the proceedings, the Attorney-General gives notice under this section to the court that he does not wish the proceedings to continue, they must be discontinued with effect from the giving of that notice but may be revived by notice given by the defendant under subsection (7).

(4) If, in the case of a person charged with an offence after being taken into custody without a warrant, the Attorney-General gives him notice, before the Magistrates' Court has been informed of the charge, that the proceedings against him are discontinued, they must be discontinued with effect from the giving of that notice.

(5) The Attorney-General must, in any notice given under subsection (3), give reasons for not wishing the proceedings to continue.

(6) On giving notice under subsection (3) the Attorney-General–

(a) must inform the defendant of the notice and of the defendant's right to require the proceedings to be continued; but

(b) need not give the defendant any indication of his reasons for not wishing the proceedings to continue.

(7) If the Attorney-General has given notice under subsection (3), the defendant must, if he wishes the proceedings to continue, give notice to that effect to the court within 21 days; and if notice is so given the proceedings must continue as if no notice had been given by the Attorney-General under subsection (3).

(8) The defendant must inform the Attorney-General if he has notified the court under subsection (7).

(9) The discontinuance of any proceedings by virtue of this section does not prevent the institution of fresh proceedings in respect of the same offence.

Discontinuance of proceedings after defendant has been sent for trial.

232.(1) This section applies if–

(a) the Attorney-General has the conduct of proceedings for an offence; and

(b) the defendant has been committed or sent for trial for the offence.

(2) If, at any time before the indictment is preferred, the Attorney-General gives notice under this section to the Supreme Court that he does not wish the proceedings to continue, they must be discontinued with effect from the giving of that notice.

(3) The Attorney-General must, in any notice given under subsection (2), give reasons for not wishing the proceedings to continue.

(4) On giving notice under subsection (2) the Attorney-General–

(a) must inform the defendant of the notice; but

(b) need not give the defendant any indication of his reasons for not wishing the proceedings to continue.

(5) The discontinuance of any proceedings by virtue of this section does not prevent the institution of fresh proceedings in respect of the same offence.

References to the Court of Appeal

Scope of review.

233.(1) A case to which this section applies may be referred to the Court of Appeal under section 234.

(2) This section applies to any case in which sentence is passed on a person by the Supreme Court for an indictable offence (not being a sentence substituted on an appeal.)

Reviews of sentencing: Principles.

234.(1) If it appears to the Attorney-General–

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

(b) that the case is one to which section 233 applies,

he may, with the leave of the Court of Appeal, refer the case to that court for it to review the sentencing of that person.

(2) On a reference under subsection (1), the Court of Appeal may–

(a) quash any sentence passed on the person in the proceeding; and

(b) in place of it pass a sentence that the court thinks appropriate for the case and that the court below had power to pass when dealing with the person.

(3) Without limiting subsection (1), the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney-General that the judge who passed sentence–

(a) failed to impose a sentence required by any enactment; or

(b) erred in law as to his powers of sentencing.

(4) For the purposes of this Part, any 2 or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of an appeal by the defendant.

(5) A judge must not sit as a member of the Court of Appeal on the hearing of, or decide any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by that judge.

(6) When the Court of Appeal has concluded the review of a case referred to it under this section, the Attorney-General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to Her Majesty in Council for Her Majesty's opinion, and Her Majesty in Council must–

(a) consider the point and give Her Majesty's opinion on it accordingly; and

(b) either remit the case to the Court of Appeal to be dealt with or deal with it Herself.

(7) A reference under subsection (6) can be made only with the leave of the Court of Appeal or Her Majesty in Council and leave is not to be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or Her Majesty in Council (as the case may be) that the point is one which ought to be considered by Her Majesty in Council.

(8) For the purpose of dealing with a case under this section Her Majesty in Council may exercise any powers of the Court of Appeal.

Reviews of sentencing: Procedure.

235.(1) Notice of an application for leave to refer a case to the Court of Appeal under section 234 must be given within 28 days from the day on which the sentence, or the last of the sentences, in the case was passed.

(2) If the Registrar is given notice of a reference or application to the Court of Appeal under section 234 he must–

(a) take all necessary steps for obtaining a hearing of the reference or application; and

(b) obtain and lay before the court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the reference or application.

(3) Rules of court may–

(a) enable a person to whose sentencing such a reference or application relates to obtain from the Registrar any documents or things, including copies or reproductions of documents, required for the reference or application; and

(b) authorise the Registrar to make charges for them in accordance with scales and rates fixed by the rules.

(4) An application–

(a) to the Court of Appeal for leave to refer a case to Her Majesty in Council under section 234(6) - must be made within 14 days after the Court of Appeal concludes its review of the case;

(b) to Her Majesty in Council for leave - must be made within 14 days after the Court of Appeal concludes its review or refuses leave to refer the case to Her Majesty in Council.

(5) The time during which a person whose case has been referred for review under section 234 is in custody pending its review and pending any reference to Her Majesty in Council under subsection (6) of that section is to be reckoned as part of the term of any sentence to which he is for the time being subject.

(6) Subject to subsections (7) and (8), a person whose sentencing is the subject of a reference to the Court of Appeal under section 234 is entitled to be present, if he wishes, on the hearing of the reference, although he may be in custody.

(7) A person in custody is not entitled to be present–

(a) on an application by the Attorney-General for leave to refer a case; or

(b) on any proceedings preliminary or incidental to a reference,

unless the Court of Appeal gives him leave to be present.

(8) The power of the Court of Appeal to pass sentence on a person may be exercised although he is not present.

(9) A person whose sentencing is the subject of a reference to Her Majesty in Council under section 234(6) and who is detained pending the hearing of that reference is not entitled to be present on the hearing of the reference or of any proceeding preliminary or incidental to it unless Her Majesty in Council so authorises.

(10) The term of any sentence passed by the Court of Appeal or Her Majesty in Council under section 234 begins to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made, unless the Court of Appeal or Her Majesty in Council otherwise directs.

Reference to Court of Appeal of point of law following acquittal on indictment.

236.(1) If a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney-General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the court, and the court must, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of its consideration of a point referred to it under this section the Court of Appeal must hear argument–

(a) by, or by counsel on behalf of, the Attorney-General; and

(b) if the acquitted person desires to present any argument to the court - by counsel on his behalf or, with the leave of the court, by the acquitted person himself.

(3) If the Court of Appeal has given its opinion on a point referred to it under this section, the court may, on its own initiative or pursuant to an application in that behalf, refer the point to Her Majesty in Council if it appears to the court that the point ought to be considered by Her Majesty.

(4) If a point is referred to Her Majesty in Council under subsection (3), Her Majesty in Council must consider the point and give Her Majesty's opinion on it accordingly.

(5) A reference under this section does not affect the trial in relation to which the reference is made, or any acquittal in that trial.

(6) The court must ensure that the identity of the respondent to a reference is not disclosed during the proceedings on the reference unless the respondent has consented to the use of his name in the proceedings.

(7) No mention must be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.

Leave to appeal to Her Majesty in Council.

237. An application under this Part to the Court of Appeal for leave to appeal to Her Majesty in Council on any ruling by the Court of Appeal may be made orally immediately after the court gives its ruling or by notice served on the Registrar within 14 days of the ruling.

PART 12 – DISCLOSURE OF MATERIAL

Preliminary

Application of Part.

238.(1) This Part applies when–

(a) a person is charged with a summary offence in respect of which a court proceeds to summary trial and in respect of which he pleads not guilty;

(b) a person who has attained the age of 18 is charged with an offence which is triable either way, in respect of which a court proceeds to summary trial and in respect of which he pleads not guilty;

(c) a person under the age of 18 is charged with an indictable offence in respect of which a court proceeds to summary trial and in respect of which he pleads not guilty;

(d) a person is charged with an indictable offence and is committed for trial for the offence concerned;

(e) a person is charged with an indictable offence and sent to the Supreme Court for trial under Part 9;

(f) a count charging a person with a summary offence is included in an indictment under section 175(2) of the Crimes Act 2011 (Common assault); or

(g) a bill of indictment charging a person with an indictable offence is preferred by direction of the Court of Appeal, or by direction or with consent of a judge.

(2) This Part applies only in relation to alleged offences into which no criminal investigation has begun before the commencement of this Part.

(3) Subsections (3) to (5) of section 239 and sections 256 and 257 have effect subject to subsections (2) and (3) of section 266.

Duty of disclosure

Initial duty of prosecutor to disclose.

239.(1) The prosecutor must–

(a) disclose to the defendant any prosecution material which has not previously been disclosed to the defendant and which might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant; or

(b) give to the defendant a written statement that there is no material of a description mentioned in paragraph (a).

(2) For the purposes of this section prosecution material is material which–

(a) is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the defendant; or

(b) in compliance with of a code of practice published under Part 29, the prosecutor has inspected in connection with the case for the prosecution against the defendant.

(3) If material consists of information which has been recorded in any form, the prosecutor discloses it for the purposes of this section–

(a) by ensuring that a copy is made of it and that the copy is given to the defendant; or

(b) if in the prosecutor's opinion that is not practicable or not desirable - by allowing the defendant to inspect it at a reasonable time and a reasonable place or by taking steps to ensure that he is allowed to do so.

(4) A copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.

(5) If material consists of information which has not been recorded, the prosecutor discloses it for the purposes of this section by ensuring that it is recorded in such form as he thinks fit and–

(a) by securing that a copy is made of it and that the copy is given to the defendant; or

(b) if in the prosecutor's opinion that is not practicable or not desirable - by allowing the defendant to inspect it at a reasonable time and a reasonable place or by taking steps to ensure that he is allowed to do so.

(6) If material does not consist of information, the prosecutor discloses it for the purposes of this section by allowing the defendant to inspect it at a reasonable time and a reasonable place or by taking steps to ensure that he is allowed to do so.

(7) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes that it is not in the public interest to disclose it and orders accordingly.

Initial duty to disclose: Further provisions.

240.(1) The prosecutor must act under section 239 as soon as is reasonably practicable after–

(a) the defendant pleads not guilty (if this Part applies by virtue of section 238(1)(a), (b) or (c));

(b) the defendant is committed or sent for trial (if this Part applies by virtue of section 238(1)(d) or (e));

(c) the count is included in the indictment (if this Part applies by virtue of section 238(1)(f)); or

(d) the bill of indictment is preferred (if this Part applies by virtue of section 238(1)(g)).

(2) In determining what is reasonably practicable –

(a) the court may take account of the nature or volume of the material concerned; and

(b) the nature of material may be defined by reference to the prosecutor's belief that the question of non-disclosure on grounds of public interest may arise.

(3) If–

(a) the prosecutor acts under section 239; and

(b) before so doing he is given a document in compliance with a provision included in a code of practice about criminal investigations published under Part 29 by virtue of section 688(3),

the prosecutor must give the document to the defendant at the same time as the prosecutor acts under section 239.

241. *Deleted*

Voluntary disclosure by defendant.

242.(1) This section applies if–

(a) this Part applies by virtue of section 238(1); and

(b) the prosecutor complies or purports to comply with section 239.

(2) The defendant–

(a) may give a defence statement to the prosecutor; and

(b) if he does so, must also give such a statement to the court.

(3) If the defendant gives a defence statement under this section he must give it during the period which, by virtue of section 252, is the relevant period for this section.

Contents of defence statement.

243.(1) For the purposes of this Part a defence statement is a written statement–

(a) setting out the nature of the defendant's defence, including any particular defences on which he intends to rely;

(b) indicating the matters of fact on which he takes issue with the prosecution;

(c) setting out, in the case of each such matter, why he takes issue with the prosecution;

(d) setting out particulars of the matters of fact on which he intends to rely for the purposes of his defence; and

(e) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take, and any authority on which he intends to rely for that purpose.

(2) A defence statement that discloses an alibi must give particulars of it, including–

(a) the name, address and date of birth of any witness the defendant believes is able to give evidence in support of the alibi, or as many of those details as are known to the defendant when the statement is given;

(b) any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the statement is given.

(3) For the purposes of this section evidence in support of an alibi is evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular locality 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.

(4) Rules of court may make provision as to the matters that, by virtue of subsection (1), are to be included in defence statements.

Updated disclosure by defendant.

244.(1) If the defendant has, before the beginning of the relevant period for this section, given a defence statement under section 242, he must during that period give to the court and the prosecutor either–

(a) a defence statement under this section (an "updated defence statement"); or

(b) a statement of the kind mentioned in subsection (4).

(2) The relevant period for this section is decided under section 252.

(3) An updated defence statement must comply with the requirements imposed by or under section 243 by reference to the state of affairs at the time when the statement is given.

(4) Instead of an updated defence statement, the defendant may give a written statement stating that he has no changes to make to the defence statement which was given under section 242.

(5) If there are other defendants in the proceedings and the court so orders, the defendant must also give either an updated defence statement or a statement of the kind mentioned in subsection (4), within a period specified by the court, to every other defendant so specified.

(6) The court may make an order under subsection (5) either on its own initiative or on the application of any party.

245. *Deleted*

246. *Deleted*

Disclosure by defendant: Further provisions.

247.(1) If a defendant's legal representative purports to give on behalf of the defendant–

(a) a defence statement under section 242 or 244; or

(b) a statement of the kind mentioned in section 244(4),

the statement is, unless the contrary is proved, deemed to be given with the authority of the defendant.

(2) The judge in a trial before a judge and jury–

(a) may direct that the jury be given a copy of any defence statement; and

(b) if he does so, may direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

(3) A direction under subsection (2)–

(a) may be made either on the judge's own initiative or on the application of any party;

(b) may be made only if the judge is of the opinion that seeing a copy of the defence statement would help the jury to understand the case or to resolve any issue in the case.

(4) The reference in subsection (2) to a defence statement is a reference–

(a) if the defendant has given only an initial defence statement (that is, a defence statement given under section 242) - to that statement;

(b) if the defendant has given both an initial defence statement and an updated defence statement (that is, a defence statement given under section 244) - to the updated defence statement;

(c) if the defendant has given both an initial defence statement and a statement of the kind mentioned in section 244(4) - to the initial defence statement.

Continuing duty of prosecutor to disclose.

248.(1) This section applies–

(a) after the prosecutor has complied or purported to comply with section 239; and

(b) before the defendant is acquitted or convicted or the prosecutor decides not to proceed with the case.

(2) The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which–

(a) might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant; and

(b) has not been disclosed to the defendant.

(3) If at any time there is any such material as is mentioned in subsection (2) the prosecutor must disclose it to the defendant as soon as is reasonably practicable (or within the period mentioned in subsection (5)(a), if that applies).

(4) In applying subsection (2) by reference to any given time, the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.

(5) If the defendant has given a defence statement under section 242 or 244–

(a) if as a result of that statement the prosecutor is required by this section to make any disclosure, or further disclosure, he must do so as soon as is reasonably practicable after the defendant gives the statement;

(b) if the prosecutor considers that he is not so required, he must as soon as is reasonably practicable after the defendant gives the statement give the defendant a written statement to that effect.

(6) For the purposes of this section prosecution material is material–

(a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the defendant; or

(b) which, in compliance with a code of practice issued under Part 29, he has inspected in connection with the case for the prosecution against the defendant.

(7) Subsections (3) to (5) of section 239 (method by which prosecutor discloses) apply for the purposes of this section as they apply for the purposes of that section.

(8) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(9) Material must not be disclosed under this section to the extent that it is material the disclosure of which is prohibited by any other law.

(10) Section 240(2) applies for the purpose of determining whether action has been taken as soon as is reasonably practicable.

Application by defendant for disclosure.

249.(1) This section applies if the defendant has given a defence statement under section 242 or 244 and the prosecutor has complied or purported to comply with section 248(5) or has failed to comply with it.

(2) If the defendant has at any time reasonable cause to believe that there is prosecution material which is required by section 248 to be disclosed to him and has not been, he may apply to the court for an order requiring the prosecutor to disclose it to him.

(3) For the purposes of this section prosecution material is material–

(a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the defendant;

(b) which, in compliance with a code of practice issued under Part 29 he has inspected in connection with the case for the prosecution against the defendant; or

(c) which falls within subsection (4).

(4) Material falls within this subsection if, in compliance with a code of practice issued under Part 29 the prosecutor must, if he asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the defendant.

(5) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(6) Material must not be disclosed under this section to the extent that it is material the disclosure of which is prohibited by any other law.

Prosecutor's failure to observe time limits.

250.(1) This section applies if the prosecutor–

(a) purports to act under section 239 but fails to act as soon as is reasonably practicable, as required by section 240(1); or

(b) purports to act under section 248(5) but fails to act as soon as is reasonably practicable as required by that section.

(2) A failure by the prosecution to act as soon as is reasonably practicable–

(a) does not on its own constitute grounds for staying the proceedings for abuse of process; but

(b) does constitute such grounds if it involves such delay by the prosecutor that the defendant is denied a fair trial.

Faults in disclosure by defendant.

251.(1) This section applies in the case set out in subsection (3).

(2) The things referred to in subsection (3)(b) are where the defendant–

(a) *Deleted*

(b) *Deleted*

(c) is required by section 244 to give either an updated defence statement or a statement of the kind mentioned in subsection (4) of that section but fails to do so;

(d) gives an updated defence statement or a statement of the kind mentioned in section 244(4) but does so after the end of the period which, by virtue of section 252, is the relevant period for section 244;

(e) sets out inconsistent defences in his defence statement; or

(f) at his trial–

(i) puts forward a defence which was not mentioned in his defence statement or is different from any defence set out in that statement;

(ii) relies on a matter which, in breach of the requirements imposed by or under section 243, was not mentioned in his defence statement;

(iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement; or

(iv) calls a witness to give evidence in support of an alibi without having complied with section 243(2)(a) or (b) as regards the witness in his defence statement.

(3) Where section 242 applies, the defendant gives an initial defence statement, and the defendant–

(a) gives the initial defence statement after the end of the period which, by virtue of section 252, is the relevant period for section 242; or

(b) does any of the things mentioned in paragraphs (c) to (f) of subsection (2).

(4) *Deleted*

(5) If this section applies–

(a) the court or any other party may make such comment as appears appropriate;

(b) the court or jury may draw such inferences as appear proper in deciding whether the defendant is guilty of the offence concerned.

(6) If–

(a) this section applies by virtue of subsection (2)(f)(ii) (including that provision as it applies by virtue of subsection (3)(b)); and

(b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,

comment by another party under subsection (5)(a) may be made only with the leave of the court.

(7) *Deleted*

(8) If the defendant puts forward a defence which is different from any defence set out in his defence statement, in doing anything under subsection (5) or in deciding whether to do anything under it the court must have regard to–

(a) the extent of the differences in the defences; and

(b) whether there is any justification for it.

(9) *Deleted*

(10) A person must not be convicted of an offence solely on an inference drawn under subsection (5).

(11) If the defendant has given a statement of the kind mentioned in section 244(4), then, for the purposes of subsections (2)(f)(ii) and (iv), the question as to whether there has been a breach of the requirements imposed by or under section 243 or a failure to comply with section 243(2)(a) or (b) is to be decided–

(a) by reference to the state of affairs at the time when that statement was given; and

(b) as if the defence statement was given at the same time as that statement.

(12) In this section–

(a) "initial defence statement" means a defence statement given under section 242;

"updated defence statement" means a defence statement given under section 244;

(b) a reference simply to a defendant's "defence statement" is a reference–

(i) if he has given only an initial defence statement - to that statement;

(ii) if he has given both an initial and an updated defence statement - to the updated defence statement;

(iii) if he has given both an initial defence statement and a statement of the kind mentioned in section 244(4) - to the initial defence statement;

(c) a reference to evidence in support of an alibi is to be construed in accordance with section 243(3) and section 266A.

Time limit for defence disclosure.

252.(1) This section has effect for the purpose of determining the relevant period for action to be taken by a defendant under any of sections 242 or 244.

(2) Subject to this section, the relevant period is a period beginning with the day on which the prosecutor complies, or purports to comply, with section 239 and ending with the expiration of 14 days from that day.

(3) The period referred to in subsection (2) may by order, upon an application made by the defendant before the expiration of that period, be extended by the court at its discretion.

(4) An application under subsection (3) must–

(a) state that the defendant believes, on reasonable grounds, that it is not possible for him to take action as required by any of the sections mentioned in subsection (1) during the period referred to in subsection (2);

(b) specify the grounds for so believing; and

(c) specify the number of days by which the defendant wishes that period to be extended.

(5) The court must not make an order under subsection (3) unless it is satisfied that the defendant cannot reasonably give or, as the case may be, could not reasonably have taken the required action during the period referred to in subsection (2).

(6) The court by order may further extend the relevant period on further application made by the defendant before the expiry of the extended period and subsections (4) and (5) apply for the purposes of an order under this subsection as they apply for the purposes of an order under subsection (3).

(7) There is no limit on the number of applications that may be made under subsection (3) as applied by subsection (6) and on a second or subsequent application the court has the same powers as on the first application.

(8) In the application of this section, the relevant period means that period as extended or further extended by an order of the court under subsection (3) or (6).

(9) If the relevant period would, apart from this subsection, expire on a Saturday, Sunday or public holiday, the period is to be treated as expiring on the next day which is not one of those days.

Disclosure: Miscellaneous

Public interest: Review for summary trials.

253.(1) If this Part applies by virtue of section 238(1), then at any time–

(a) after a court makes an order under section 239(7), 248(8) or 249(5); and

(b) before the defendant is acquitted or convicted or the prosecutor decides not to proceed with the case concerned,

the defendant may apply to the court for a review of the question whether it is still not in the public interest to disclose material affected by its order.

(2) In such a case the court must review that question, and if it concludes that it is in the public interest to disclose material to any extent–

(a) it must so order; and

(b) it must take reasonable steps to inform the prosecutor of its order.

(3) If the prosecutor is informed of an order made under subsection (2) he must act accordingly, having regard to the provisions of this Part (unless he decides not to proceed with the case concerned).

Public interest: Review in other cases.

254.(1) If this Part applies by virtue of section 238(2), the court must keep under review the question whether at any given time it is still not in the public interest to disclose material affected by its order.

(2) The question mentioned in subsection (1) must be kept under review at all times–

(a) after a court makes an order under section 239(7), 248(8) or 249(5); and

(b) before the defendant is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.

(3) The court must keep the question mentioned in subsection (1) under review without the need for an application; but the defendant may apply to the court for a review of that question.

(4) If the court at any time concludes that it is in the public interest to disclose material to any extent it must so order, and must take reasonable steps to inform the prosecutor of its order.

(5) If the prosecutor is informed of an order made under subsection (4) he must act accordingly having regard to the provisions of this Part (unless he decides not to proceed with the case concerned).

Applications: Opportunity to be heard.

255. If–

(a) an application is made under section 239(7), 248(8), 249(5), 252(3) or 254(3) in respect of any material;

(b) a person claiming to have an interest in the material applies to be heard by the court; and

(c) the person shows that he was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to the material,

the court must not make an order on the application mentioned in paragraph (a) unless the person applying under paragraph (b) has been given an opportunity to be heard.

Confidentiality of disclosed information.

256.(1) If the defendant is given or allowed to inspect a document or other object under this Part, then, subject to subsections (2) to (4), he must not use or disclose it or any information recorded in it.

(2) The defendant may use or disclose the object or information–

(a) in connection with the proceedings for whose purposes he was given the object or allowed to inspect it;

(b) with a view to the taking of further criminal proceedings, such as by way of appeal, with regard to the matter giving rise to the proceedings mentioned in paragraph (a); or

(c) in connection with the proceedings first mentioned in paragraph (b).

(3) The defendant may use or disclose–

(a) the object to the extent that it has been displayed to the public in open court; or

(b) the information to the extent that it has been communicated to the public in open court;

but the preceding provisions of this subsection do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of court under section 257.

(4) If–

(a) the defendant applies to the court for an order granting permission to use or disclose the object or information; and

(b) the court makes such an order,

the defendant may use or disclose the object or information for the purpose and to the extent specified by the court.

(5) An application under subsection (4) may be made and dealt with at any time, and in particular after the defendant has been acquitted or convicted or the prosecutor has decided not to proceed with the case concerned.

(6) If–

(a) an application is made under subsection (4); and

(b) the prosecutor or a person claiming to have an interest in the object or information applies to be heard by the court,

the court must not make an order granting permission unless the person applying under paragraph (b) has been given an opportunity to be heard.

(7) Nothing in this section affects any other restriction or prohibition on the use or disclosure of an object or information, whether the restriction or prohibition arises under an enactment (whenever passed) or otherwise.

Confidentiality: Contravention.

257.(1) It is a contempt of court for a person knowingly to use or disclose an object or information recorded in it if the use or disclosure is in contravention of section 256.

(2) If a person is guilty of a contempt under this section–

(a) the Magistrates' Court may commit him to custody for up to 6 months or fine him up to £5,000, or do both;

(b) the Supreme Court may commit him to custody for up to 2 years or fine him, or do both.

(3) If–

(a) a person is guilty of a contempt under this section; and

(b) the object concerned is in his possession,

the court may order that the object be forfeited and dealt with as the court orders.

(4) The power of the court under subsection (3) includes power to order the object to be destroyed or given to the prosecutor or placed in his custody for a specified period.

(5) If–

(a) the court proposes to make an order under subsection (3); and

(b) the person found guilty, or any other person claiming to have an interest in the object, applies to be heard by the court,

the court must not make the order unless the applicant has been given an opportunity to be heard.

(6) If–

(a) a person is guilty of a contempt under this section; and

(b) a copy of the object concerned is in his possession,

the court may order that the copy be forfeited and dealt with as the court orders.

(7) Subsections (4) and (5) apply for the purposes of subsection (6) as they apply for the purposes of subsection (3), but as if references to the object were references to the copy.

(8) An object or information is inadmissible as evidence in civil proceedings if to adduce it would in the opinion of the court be likely to constitute a contempt under this section; and "the court" here means the court before which the civil proceedings are being taken.

(9) The powers of the Magistrates' Court under this section may be exercised either on the court's own initiative or by order on complaint.

Human Trafficking Offences: Investigation and Prosecution.

Requirements for investigation or prosecution.

258.(1) The investigation or prosecution of a human trafficking offence shall not be dependent on reporting or accusation by a victim wherever the offence takes place.

(2) Any criminal proceedings may continue even if the victim has withdrawn his or her statement.

(3) Where the victim ("V") has committed a criminal act as a direct consequence of V being subjected to human trafficking, no prosecution or imposition of penalties shall occur if "V" has been compelled to commit the criminal act as a direct consequence of being subjected to–

(a) threats or use of force;

(b) coercion;

(c) abduction;

(c) fraud or deception;

(e) the abuse of power or of a position of vulnerability; or

(f) the giving or receiving of payments or benefits to achieve the consent of a person having control over V.

(4) For the purposes of subsection (3)(e) a position of vulnerability means a situation in which V has no real or acceptable alternative but to submit to the abuse involved.

(5) Subsection (3) shall not abrogate or limit the scope of any common law defences such as duress and necessity.

Resources for investigation or prosecution.

259. The Government shall take the necessary measures to ensure that–

(a) persons, units or services responsible for investigating or prosecuting trafficking in human beings are trained accordingly; and

(b) effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating trafficking in human beings.

260-264. Not used.

Supplementary

Rules of court.

265.(1) Rules of court may provide for the practice and procedure to be followed in relation to–

(a) proceedings to deal with a contempt of court under section 257;

(b) an application under any provision of this Part;

(c) the making of an order under any provision of this Part.

(2) The power to make rules of court includes power to make, with regard to any proceedings before the Magistrates' Court which relate to an alleged offence, provision for–

(a) requiring any party to the proceedings to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings;

(b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.

(3) Rules made by virtue of subsection (2) may–

(a) specify the kinds of expert evidence to which they apply;

(b) exempt facts or matters of any description specified in the rules.

(4) Rules made by virtue of this section may–

(a) include provision requiring persons to be notified of an application;

(b) make different provision for different cases or classes of case.

Other rules as to disclosure.

266.(1) A duty of disclosure under any provision of this Part does not affect and is not affected by any duty arising under any other enactment with regard to material to be provided to or by the defendant or a person representing him.

(2) If this Part applies as regards things falling to be done after the commencement of this Part in relation to an alleged offence, the rules of common law which–

(a) were effective immediately before the commencement of this Part; and

(b) relate to the disclosure of material by the prosecutor,

do not apply as regards things falling to be done after that time in relation to the alleged offence.

(3) Subsection (2) does not affect the rules of common law as to whether disclosure is in the public interest.

Notice of alibi.

266A.(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 at which he is committed for trial for the offence concerned or is sent to the Supreme Court for trial under Part 9 or be given in writing to the prosecutor, and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to the prosecutor.

(7) A notice required by this section to be given to 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 mentioned in subsection (6).

(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.

(10) The requirements set out in this section are in addition to those set out in sections 239 to 252.

PART 13 – APPEALS TO THE SUPREME COURT

Right of appeal

Right of appeal against conviction or sentence.

267.(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) An appeal may be made against a conviction resulting in an absolute or conditional discharge, even though such a discharge may for certain purposes not be regarded as a conviction.

(3) In this section "sentence" includes any order made on conviction by the Magistrates' Court, not being–

(a) a probation order made before the commencement of this Act;

(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 pursuant to any law under which the court has no discretion as to the making of the order or its terms.

(4) If 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 is the respondent to the appeal;

(b) section 5 of the Legal Aid and Assistance Act (Legal aid for appellants in certain cases) and, in relation to an appellant in custody for failure to comply with the order, section 118 (Bail on appeal) apply, with necessary modifications, as if the appeal were an appeal against a conviction.

Right of appeal from the Magistrates' Court in mental disorder cases.

268.(1) A person in whose case a special finding or verdict under Part 28 is made by the Magistrates' Court may appeal against the finding or verdict to the Supreme Court in accordance with section 278.

(2) If on the trial of an information charging a person with an offence the Magistrates' Court makes a hospital order or interim hospital order in respect of him without convicting him–

(a) the person has the same right of appeal against the order as if it had been made on his conviction; and

(b) on any such appeal the Supreme Court has the same powers as if the appeal had been against both conviction and sentence.

(3) An appeal by a juvenile with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

Appeals in cases concerning juveniles.

269.(1) Appeals to the Supreme Court from orders of the Magistrates' Court in relation to a juvenile may be brought in the following cases and by the following persons–

(a) in the case of a sentence of imprisonment or detention - by the juvenile or his parent or guardian on his behalf;

(b) in the case of a community sentence (youth rehabilitation order) - by the juvenile or by the probation officer;

(c) in the case of a binding over order on a parent or guardian - by the parent or guardian.

(2) Nothing in this section affects any right of appeal to the Supreme Court conferred by this Act or any other law.

Procedure

Notice of appeal.

270.(1) An appeal from the Magistrates' Court to the Supreme Court is commenced by the appellant giving notice of appeal within 21 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 is–

(a) if the court has adjourned the trial of an information after conviction - the day on which the court sentences or otherwise deals with the offender;

(b) if a court defers sentence - the day to which sentence is deferred.

(3) A notice of appeal must–

(a) be in writing; and

(b) state the grounds of appeal.

(4) The time for giving notice of appeal may be extended, either before or after it expires, by direction of the Supreme Court, on an application in writing to the Registrar, specifying the grounds of the application.

(5) If the Supreme Court extends the time for giving notice of appeal, the Registrar must give notice of the extension to–

(a) the appellant; and

(b) the clerk of the Magistrates' Court,

and the appellant must give notice to any other party to the appeal.

(6) The powers of the Supreme Court under subsection (4) may be exercised by a single judge of the court.

Entry of appeal.

271.(1) On receiving a notice of appeal, the clerk of the Magistrates' Court must send the notice to the Registrar, who must–

(a) enter the appeal; and

(b) give notice of the date, time and place of the hearing to the appellant, any other party to the appeal and the clerk of the Magistrates' Court.

(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.

272.(1) The Registrar must–

(a) take all necessary steps for obtaining a hearing under this Part of any appeals of which notice is given to him; and

(b) 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 that 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–

(a) the Registrar may refer the appeal to the Supreme Court for summary determination; and

(b) if the case is so referred, the Supreme Court may, if it considers that the appeal is frivolous or vexatious, and can be decided 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 on the appeal, despite 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 authorised to appeal, must be kept in the custody of the Magistrates' Court in accordance with rules made for the purpose, for the time provided by the rules, and subject to any power given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The Registrar must provide the necessary forms and instructions in relation to notices of appeal under this Part to any person who demands them, and to the clerk of the Magistrates' Court.

(5) The Superintendent must cause–

(a) those forms and instructions to be placed at the disposal of prisoners wishing to appeal; and

(b) any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

Abandonment of appeal.

273.(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.

(2) On receiving notice of abandonment of an appeal under subsection (1), the clerk must give notice of the abandonment to the other party to the appeal and to the Registrar.

(3) If 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.

(4) Costs ordered to be paid under this section are enforceable as a civil debt.

Right of appellant to be present.

274.(1) An appellant, even if in custody, is entitled to be present, if he desires it, on the hearing of his appeal, unless 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, is not entitled to be present, unless 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 even if the appellant is for any reason not present, but only if he is legally represented.

Procedure at hearing.

275.(1) An appeal to the Supreme Court from the Magistrates' Court in any criminal case is to be decided by the Supreme Court–

(a) upon perusal of a copy, certified as a true copy by the clerk of the Magistrates' Court, of the notes made by the clerk of the proceedings before the Magistrates' Court or other transcript of those proceedings; and

(b) upon hearing the parties to the appeal or their legal representatives.

(2) The parties to the appeal or their legal representatives are to be heard in the following order–

(a) the appellant or his legal representative first addresses the court in support of the appeal;

(b) the respondent or his legal representatives then addresses the court;

(c) the appellant or his legal representative then has the right of reply.

(3) If neither party appears or is represented on an appeal, the appeal must be dismissed.

Powers of the Supreme Court on appeal

Appeals to the Supreme Court.

276.(1) On an appeal against conviction, or against conviction and sentence, other than an appeal upon a case stated, the Supreme Court may–

(a) quash the conviction and acquit the appellant;

(b) affirm the conviction;

(c) 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;

(d) in either of the cases mentioned in paragraph (b) and (c), affirm the sentence passed by the Magistrates' Court or substitute for it 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; or

(e) order a re-trial of the appellant before the Magistrates' court.

(2) On an appeal against sentence only, the Supreme Court may–

(a) affirm the sentence; or

(b) 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.

(3) On an appeal against any other order, the Supreme Court may 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.

(4) Subsections (1) to (3) have effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the Supreme Court on the appeal.

(5) This section applies whether or not the appeal is against the whole of the decision.

(6) In this section "sentence" includes any order made by a court when dealing with an offender, including–

(a) a hospital order, interim hospital order or supervision order under Part 28; and

(b) a recommendation for deportation made when dealing with an offender.

(7) The fact that an appeal is pending against an interim hospital order under Part 28 does not affect the power of the Magistrates' Court to renew or terminate the order or to deal with the appellant on its termination.

(8) If the Supreme Court quashes an interim hospital order but does not pass any sentence or make any other order in its place the court may direct the appellant to be kept in custody or released on bail pending his being dealt with by the Magistrates' Court.

(9) If the Supreme Court makes an interim hospital order by virtue of this section–

(a) the power of renewing or terminating the order and of dealing with the appellant on its termination is exercisable by the Magistrates' Court and not by the Supreme Court; and

(b) the Magistrates' Court is to be treated for the purposes of section 670(2) (absconding offenders) as the court that made the order.

(10) No magistrate is liable to any costs in respect or by reason of an appeal under this section.

Determination of appeals.

277.(1) Subject to subsection (2), the Supreme Court, upon the hearing of an appeal against conviction, must allow the appeal if it thinks that–

(a) the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or

(b) the judgment of the Magistrates' Court should be set aside on the ground of a wrong decision of any question of law; or

(c) on any ground there was a material irregularity in the course of the trial,

and in any other case must dismiss the appeal.

(2) The Supreme Court, even if it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) Subject to this Part, the Supreme Court must, if it allows an appeal against conviction, quash the conviction and direct a judgment and order of acquittal to be entered.

Appeals against special findings or verdicts.

278.(1) If, apart from this section–

(a) an appeal against a special finding or verdict would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the mental disorder of the defendant,

the Supreme Court may dismiss the appeal if it is of the opinion that but for the mental disorder of the defendant the proper verdict would have been that he was guilty of an offence other than the offence charged.

(2) If an appeal against a special finding or verdict is allowed, then–

(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 verdict 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 Supreme Court–

(i) must substitute for the special finding a verdict of guilty of that offence; and

(ii) has 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 verdict; and

(b) in any other case, the Supreme Court must substitute for the finding of the court a verdict of acquittal.

(3) If, on an appeal against conviction, the Supreme Court, on the written or oral evidence of 2 or more medical practitioners, is of the opinion–

(a) that the proper verdict would have been one of not guilty by reason of mental disorder; or

(b) that the case is not one where there should have been a verdict of acquittal, but there should have been findings that the accused was suffering from mental disorder so as not to be responsible in law for his actions at the time when the act was done or omission made,

then, if it appears to the court 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 must make a special verdict to the effect that the defendant was not guilty by reason of mental disorder.

(4) If the court makes a special verdict as in subsection (3), it must also make such one of the following orders as it considers to be most suitable in all the circumstances of the case–

(a) a hospital order, interim hospital order or supervision order pursuant to Part 28;

(b) an order for his absolute discharge.

(5) The term of any sentence passed by the Supreme Court in the exercise of the powers conferred by subsection (2)(a), unless the court otherwise directs, begins to run from the time when it would have begun to run if passed in the proceedings in the Magistrates' Court.

Supplementary powers.

279.(1) On an appeal under this Part, the Supreme Court may, if it thinks it necessary or expedient in the interests 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;

(b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether or not they were called at the trial;

(c) order the examination of any such witnesses to be conducted, in the manner provided by rules of court, before a judge or any officer of the Supreme Court or any magistrate or other person

appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court;

(d) 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;

(e) if 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 the 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 the court thinks fit to adopt it;

(f) 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

(g) 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.

(2) In no case may any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Enlargement of time.

280. A judge of the Supreme Court may, upon application made in open court by the appellant and after not less than 2 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 judge thinks fit so to do.

Power to correct omissions or mistakes.

281.(1) The Supreme Court may, in the course of hearing any appeal, correct any error or mistake in the order or judgment incorporating the decision which is the subject of the appeal.

(2) Without limiting subsection (1), if on an appeal under this Part–

(a) an objection is made on account of any omission or mistake in the drawing up of a conviction or order of the Magistrates' Court; and

(b) it is shown to the satisfaction of a judge of the Supreme Court sufficient grounds were in proof before the Magistrates' Court to have authorised the drawing up of such conviction or order free from the omission or mistake,

the judge may amend the conviction or order and adjudicate on it as if no such omission or mistake had occurred.

Manner of enforcement of decision.

282.(1) 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 affecting 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) by any process already issued to enforce the decision appealed against, to the extent that process permits.

(2) The decision of the Supreme Court has effect as if it had been made by the Magistrates' Court.

Notification to Magistrates' Court.

283. When an appeal against a conviction, special finding or order of the Magistrates' Court has been decided under the provisions of section 276 or 278 (1), the Registrar must forthwith notify that decision to the Magistrates' Court, and that court must, in relation to the decision, exercise all such powers as are necessary for the enforcement of the decision 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.

284.(1) Any person who was a party to any proceedings before the Magistrates' Court or is aggrieved by the conviction, order, decision 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 magistrates composing the court to state a case for the opinion of the Supreme Court on the question of law or jurisdiction involved.

(2) No application may be made under this section in respect of a decision which by virtue of any law is final.

(3) An application under subsection (1) must be made within 21 days after the day on which the decision of the Magistrates' Court was given.

(4) No writ of *certiorari* or other writ is required for the removal of any conviction, order or other decision in relation to which a case is stated for obtaining the judgment or decision of the Supreme Court on the case.

(5) For the purpose of subsection (3), the day on which the decision of the Magistrates' Court is given is–

(a) if the court has adjourned the trial of an information after conviction - the day on which the court sentences or otherwise deals with the offender;

(b) if a court defers sentence - the day to which sentence is deferred.

(6) 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 ceases.

(7) If the magistrates are of opinion that an application under this section is frivolous–

(a) they may, subject to subsection (8), refuse to state a case; and

(b) if the applicant so requires, must give him a certificate stating that the application has been refused.

(8) The magistrates must not refuse to state a case if the application is made by or under the direction of the Attorney-General.

(9) If the magistrates 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 requiring them to state a case.

Case may be sent back for amendment.

285.(1) The Supreme Court may, if it thinks fit, cause any case stated to be sent back to the magistrates for amendment.

(2) If a case is sent back pursuant to subsection (1), the case must be amended accordingly, and judgment is to be delivered only after it has been amended.

Determination of question.

286.(1) The Supreme Court must hear and decide the question or questions of law arising on any case stated, and thereupon–

(a) reverse, affirm or amend the decision in respect of which the case has been stated;

(b) remit the matter to the Magistrates' Court, with the opinion of the Supreme Court on the case; or

(c) make any other order in relation to the matter as the Supreme Court thinks fit.

(2) No magistrate is liable to any costs in respect or by reason of an appeal by way of case stated.

Enforcement of decisions.

287. Any conviction, order, decision 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 14 – SUPREME COURT PROCEDURE

Manner of trial

Trials to be with jury or lay assessors.

288.(1) Subject to the following subsections, every criminal case before the court is to be tried with a jury in the manner provided by Part III of the Supreme Court Act.

(2) A trial on an indictment for a serious or complex financial offence may be conducted by a judge, assisted by 2 lay assessors, or by the judge alone, in accordance with and in the manner prescribed by Part IIIA of the Supreme Court Act..

(3) If a defendant arraigned on an indictment or inquisition pleads not guilty and the prosecutor proposes to offer no evidence against him, the court may, if it thinks fit, order that a verdict of not guilty be recorded without the defendant being given in charge to a jury, and the verdict has the same effect as if the defendant had been tried and acquitted on the verdict of a jury.

Indictments

Bills of indictment.

289.(1) Subject to this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before the Supreme Court, and it thereupon becomes an indictment and must be proceeded with accordingly

(2) Subject to the following subsections, no bill of indictment charging any person with an indictable offence may be preferred unless–

(a) the person charged has been committed or sent for trial for the offence under Part 9; or

(b) the bill is preferred by the direction of the Court of Appeal or by the direction or with the consent of a judge of the Supreme Court.

(3) If the person charged has been committed or sent for trial, the bill of indictment against him may include, either in substitution for or in addition to counts charging the offence which the person was committed or sent, any counts founded on facts or evidence disclosed to the Magistrates' Court inquiring into that offence as examining magistrates, being counts which may lawfully be joined in the same indictment.

(4) In a case to which subsection (2)(a) applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the notice of committal or notice of sending, any counts founded on material that accompanied the copy of that notice which, pursuant to Part 9, was given to the person charged, being counts which may lawfully be joined in the same indictment.

(5) In a case to which subsection (2)(b) applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the notice under Part 9, any counts founded on material which, pursuant to rules made under that Part, was served on the person charged, being counts which may be lawfully joined in the same indictment.

(6) If a bill of indictment has been preferred otherwise than in accordance with subsections (2) to (5), the indictment is liable to be quashed, except that–

(a) if the bill contains several counts, and those subsections have been complied with as respects one or more of them, only those counts that were wrongly included are to be quashed under this subsection; and

(b) if a person who has been committed for trial is convicted on any indictment or any count of an indictment, that indictment or count must not be quashed under this subsection in any proceedings on appeal, unless application was made at the trial that it should be so quashed.

(7) If a bill of indictment is preferred in accordance with subsections (1) and (2), no objection to the indictment may be taken after the commencement of the trial by reason of any failure to observe any rules under section 294.

(8) For the purposes of subsection (7), the trial commences at the time when a jury is sworn to consider the issue of guilt or whether the accused did the act or made the omission charged, or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted.

(9) Nothing in this section affects any enactment restricting the right to prosecute in particular classes of case.

Contents of indictments.

290.(1) Every indictment must contain, and is sufficient if it contains, a statement of the specific offence or offences with which the defendant is charged, together with any particulars needed to give reasonable information as to the nature of the charge.

(2) Despite any rule of law or practice, an indictment is, subject to the provisions of this Part, not open to objection in respect of its form or contents if it is framed in accordance with rules made under section 294.

Joining of charges in same indictment.

291.(1) Subject to any rules made under section 294, charges for more than one offence may be joined in the same indictment.

(2) A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge–

(a) is founded on the same facts or evidence as a count charging an indictable offence; or

(b) is part of a series of offences of the same or similar character as an indictable offence which is also charged,

but only if (in either case) the facts or evidence relating to the offence were disclosed to the Magistrates' Court inquiring into the offence as examining magistrates or are disclosed by material which has been served on the person charged.

(3) If a count charging an offence to which subsection (2) applies is included in an indictment, the offence must be tried in the same manner as if it were an indictable offence, but the Supreme Court may only deal with the offender in respect of it in a manner in which the Magistrates' Court could have dealt with him.

(4) The summary offences to which this section applies are–

(a) an offence under section 40 of the Traffic Act 2005 (Driving a motor vehicle while disqualified);

(b) an offence of criminal damage, etc. which is triable summarily by virtue of section 148; and

(c) any summary offence which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.

Objections to and amendment of indictments.

292.(1) An objection to an indictment for any formal defect on its face must be taken immediately after the indictment has been read over to the defendant and not later.

(2) If, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court–

(a) must 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

(b) may make such order as to the payment of any costs incurred owing to the necessity for amendment as the court thinks fit.

(3) If an indictment is amended under this section, a note of the order for amendment must be endorsed on it.

Separate trial of counts and postponement of trial.

293.(1) If, before trial, or at any stage of a trial, the court is of opinion–

(a) that a defendant may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment; or

(b) 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 the indictment.

(2) If, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a defendant 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 must make such order as to the postponement of the trial as appears necessary.

(3) If an order of the court is made under this section for a separate trial or for the postponement of a trial–

(a) if the 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;

(b) the procedure on the separate trial of a count is the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial is 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 defendant 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 is in addition to and does not derogate from any other power of the court for the same or similar purposes.

Rules as to indictments.

294. Rules of court may make provision regulating indictments and any matter connected with them, and in particular as to–

(a) how and when bills of indictment are to be preferred; and

(b) how application is to be made for the consent of a judge to the preferment of a bill of indictment.

Pleas

Plea of guilty to other offence.

295. If a person is arraigned on an indictment for any offence, and can lawfully be convicted on that indictment of some other offence not charged in the indictment, he may plead not guilty of the offence charged in the indictment, but guilty of that other offence.

Pleas by corporations.

296.(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 must order a plea of not guilty to be entered and the trial must 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 authorised to do, but a person so appointed is not, by virtue only of being so appointed, 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, is admissible without further proof as *prima facie* evidence that that person has been so appointed.

Plea of autrefois acquit or autrefois convict.

297. If a defendant pleads *autrefois acquit* or *autrefois convict* it is for the judge, without the presence of a jury, to decide the issue.

Attendance of witnesses

Issue of witness summons on application to Supreme Court.

298.(1) This section applies if the Supreme Court is satisfied that–

(a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the Supreme Court, and

(b) the person will not voluntarily attend as a witness or will not voluntarily produce the document or thing.

(2) In such a case the Supreme Court must, subject to the following provisions of this section, issue a summons (a witness summons) directed to the person concerned and requiring him to–

(a) attend before the Supreme Court at the time and place stated in the summons; and

(b) give the evidence or produce the document or thing.

(3) A witness summons may only be issued under this section on an application; and the Supreme Court may refuse to issue the summons if any requirement relating to the application is not fulfilled.

(4) If a person has been committed or sent for trial under Part 9, for any offence to which the proceedings concerned relate, an application must be made as soon as is reasonably practicable after the committal or sending.

(5) If the proceedings concerned relate to an offence in relation to which a bill of indictment has been preferred under the authority of section 289(2)(b) (bill preferred by direction of Court of Appeal, or by direction or with consent of judge) an application must be made as soon as is reasonably practicable after the bill was preferred.

(6) An application must be made in accordance with any relevant rules of court.

(7) Rules of court may specify the cases which–

(a) require an application to be made by a party to the case;

(b) require the service of notice of an application on the person to whom the witness summons is proposed to be directed;

(c) require an application to be supported by an affidavit or a statement containing a declaration of truth containing such matters as the rules may stipulate.

(8) Rules of court may make provision for enabling the person to whom the witness summons is proposed to be directed to be present or represented at the hearing of the application for the witness summons.

(9) The rules may in particular require an affidavit or a statement containing a declaration of truth to –

(a) set out any charge on which the proceedings concerned are based;

(b) specify any stipulated evidence, document or thing in such a way as to enable the directed person to identify it;

(c) specify grounds for believing that the directed person is likely to be able to give any stipulated evidence or produce any stipulated document or thing;

(d) specify grounds for believing that any stipulated evidence is likely to be material evidence;

(e) specify grounds for believing that any stipulated document or thing is likely to be material evidence.

(10) In subsection (9)–

(a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons;

(b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

Power to require advance production.

299. A witness summons which is issued under section 298 and which requires a person to produce a document or thing as mentioned in subsection (2) of that section may also require him to produce the document or thing–

(a) at a place stated in the summons; and

(b) at a time which is so stated and precedes that stated under that subsection,

for inspection by the person applying for the summons.

Directions if summons no longer needed.

300.(1) If–

(a) a document or thing is produced pursuant to a requirement imposed by a witness summons under section 299;

(b) the person applying for the summons concludes that a requirement imposed by the summons under section 298(2) is no longer needed; and

(c) he accordingly applies to the Supreme Court for a direction that the summons is to be of no further effect,

the court may direct accordingly.

(2) An application under this section must be made in accordance with relevant rules of court.

(3) Rules of court may, in cases the rules specify, require the effect of a direction under this section to be notified to the person to whom the summons is directed.

Application to make summons under section 298 ineffective.

301.(1) If a witness summons issued under section 298 is directed to a person who–

(a) applies to the Supreme Court;

(b) satisfies the court that he was not served with notice of the application to issue the summons and that he was neither present nor represented at the hearing of the application; and

(c) satisfies the court that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence,

the court may direct that the summons is of no effect.

(2) For the purposes of subsection (1) it is immaterial whether or not rules of court–

(a) require the person to be served with notice of the application to issue the summons;

(b) enable the person to be present or represented at the hearing of the application.

(3) In subsection (1)(b) "served" means–

(a) if the rules require the person to be served with notice of the application to issue the summons - served in accordance with the rules;

(b) in any other case - served in a way that appears reasonable to the court to which the application is made.

(4) The Supreme Court may refuse to make a direction under this section if any requirement relating to the application under this section is not fulfilled.

(5) An application under this section must be made in accordance with relevant rules of court.

(6) Rules of court may specify the cases which–

(a) require the service of notice of an application under this section on the person on whose application the witness summons was issued;

(b) require that if–

(i) a person applying under this section can produce a particular document or thing; but

(ii) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

he must arrange for the document or thing to be available at the hearing of the application.

(7) If a direction is made under this section that a witness summons is of no effect, the person on whose application the summons was issued may be ordered to pay the whole or any part of the costs of the application under this section.

(8) Any costs payable under an order made under subsection (7) must be taxed by the Registrar, and payment of those costs is 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.

Issue of witness summons of court's own motion.

302. For the purpose of any criminal proceedings before it, the Supreme Court may on its own initiative issue a witness summons directed to a person and requiring him to–

(a) attend before the court at the time and place stated in the summons; and

(b) give evidence, or produce any document or thing specified in the summons.

Application to make summons under section 302 ineffective.

303.(1) If a witness summons issued under section 302 is directed to a person who–

(a) applies to the Supreme Court; and

(b) satisfies the court that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence,

the court may direct that the summons is of no effect.

(2) The Supreme Court may refuse to make a direction under this section if any requirement relating to the application under this section is not fulfilled.

(3) An application under this section must be made in accordance with relevant rules of court.

(4) Rules of court may specify the cases which–

(a) require the service of notice of an application under this section on the person on whose application the witness summons was issued;

(b) require that if–

(i) a person applying under this section can produce a particular document or thing; but

(ii) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

he must arrange for the document or thing to be available at the hearing of the application.

Penalty for disobeying a witness summons or requirement.

304.(1) A person who without just excuse disobeys a witness summons requiring him to attend before the Supreme Court commits contempt of court and may be punished summarily as if his contempt had been committed in the face of the court.

(2) A person who without just excuse disobeys a requirement made by the Supreme Court under section 299 commits contempt of court and may be punished summarily as if his contempt had been committed in the face of the court.

(3) No person is by reason of any disobedience mentioned in subsection (1) or (2) liable to imprisonment for a period exceeding 3 months.

Further process to ensure attendance of witness.

305.(1) If a judge of the Supreme Court is satisfied by evidence on oath that a witness in respect of whom a witness summons is in force is unlikely to comply with the summons, the judge may, subject to subsection (2), issue a warrant to arrest the witness and bring him before the court before which he is required to attend.

(2) A warrant may not be issued under subsection (1) unless the judge is satisfied by evidence as mentioned in that subsection that the witness is likely to be able to give material evidence or to produce any document or thing that will be material evidence in the proceedings.

(3) If a witness who is required to attend before the Supreme Court by virtue of a witness summons fails to attend in compliance with the summons–

(a) the court may serve on him a notice requiring him to attend the court at a specified time; and

(b) if–

(i) there are reasonable grounds for believing that he has failed to attend without just excuse; or

(ii) he has failed to comply with the notice,

the court may issue a warrant to arrest him and bring him before the court.

(3) A witness brought before the Supreme Court pursuant to a warrant under this section may be remanded in custody or on bail (with or without sureties) until a time the court appoints for receiving his evidence or dealing with him under section 304.

(4) If a witness attends the Supreme Court pursuant to a notice under this section the court may direct that the notice has effect as if it required him to attend at any later time appointed by the court for receiving his evidence or dealing with him under section 304.

Expenses of witnesses.

306.(1) Every person who attends any criminal trial of the Supreme Court as a witness for the prosecution or for the defence, in response to a witness summons, is entitled at the conclusion of the case, whether he has been examined or not, to be paid for his attendance and expenses in accordance with a scale established by rules of court.

(2) The court may, if it thinks fit, disallow the payment to a witness of any sum that would otherwise be payable under subsection (1).

(3) If the court certifies that in its opinion any witness examined for the defence, not being a witness mentioned in subsection (1)–

(a) has given material evidence; and

(b) has given his evidence in a truthful and satisfactory manner,

it may order that the witness is to be paid allowances and expenses as if he had attended in response to a witness summons, and the account of such a witness is to be taxed and paid accordingly.

(4) No claim made by a witness for payment of a sum under subsection (3) is to be entertained unless the claim is made within one month after the last day of the criminal trial in respect of which it is made.

(5) Payment of any allowances or expenses under this section is to be made out of funds appropriated by the Parliament under the relevant Appropriation Act.

Tainted acquittals

Acquittals tainted by intimidation, etc.

307.(1) This section applies if–

(a) a person has been acquitted of an offence; and

(b) a person has been convicted of an administration of justice offence involving interference with or intimidation of a juror or a witness (or potential witness) in any proceedings which led to the acquittal.

(2) If it appears to the court before which the person was convicted as mentioned in subsection (1)(b) that–

(a) there is a real possibility that, but for the interference or intimidation, the acquitted person would not have been acquitted; and

(b) it would not, for lapse of time or for any other reason, be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which he was acquitted,

the court must certify that it so appears.

(3) If a court certifies under subsection (2), an application may be made to the Court of Appeal for an order quashing the acquittal, and the court must make the order if (but must not do so unless) the four conditions in section 308 are satisfied.

(4) If an order is made under subsection (3) proceedings may be taken against the acquitted person for the offence of which he was acquitted.

(5) For the purposes of this section the following offences are administration of justice offences–

(a) the offence of perverting the course of justice;

(b) the offence under section 478 of the Crimes Act 2011 (Intimidation etc. of witnesses, jurors and others);

(c) an offence of aiding, abetting, counselling, procuring, suborning or inciting another person to commit an offence under section 457 of the Crimes Act 2011(Perjury in judicial proceedings).

(6) This section applies in relation to acquittals in respect of offences alleged to be committed on or after the commencement of this Part.

Conditions for making order.

308.(1) The first condition is that it appears to the Court of Appeal likely that, but for the interference or intimidation, the acquitted person would not have been acquitted.

(2) The second condition is that it does not appear to the court that, because of lapse of time or for any other reason, it would be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which he was acquitted.

(3) The third condition is that it appears to the court that the acquitted person has been given a reasonable opportunity to make written representations to the court.

(4) The fourth condition is that it appears to the court that the conviction for the administration of justice offence will stand.

(5) In applying subsection (4) the court must–

(a) take into account all the information before it; but

(b) ignore the possibility of new factors coming to light.

(6) Accordingly, the fourth condition has the effect that the court must not make an order under section 307(3) if (for instance) it appears to the court that any time allowed for giving notice of appeal has not expired or that an appeal is pending.

Time limits for proceedings.

309.(1) If–

(a) an order is made under section 307(3) quashing an acquittal;

(b) by virtue of section 307(4) it is proposed to take proceedings against the acquitted person for the offence of which he was acquitted; and

(c) apart from this subsection, the effect of an enactment would be that the proceedings must be commenced before a specified period calculated by reference to the commission of the offence,

in relation to the proceedings the enactment has effect as if the period were instead one calculated by reference to the time the order is made under section 307(3).

(2) Subsection (1)(c) applies however the enactment is expressed.

Miscellaneous provisions

Practice and procedure in connection with indictable offences and appeals.

310.(1) All enactments and rules of law relating to procedure in connection with indictable offences continue to have effect in relation to proceedings in the Supreme Court unless repealed or varied by this Act.

(2) Without limiting subsection (1), that subsection applies in particular to–

(a) the practice by which, on any one indictment, the taking of pleas, the trial by jury and the pronouncement of judgment may respectively be by or before different judges;

(b) the release, after respite of judgment, of a convicted person on recognizance to come up for judgment if called on, but meanwhile to be of good behaviour;

(c) the manner of trying any question relating to the breach of a recognizance;

(d) the manner of execution of any sentence on conviction, or the manner in which any other judgment or order given in connection with trial on indictment may be enforced; and

(e) the customary practice and procedure with respect to appeals to the Supreme Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case.

Process to compel appearance.

311.(1) Any direction to appear and any condition of a recognizance to appear before the Supreme Court, and any summons or order to appear before that court, may be so framed as to require appearance at such time and place as may be directed by the Supreme Court, and if a time or place is specified in the direction, condition, summons or order, it may be varied by any subsequent direction of that court.

(2) If an indictment has been signed although the person charged has not been committed for trial, the Supreme Court may issue a summons requiring that person to appear before it, or may issue a warrant for his arrest.

(3) The Supreme Court, on issuing a warrant for the arrest of any person, may endorse the warrant for bail, in which case–

(a) the person arrested under the warrant must, unless the Supreme Court otherwise directs, be taken to a police station; and

(b) the officer in charge of the station must release him from custody if he, and any sureties required by the endorsement and approved by the officer, enter into recognizances of an amount specified in the endorsement.

(4) A person in custody pursuant to a warrant issued by the Supreme Court with a view to his appearance before that court must be brought forthwith before either the Supreme Court or the Magistrates' Court.

PART 15 - RETRIAL FOR SERIOUS OFFENCES

Application for retrial

Cases that may be retried.

312.(1) This Part applies if a person has been acquitted of a qualifying offence in proceedings–

(a) on indictment in Gibraltar;

(b) on appeal against a conviction, verdict or finding in proceedings on indictment in Gibraltar; or

(c) on appeal from a decision on such an appeal.

(2) A person acquitted of an offence in proceedings mentioned in subsection (1) is treated for the purposes of that subsection as also acquitted of any qualifying offence of which he could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence–

(a) of which he has been convicted;

(b) of which he has been found not guilty by reason of mental disorder; or

(c) in respect of which a finding has been made under section 660 that he did the act or made the omission charged against him.

(3) References in subsections (1) and (2) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under section 314(1) or (3).

(4) This Part also applies if a person has been acquitted, in criminal proceedings elsewhere than in Gibraltar, of an offence under the law of the place where the proceedings were held, if the commission of the offence as alleged would have amounted to or included the commission (in Gibraltar or elsewhere) of a qualifying offence.

(5) Conduct punishable under the law in force elsewhere than in Gibraltar is an offence under that law for the purposes of subsection (4), however it is described in that law.

(6) This Part applies whether the acquittal was before or after the commencement of this Part.

(7) In this Part–

(a) references to acquittal are to acquittal in circumstances within subsection (1) or (4);

(b) "qualifying offence" means an offence listed in Schedule 7;

(c) "new evidence" is to be read in accordance with section 315(2).

Application to Court of Appeal.

313.(1) The Attorney-General may apply to the Court of Appeal for an order–

(a) quashing a person's acquittal in proceedings within section 312(1); and

(b) ordering him to be retried for the qualifying offence.

(2) The Attorney-General may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in Gibraltar, for–

(a) a decision whether the acquittal is a bar to the person being tried in Gibraltar for the qualifying offence; and

(b) if it is, an order that the acquittal is not to be a bar.

(3) The Attorney-General may make an application only if satisfied that–

(a) there is evidence as respects which the requirements of section 315 appear to be met;

(b) it is in the public interest for the application to be made; and

(c) any trial pursuant to an order on the application would not be inconsistent with the obligations of Gibraltar under Article 82 of the Treaty on the Functioning of the European Union relating to the principle of *ne bis in idem.*

(4) Not more than one application may be made under subsection (1) or (2) in relation to an acquittal.

Decision by Court of Appeal.

314.(1) On an application under section 313(1), the Court of Appeal–

(a) if satisfied that the requirements of sections 315 and 316 are met, must make the order applied for;

(b) otherwise, must dismiss the application.

(2) Subsections (3) and (4) apply to an application under section 313(2).

(3) If the Court of Appeal decides that the acquittal is a bar to the person being tried for the qualifying offence, the court–

(a) if satisfied that the requirements of sections 315 and 316 are met, must make the order applied for;

(b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.

(4) If the Court of Appeal decides that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.

New and compelling evidence.

315.(1) The requirements of this section are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.

(2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).

(3) Evidence is compelling if–

(a) it is reliable;

(b) it is substantial; and

(c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.

(4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.

(5) For the purposes of this section, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

Interests of justice.

316.(1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order under section 314.

(2) That question is to be decided having regard in particular to–

(a) whether existing circumstances make a fair trial unlikely;

(b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;

(c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by a police officer or by the prosecutor to act with due diligence or expedition;

(d) whether, since those proceedings or, if later, since the commencement of this Part, any police officer or prosecutor has failed to act with due diligence or expedition.

(3) In subsection (2) references to a police officer or prosecutor include references to a person charged with corresponding duties under the law in force elsewhere than in Gibraltar.

Procedure and evidence on the application.

317.(1) If the Attorney-General wishes to make an application under section 313(1) or (2), he must give notice of the application to the Court of Appeal.

(2) Within 2 days beginning with the day on which any such notice is given, notice of the application must be served by the Attorney-General on the person to whom the application relates, charging him with the offence to which it relates or, if he has been charged with it in accordance with section 325(4), stating that he has been so charged.

(3) Subsection (2) applies whether the person to whom the application relates is in Gibraltar or elsewhere, but the Court of Appeal may, on application by the Attorney-General, extend the time for service under that subsection if it considers it necessary to do so because of that person's absence from Gibraltar.

(4) The Court of Appeal must consider the application at a hearing.

(5) The person to whom the application relates–

(a) is entitled to be present at the hearing, although he may be in custody, unless he is in custody elsewhere than in Gibraltar; and

(b) is entitled to be represented at the hearing, whether he is present or not.

(6) For the purposes of the application, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice–

(a) order the production of any document, exhibit or other thing, the production of which appears to the court to be necessary for the determination of the application; and

(b) order any witness who would be a compellable witness in criminal proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.

(7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

Appeals.

318.(1) An appeal lies to Her Majesty in Council, at the instance of the acquitted person or the Attorney-General, from any decision of the Court of Appeal on an application under section 313(1) or (2).

(2) An appeal under subsection (1) can be made only with the leave of the Court of Appeal or Her Majesty in Council.

(3) An application under this Part to the Court of Appeal for leave to appeal to Her Majesty in Council may be made orally immediately after the court gives its ruling or by notice served on the Registrar within 14 days of the ruling.

(4) For the purpose of dealing with a case under this section Her Majesty in Council may exercise any powers of the Court of Appeal.

Restrictions on publication in the interests of justice.

319.(1) If it appears to the Court of Appeal that the inclusion of any matter in a publication or relevant programme would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the

court may order that the matter is not to be included in any publication or relevant programme while the order has effect.

(2) In subsection (1) "retrial" means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under section 314.

(3) The court may make an order under this section only if it appears to it necessary in the interests of justice to do so.

(4) An order under this section may apply to a matter which has been included in a publication published or relevant programme broadcast before the order takes effect, but such an order–

(a) applies only to the later inclusion of the matter in a publication or programme (whether directly or by inclusion of the earlier publication or programme); and

(b) does not otherwise affect the earlier publication.

(5) After notice of an application has been given under section 317(1) relating to the acquitted person and the qualifying offence, the court may make an order under this section either–

(a) on its own initiative; or

(b) on the application of the Attorney-General.

(6) Before such notice has been given, an order under this section–

(a) may be made only on the application of the Attorney-General; and

(b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by the police.

(7) The court may at any time, on its own initiative or on an application made by the Attorney-General or the acquitted person, vary or revoke an order under this section.

(8) Any order made under this section before notice of an application has been given under section 317(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.

(9) An order under this section which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time–

(a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application; or

(b) if he is tried pursuant to such an order, at the conclusion of the trial.

(10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication or relevant programme or any power, under an enactment or otherwise, to impose such a prohibition or restriction.

Offences in connection with publication restrictions.

320.(1) This section applies if–

(a) an order under section 319 is made; and

(b) while the order has effect, any matter is included in a publication in contravention of the order.

(2) If the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical commits an offence.

(3) If the publication is a relevant programme, any person having functions in relation to the programme corresponding to those of an editor of a newspaper commits an offence.

(4) In the case of any other publication, any person publishing it commits an offence.

(5) If an offence under this section committed by a corporate body is proved–

(a) to have been committed with the consent or connivance of; or

(b) to be attributable to any neglect on the part of,

an officer, the officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(6) In subsection (5), "officer" means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(7) If the affairs of a corporate body are managed by its members, "director" in subsection (6) means a member of that body.

(8) A person who commits an offence under this section is liable on summary conviction to a fine at level 5 on the standard scale.

(9) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney-General.

Procedure on a retrial

Procedure on a retrial.

321.(1) If a person–

(a) is tried pursuant to an order under section 314(1); or

(b) is tried on indictment pursuant to an order under section 314(3),

the trial must be on an indictment preferred by direction of the Court of Appeal.

(2) After the end of 2 months after the date of the order, the person may not be arraigned on an indictment preferred pursuant to such a direction unless the Court of Appeal gives leave.

(3) The Court of Appeal must not give leave unless satisfied that–

(a) the prosecutor has acted with due expedition; and

(b) there is a good and sufficient cause for trial despite the lapse of time since the order under section 314.

(4) If the person may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order and–

(a) for any direction required for restoring an earlier judgment and verdict of acquittal of the qualifying offence; or

(b) in the case of a person acquitted elsewhere than in Gibraltar, for a declaration to the effect that the acquittal is a bar to his being tried for the qualifying offence.

(5) An indictment under subsection (1) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order or declaration under section 314.

Evidence on a retrial.

322.(1) Evidence given at a trial pursuant to an order under section 314(1) or (3) must be given orally if it was given orally at the original trial, unless–

(a) all the parties to the trial agree otherwise;

(b) section 391 applies; or

(c) the witness is unavailable to give evidence, otherwise than as mentioned in subsection (2) of that section, and section 389(1)(d) applies.

(2) At a retrial pursuant to an order under section 314(1), written depositions read as evidence at the original trial are not admissible in evidence.

(3) A transcript of the record of the evidence given by any witness at the original trial may, with the leave of the judge, be read as evidence–

(a) by agreement between the prosecution and the defence; or

(b) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success,

and in either case may be so read without further proof, if verified in accordance with relevant rules of court.

Authorisation of investigations.

323.(1) This section applies to the investigation of the commission of a qualifying offence by a person–

(a) acquitted in proceedings within section 312(1) of the qualifying offence; or

(b) acquitted elsewhere than in Gibraltar of an offence the commission of which as alleged would have amounted to or included the commission (in Gibraltar or elsewhere) of the qualifying offence.

(2) Subject to section 324, a police officer may not do anything within subsection (3) for the purposes of such an investigation unless the Attorney-General has–

(a) certified that in his opinion the acquittal would not be a bar to the trial of the acquitted person in Gibraltar for the qualifying offence; or

(b) given his written consent to the investigation (whether before or after the start of the investigation).

(3) The police officer may not, either with or without the consent of the acquitted person–

(a) arrest or question him;

(b) search him or premises owned or occupied by him;

(c) search a vehicle owned by him or anything in or on such a vehicle;

(d) seize anything in his possession; or

(e) take his fingerprints or take a sample from him.

(4) The Attorney-General may only give his consent on a written application, and such an application may be made only by a police officer of the rank of Chief Inspector or above.

(5) A police officer may make an application under subsection (4) only if –

(a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 313(1) or (2) in respect of the qualifying offence to which the investigation relates; or

(b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(6) The Attorney-General may not give his consent unless satisfied that–

(a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and

(b) it is in the public interest for the investigation to proceed.

Urgent investigative steps.

324.(1) Section 323 does not prevent a police officer from taking any action for the purposes of an investigation if–

(a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced;

(b) the requirements of subsection (2) are met; and

(c) either–

(i) the action is authorised under subsection (3); or

(ii) the requirements of subsection (5) are met.

(2) The requirements of this subsection are met if –

(a) there has been no undue delay in applying for consent under section 323(2);

(b) that consent has not been refused; and

(c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.

(3) A police officer of the rank of Chief Inspector or above may authorise the action if–

(a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 313(1) or (2) in respect of the qualifying offence to which the investigation relates; or

(b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(4) An authorisation under subsection (3) must–

(a) if reasonably practicable, be given in writing;

(b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.

(5) The requirements of this subsection are met if–

(a) there has been no undue delay in applying for authorisation under subsection (3);

(b) that authorisation has not been refused; and

(c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation before taking the action.

(6) If the requirements of subsection (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, a police officer of the rank of Chief Inspector or above certifies in writing that he is satisfied that, when the action was taken–

(a) new evidence had been obtained which would be relevant to an application under section 313(1) or (2) in respect of the qualifying offence to which the investigation relates; or

(b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

Arrest and charge.

325.(1) If section 323 applies to the investigation of the commission of an offence by any person and no certification has been given under subsection (2) of that section–

(a) a magistrate may issue a warrant to arrest the person for that offence only if satisfied by written information that new evidence has been obtained which would be relevant to an application under section 313(1) or (2) in respect of the commission by that person of that offence; and

(b) the person may not be arrested for that offence except under a warrant so issued.

(2) Subsection (1) does not affect section 327(3)(b) or 329(3), or any other power to arrest a person, or to issue a warrant for the arrest of a person, otherwise than for an offence.

(3) Part 5 (Police Detention) applies as follows if a person–

(a) is arrested for an offence under a warrant issued in accordance with subsection (1)(a); or

(b) having been so arrested, is subsequently treated under section 55(7) (Limitations on police detention) as arrested for that offence.

(4) For the purposes of that Part there is sufficient evidence to charge the person with the offence for which he has been arrested if, and only if, a police officer of the rank of Chief Inspector or above (who has not been directly involved in the investigation) is of the opinion that the evidence available or known to him is sufficient for the case to be referred to a prosecutor to consider whether consent should be sought for an application in respect of that person under section 313.

(5) For the purposes of that Part it is the duty of the custody officer at each police station where the person is detained to make available or known to an officer at that police station of the rank of Chief Inspector or above any evidence which it appears to him may be relevant to an application under section 313(1) or (2) in respect of the offence for which the person has been arrested, and to do so as soon as practicable–

(a) after the evidence becomes available or known to him; or

(b) if later, after he forms that view.

(6) Section 58 (Duties of custody officer before charge) (including any provision of that section as applied by section 63(7)) (Review of police detention) has effect subject to the following modifications–

(a) in subsection (1)–

(i) for "decide whether the officer has before him" substitute "request an officer of the rank of Chief Inspector or above (who has not been directly involved in the investigation) to decide, in accordance with section 325(4), whether there is";

(ii) for "him to do so" substitute "that decision to be made";

(b) in subsection (2)–

(i) for the words from "custody officer decides" to "before him" substitute "officer who is making a decision decides that there is not such sufficient evidence";

(ii) omit "custody" from the second place where it occurs;

(c) in subsection (3)–

(i) omit "custody";

(ii) after "may" insert "direct the custody officer to".

(d) in subsection (7) for the words from "the custody officer" to the end of that subsection substitute "an officer of the rank of Chief Inspector or above (who has not been directly involved in the investigation) decides, in accordance with section 325(4), that there is sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested must be charged.";

(e) subsection (8) does not apply;

(f) after subsection (12) insert–

"(13) The officer who is requested by the custody officer to make a decision under subsection (1) must make it as soon as practicable after the request is made.".

(7) Section 63 (Review of police detention) has effect as if in subsections (7) and (8) of that section after "(6)" there were inserted "and (12)".

(8) Section 66 (Authorisation of continued detention) has effect as if in subsection (1) of that section for the words from "who" to "detained" there were substituted "(who has not been directly involved in the investigation)".

Bail and custody before application.

326.(1) In relation to a person charged in accordance with section 325(4)–

(a) section 61 (Duties of custody officer after charge) (including any provision of that section as applied by section 63(9)) has effect as if, in subsection (1), for "either on bail or without bail" there were substituted "on bail",

(b) section 72(2) (Bail after arrest) does not apply and references in section 61 to bail are references to bail subject to a duty to appear before the Supreme Court at a time the custody officer appoints, not being later than 24 hours after the person is released.

(2) If such a person is, after being charged kept in police detention, he must be brought before the Supreme Court as soon as practicable and, in any event, not more than 24 hours after he is charged.

(3) If a person appears or is brought before the Supreme Court in accordance with subsection (1) or (2), the court may either–

(a) grant bail for the person to appear, if notice of an application is served on him under section 317(2), before the Court of Appeal at the hearing of that application; or

(b) remand the person in custody to be brought before the Supreme Court under section 327(2).

(4) If the Supreme Court grants bail under subsection (3), it may revoke bail and remand the person in custody as referred to in subsection (3)(b).

(5) In subsection (6) the "relevant period", in relation to a person granted bail or remanded in custody under subsection (3), means–

(a) the period of 42 days beginning with the day on which he is granted bail or remanded in custody under that subsection; or

(b) that period as extended or further extended under subsection (7).

(6) If at the end of the relevant period no notice of an application under section 313(1) or (2) in relation to the person has been given under section 317(1), the person–

(a) if on bail subject to a duty to appear as mentioned in subsection (3)(a), ceases to be subject to that duty and to any conditions of that bail; and

(b) if in custody on remand under subsection (3)(b) or (4), must be released immediately without bail.

(7) The Supreme Court may, on the application of the prosecutor, extend or further extend the period mentioned in subsection (5)(a) until a specified date, but only if satisfied that–

(a) the need for the extension is due to some good and sufficient cause; and

(b) the prosecutor has acted with all due diligence and expedition.

Bail and custody before hearing.

327.(1) This section applies if notice of an application is given under section 317(1).

(2) If the person to whom the application relates is in custody under section 326(3)(b) or (4), he must be brought before the Supreme Court as soon as practicable and, in any event, within 48 hours after the notice is given.

(3) If that person is not in custody under section 326(3)(b) or (4), the Supreme Court may, on application by the prosecutor–

(a) issue a summons requiring the person to appear before the Court of Appeal at the hearing of the application; or

(b) issue a warrant for the person's arrest,

and a warrant under paragraph (b) may be issued at any time even though a summons has previously been issued.

(4) If a summons is issued under subsection (3)(a), the time and place at which the person must appear may be specified either–

(a) in the summons; or

(b) in a subsequent direction of the Supreme Court.

(5) The time or place specified may be varied from time to time by a direction of the Supreme Court.

(6) A person arrested under a warrant under subsection (3)(b) must be brought before the Supreme Court as soon as practicable and in any event within 48 hours after his arrest.

(7) If a person is brought before the Supreme Court under subsection (2) or (6) the court must either–

(a) remand him in custody to be brought before the Court of Appeal at the hearing of the application; or

(b) grant bail for him to appear before the Court of Appeal at the hearing.

(8) If bail is granted under subsection (7)(b), the Supreme Court may revoke the bail and remand the person in custody as referred to in subsection (7)(a).

Bail and custody during and after hearing.

328.(1) The Court of Appeal may, at any adjournment of the hearing of an application under section 313(1) or (2)–

(a) remand the person to whom the application relates on bail; or

(b) remand him in custody.

(2) At a hearing at which the Court of Appeal–

(a) makes an order under section 314;

(b) makes a declaration under subsection (4) of that section; or

(c) dismisses the application or makes a declaration under subsection (3) of that section, if it also gives the prosecutor leave to appeal against its decision or the prosecutor gives notice that he intends to apply for such leave,

the court may make such order as it sees fit for the custody or bail of the acquitted person pending trial pursuant to the order or declaration, or pending determination of the appeal.

(3) For the purpose of subsection (2), the determination of an appeal is pending–

(a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;

(b) if leave to appeal is granted, until the appeal is disposed of.

(4) Section 111 applies in relation to the grant of bail under this section as if in subsection (2) the reference to the court included a reference to the Court of Appeal.

(5) The court may at any time, as it sees fit–

(a) revoke bail granted under this section and remand the person in custody; or

(b) vary an order under subsection (2).

Revocation of bail.

329.(1) If–

(a) a court revokes a person's bail under this Part; and

(b) that person is not before the court when his bail is revoked,

the court must order him to surrender himself forthwith to the custody of the court.

(2) If a person surrenders himself into the custody of the court in compliance with an order under subsection (1), the court must remand him in custody.

(3) A person who has been ordered to surrender to custody under subsection (1) may be arrested without a warrant by an officer if he fails without reasonable cause to surrender to custody in accordance with the order.

(4) A person arrested under subsection (3) must be brought as soon as practicable, and, in any event, not more than 24 hours after he is arrested, before the court and the court must remand him in custody.

PART 16 – EVIDENCE: GENERAL PRINCIPLES

Principles for admission of evidence

Evidence to be on oath.

330.(1) Subject to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a court in criminal proceedings must be given on oath.

(2) In this section, "oath" includes an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.

Principles for admission of statements.

331.(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) the Magistrates' Court on a trial of an information,

is of the opinion that in the interests of justice a statement in a document, although admissible by virtue of Part 17, ought not to be admitted, it may refuse to admit the statement.

(2) Without limiting subsection (1), the court, in deciding whether a statement should be admitted, must have regard to–

(a) the nature and source of the document containing the statement and 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) the extent to which the statement appears to supply evidence which would otherwise not be readily available;

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

(d) 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 defendant or, if there is more than one, to any of them.

(3) Nothing in this Part affects–

(a) any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion;

(b) any power of a court to exclude at its discretion a statement otherwise admissible by virtue of this Part;

(c) 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.

Exclusion of unfair evidence.

332.(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it 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 affects any rule of law requiring a court to exclude evidence.

(3) This section does not apply to proceedings before the Magistrates' Court inquiring into an offence as examining magistrates.

Onus of proving exceptions, etc.

333. If 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 is on him, even if the information or complaint contains an allegation negativing the exception, exemption, proviso, excuse or qualification.

Summoning and calling of witnesses

General power to examine witnesses, etc.

334.(1) A court may, at any stage of any criminal proceedings–

(a) examine any person in attendance whether or not summoned as a witness; and

(b) recall and re-examine any person already examined.

(2) The court must examine or recall and re-examine any witness if his evidence appears to it essential to the just decision of the case

(3) The prosecutor or the counsel for the prosecution and the defendant or his legal representative have the right to cross-examine any person examined by the court pursuant to subsection (1), and the court must adjourn the case for such time as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the examining of any such person as a witness.

Witnesses in custody.

335.(1) Without affecting any other power to summon witnesses conferred upon it by this Act or any other law, a court that wishes to examine as a witness in any criminal proceedings before it a person who is in prison, may issue an order to the Superintendent requiring him to bring the prisoner in proper custody, at a time to be named in the order, before the court for examination.

(2) The Superintendent, on receipt of an order under subsection (1), must–

(a) act in accordance with it; and

(b) provide for the safe custody of the prisoner during his absence from the prison for such purpose.

Arrest and punishment of recalcitrant witnesses.

336.(1) Without affecting any other powers conferred upon the Supreme Court by this Act or any other law, the Supreme Court may, if 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 Magistrates' Court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may–

(a) commit him to custody for up to 28 days or until he sooner gives evidence or produces the document or thing;

(b) impose on him a fine at level 4 on the standard scale; or

(c) commit him to custody under paragraph (a) and fine him under paragraph (b).

(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 court may, if it sees fit, commit him to custody for a further period of up to 28 days and so again, from time to time, until the person consents to do what is required of him.

(4) Without affecting 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.

Calling of person charged.

337.(1) Every person charged in criminal proceedings who is called as a witness in the proceedings must, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(2) The failure of any person charged with an offence to give evidence must not be made the subject of any comment by the prosecution.

Time for taking defendant's evidence.

338.(1) If at the trial of any person for an offence–

(a) the defence intends to call 2 or more witnesses to the facts of the case; and

(b) those witnesses include the defendant,

the defendant must, subject to section 360, be called before the other witnesses unless the court in its discretion otherwise directs.

(2) If the only witness to the facts of the case called by the defence is the person charged, he must be called as a witness immediately after the close of the evidence for the prosecution.

Competence and compellability

Competence of witnesses to give evidence.

339.(1) Subject to subsections (2) and (3), at every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.

(2) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to–

(a) understand questions put to him as a witness; and

(b) give answers to them which can be understood.

(3) A person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (whether he is the only person, or is one of 2 or more persons, charged in the proceedings).

(4) In subsection (3) the reference to a person charged in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Determining competence of witnesses.

340.(1) Any question whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised by–

(a) a party to the proceedings; or

(b) the court on its own initiative,

is to be decided by the court in accordance with this section.

(2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in subsection (1) the court must treat the witness as having the benefit of any directions under section 431 of this Act (Special measures direction relating to eligible witness) which the court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question must take place in the absence of the jury (if there is one).

(5) Expert evidence may be received on the question.

(6) Any questioning of the witness (if the court considers that necessary) must be conducted by the court in the presence of the parties.

Deciding whether witness to be sworn.

341.(1) Any question whether a witness in criminal proceedings may be sworn for the purpose of giving evidence on oath, whether raised by–

(a) a party to the proceedings; or

(b) the court on its own initiative,

is to be decided by the court in accordance with this section.

(2) The witness may not be sworn for that purpose unless–

(a) he has attained the age of 14; and

(b) he has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) A witness who is able to give intelligible testimony is presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in subsection (2)(b).

(5) Any proceedings held for deciding the question mentioned in subsection (1) must take place in the absence of the jury (if there is one).

(6) Expert evidence may be received on the question.

(7) Any questioning of the witness (if the court considers that necessary) must be conducted by the court in the presence of the parties.

(8) For the purposes of this section a person is able to give intelligible testimony if he is able to–

(a) understand questions put to him as a witness; and

(b) give answers to them which can be understood.

Reception of unsworn evidence.

342.(1) Subsections (2) and (3) apply to a person (of any age) who–

(a) is competent to give evidence in criminal proceedings; but

(b) (by virtue of section 341(2)) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a person to whom this subsection applies is to be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings must receive in evidence any evidence given unsworn pursuant to subsection (2) or (3).

(5) If a person ("the witness") who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings is to be taken to be unsafe for the purposes of an appeal against conviction by reason only that it appears to the Court of Appeal that the witness was a person falling within section 341(2) (and should accordingly have given his evidence on oath).

Abolition of right of defendant to make unsworn statement.

343.(1) Subject to subsections (2) and (3), in any criminal proceedings the defendant is not entitled to make a statement without being sworn, and accordingly, if he gives evidence, he must do so (subject to sections 339 and 340) on oath and be liable to cross-examination.

(2) This section does not affect the right of the defendant, if not legally represented, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, a legal representative could address the court or jury on his behalf.

(3) Nothing in subsection (1) prevents the defendant making a statement without being sworn if–

(a) it is one which he is required by law to make personally; or

(b) he makes it by way of mitigation before the court passes sentence upon him.

(4) Nothing in this section applies–

(a) to a trial; or

(b) to proceedings before magistrates sitting as examining magistrates,

which began before the commencement of this section.

Competence of persons charged and their spouses.

344.(1) Subject to this section, a person charged with an offence, and the spouse of the person so charged, is 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.

(2) A person charged in criminal proceedings may not be called as a witness in the proceedings except upon his own application.

(3) The spouse of the person charged may not, except as provided in this Part, be called as a witness pursuant to this Part except upon the application of the person so charged.

(4) Nothing in this Part makes a spouse compellable to disclose any communication made to him or her by the other spouse during the marriage.

(5) A person charged in criminal proceedings who is called as a witness in the proceedings may be asked any question in cross-examination even though it would tend to incriminate him as to any offence with which he is charged in the proceedings.

Defendant's spouse as a witness.

345.(1) In any proceedings the spouse of a person charged in the proceedings is, subject to subsection (4), compellable to give evidence on behalf of that person.

(2) In any proceedings the spouse of a person charged in the proceedings is, subject to subsection (3), compellable to give evidence–

(a) on behalf of any other person charged in the proceedings, but only in respect of any specified offence with which that other person is charged;

(b) for the prosecution, but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the spouse of a person charged in any proceedings, an offence is a specified offence for the purposes of subsection (2) if–

(a) it involves an assault on, or injury or a threat of injury to, the spouse or a person who was at the material time under the age of 16; or

(b) it is a sexual offence (as defined in section 2) alleged to have been committed in respect of a person who was at the material time under that age.

(4) No person who is charged in any proceedings is compellable by virtue of subsection (1) or (2) to give evidence in the proceedings.

(5) References in this section to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Defendant's spouse as a witness: Supplementary.

346.(1) In any proceedings a person who has been, but is no longer, married to the defendant is compellable to give evidence as if that person and the defendant had never been married.

(2) If in any proceedings the age of any person at any time is material for the purposes of section 345, his age at the material time is for the purposes of that provision deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(3) The failure of the spouse of a person charged in any proceedings to give evidence in the proceedings must not be made the subject of any comment by the prosecution.

Evidence by spouses about property.

347.(1) If a person ('A') is charged in proceedings not brought by A's spouse with having committed any offence with reference to A's spouse or to property belonging to A's spouse, A's spouse is competent to give evidence at every stage of the proceedings, either for the defence or for the prosecution, and whether the defendant is charged solely or jointly with any other person.

(2) Subsection (1) is subject to the following rules–

(a) the spouse is not compellable either to give evidence or, in giving evidence, to disclose any communication made to the spouse during the marriage by the defendant; and

(b) the failure of the spouse to give evidence must not be made the subject of any comment by the prosecution.

Limitation of rule against self-incrimination.

348.(1) A person is not to be excused from–

(a) 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) complying with any order made in any such proceedings,

on the ground that do so may incriminate that person or the spouse of that person of an offence of dishonesty or criminal damage.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence of dishonesty or criminal damage, admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

Convictions and acquittals

Admissibility of evidence of previous conviction.

349. Subject to the provisions of this Act and of any other law relating to the admission of evidence of previous convictions, on the trial of any person before any court, evidence of any previous conviction for any offence may not be admitted in evidence before a verdict or finding of guilty has been returned.

Evidence in Magistrates' Court.

350. If–

(a) a person is convicted of a summary offence by the Magistrates' Court, other than a Juvenile Court;

(b) it is proved to the satisfaction of the court that not less than 7 days previously a notice was served on the offender in the prescribed form and manner specifying an 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

(c) 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 defendant had appeared and admitted it.

Conviction as evidence of commission of offence.

351.(1) In any proceedings, the fact that a person other than the defendant has been convicted of an offence by or before any court in Gibraltar, or by a court martial in or outside Gibraltar, is admissible in evidence for the purpose of proving that that person committed that offence, if evidence of his having done so is admissible.

(2) In any proceedings in which by virtue of this section a person other than the defendant is proved to have been convicted of an offence by or before any court in Gibraltar, or by a court martial in or outside Gibraltar, that person is to be taken to have committed that offence unless the contrary is proved.

(3) In any proceedings when evidence is admissible of the fact that the defendant has committed an offence, if the defendant is proved to have been convicted of the offence by or before any court in Gibraltar, or by a court martial in or outside Gibraltar, he is to be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section affects–

(a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

(b) the operation of any enactment by which 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) If evidence that a person has been convicted of an offence is admissible by virtue of this section, then, without affecting the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based–

(a) the contents of any document which is admissible as evidence of the conviction; and

(b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

are admissible in evidence for that purpose.

(6) For the purposes of this section–

(a) a conviction leading to a conditional or absolute discharge or to a community sentence (or, before the commencement of this Act, to a probation order under the repealed Act) is a conviction; but

(b) a conviction that no longer subsists is not a conviction.

(7) If in any proceedings the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority that has custody of that document is admissible in evidence and is to be taken to be a true copy of that document or part unless the contrary is shown.

Proof of convictions and acquittals in Gibraltar.

352.(1) If in any proceedings the fact that a person has been convicted or acquitted of an offence in Gibraltar, or by a court martial in or outside Gibraltar, is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

(2) For the purposes of this section a certificate of conviction or of acquittal–

(a) as regards a conviction or acquittal on indictment – must be a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and

(b) as regards a conviction or acquittal on a summary trial – must be a copy of the conviction or of the dismissal of the information, signed by the proper officer of the court where the conviction or acquittal took place or by the proper officer of the court, if any, to which a memorandum of the conviction or acquittal was sent.

(3) A document purporting to be a duly signed certificate of conviction or acquittal under this section is to be taken to be such a certificate unless the contrary is proved.

(4) In subsection (2) "proper officer" means–

(a) in relation to the Magistrates' Court - the clerk of the court; and

(b) in relation to any other court - the clerk of the court, his deputy or any other person having custody of the court record.

(5) The method of proving a conviction or acquittal authorised by this section is in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

Proof of convictions elsewhere.

353.(1) If in any proceedings the fact that a person ('A') has been convicted or acquitted of an offence outside Gibraltar, other than at a court martial, is admissible in evidence, it may be proved 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) a copy of the sentence or order;

(b) the fingerprints, or photographs of the fingerprints, of the person so convicted; and

(c) evidence that the fingerprints of the person so convicted are those of A.

(2) Such a certificate is *prima facie* evidence of all facts set out in it without proof that the officer purporting to sign it did in fact sign it and was empowered to do so.

(3) This section does not affect the operation of section 11 of the UK Evidence Act 1851 relating to the admissibility of documents.

Proof by fingerprints.

354.(1) A previous conviction may be proved against any person in any 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 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 records to have been taken from the person convicted on the occasion of the conviction, is evidence of the conviction and 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 to it were taken from any person while in lawful custody, is 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 and certifying that the fingerprints, copies of which are certified by or on behalf of the Commissioner to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of the Commissioner 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, is evidence of the matters so certified.

(5) The method of proving a previous conviction authorised by this section is in addition to and not to the exclusion of any other authorised method of proving such conviction.

Admissions and confessions

Proof by formal admission.

355.(1) Subject to this section, any fact of which oral evidence may be given in any 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 is, as against that party, 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, must be in writing;

(c) if made in writing by an individual, must purport to be signed by the person making it and, if so made by a corporate body, to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body;

(d) if made on behalf of a defendant who is an individual, must be made by his legal representative;

(e) if made at any stage before the trial by a defendant who is an individual, must be approved by his legal representative, 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 is to 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.

Confessions: General.

356.(1) In any proceedings a confession made by a defendant 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 pursuant to this section.

(2) If, in any proceedings in which the prosecution proposes to give in evidence a confession made by a defendant, 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 the defendant in consequence of that thing,

the court must not allow the confession to be given in evidence against the defendant (notwithstanding that it may be true) unless the prosecution proves to the court beyond reasonable doubt that the confession was not obtained as described in paragraph (a) or (b).

(3) In any proceedings in which the prosecution proposes to give in evidence a confession made by a defendant, the court may on its own initiative 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 pursuant to this section does not affect the admissibility in evidence–

(a) of any facts discovered as a result of the confession; or

(b) if the confession is relevant as showing that the defendant 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 a defendant is not admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies to any fact discovered as a result of a confession which is–

(a) wholly excluded pursuant to this section; or

(b) partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section “oppression” includes torture, inhuman or degrading treatment and the use or threat of violence (whether or not amounting to torture).

(8) Nothing in this Part affects the admissibility of a confession made by an accused person.

Confessions may be given in evidence for co-defendant.

357.(1) In any proceedings a confession made by a defendant may be given in evidence for another person charged in the same proceedings (a co-defendant) insofar as it is relevant to any matter in issue in the proceedings and is not excluded by the court pursuant to this section.

(2) If, in any proceedings where a co-defendant proposes to give in evidence a confession made by a defendant, 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 of it,

the court must not allow the confession to be given in evidence for the co-defendant except insofar as it is proved to the court on the balance of probabilities that the confession (even if it might be true) was not so obtained.

(3) Before allowing a confession made by a defendant to be given in evidence for a co-defendant in any proceedings, the court may on its own initiative require the fact that the confession was not obtained as mentioned in subsection (2) to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded pursuant to this section does not affect the admissibility in evidence–

(a) of any facts discovered as a result of the confession; or

(b) if the confession is relevant as showing that the defendant 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 a defendant is not admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies to–

(a) any fact discovered as a result of a confession which is wholly excluded pursuant to this section; and

(b) any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

Confessions by mentally handicapped persons.

358.(1) Without affecting the general duty of the court at a trial on indictment with a jury to direct the jury on any matter on which it appears to the court appropriate to do so, if in such a trial–

(a) the case against the defendant depends wholly or substantially on a confession by him; and

(b) the court is satisfied that–

(i) the defendant is mentally handicapped; and

(ii) the confession was not made in the presence of an independent person,

the court must–

(c) warn the jury that there is special need for caution before convicting the defendant in reliance on the confession; and

(d) explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) If in a summary trial or a trial without a jury 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 with a jury, the court must treat the case as one in which there is a special need for caution before convicting the defendant 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;

"police purposes" includes the purposes of civilians employed by the police and police cadets undergoing training with a view to becoming members of the police force.

Inferences from silence

359. *Deleted*

360. *Deleted*

361. *Deleted*

362. *Deleted*

363. *Deleted*

364. *Deleted*

Evidence of bad character

Interpretation of sections 366 to 379.

365.(1) In sections 366 to 379–

"bad character" is to be read in accordance with section 366;

"important matter" means a matter of substantial importance in the context of the case as a whole;

"misconduct" means the commission of an offence or other reprehensible behaviour;

"probative value", and "relevant" (in relation to an item of evidence), are to be read in accordance with section 377;

"prosecution evidence" means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution.

(2) If a defendant is charged with 2 or more offences in the same criminal proceedings, sections 366 to 379 (except section 369(3)) have effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be read accordingly.

(3) Nothing in sections 366 to 379 affects the exclusion of evidence–

(a) under the rule in section 395 against a party impeaching the credit of his own witness by general evidence of bad character;

(b) under section 456 (Restriction on evidence or questions about complainant's sexual history); or

(c) on grounds other than the fact that it is evidence of a person's bad character.

"Bad character".

366. References in sections 367 to 379 to evidence of a person's "bad character" are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which–

(a) has to do with the alleged facts of the offence with which the defendant is charged; or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

Abolition of common law rules.

367.(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Subsection (1) is subject to section 393(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his bad character.

Non-defendant's bad character.

368.(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if–

(a) it is important explanatory evidence;

(b) it has substantial probative value in relation to a matter which–

(i) is a matter in issue in the proceeding; and

(ii) is of substantial importance in the context of the case as a whole; or

(c) all parties to the proceedings agree to the evidence being admissible.

(2) For the purposes of subsection (1)(a) evidence is important explanatory evidence if–

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case; and

(b) its value for understanding the case as a whole is substantial.

(3) In assessing the probative value of evidence for the purposes of subsection (1)(b) the court must have regard to the following factors (and to any others it considers relevant)–

(a) the nature and number of the events, or other things, to which the evidence relates;

(b) when those events or things are alleged to have happened or existed;

(c) if–

(i) the evidence is evidence of a person's misconduct; and

(ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

(d) if–

(i) the evidence is evidence of a person's misconduct;

(ii) it is suggested that that person is also responsible for the misconduct charged; and

(iii) the identity of the person responsible for the misconduct charged is disputed,

the extent to which the evidence shows or tends to show that the same person was responsible each time.

(4) Except where subsection (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

Defendant's bad character.

369.(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if–

(a) all parties to the proceedings agree to the evidence being admissible;

(b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it;

(c) it is important explanatory evidence;

(d) it is relevant to an important matter in issue between the defendant and the prosecution;

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;

(f) it is evidence to correct a false impression given by the defendant; or

(g) the defendant has made an attack on another person's character.

(2) Sections 370 to 374 contain provisions supplementing subsection (1).

(3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that 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.

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

"Important explanatory evidence".

370. For the purposes of section 369(1)(c) evidence is important explanatory evidence if–

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case; and

(b) its value for understanding the case as a whole is substantial.

"Matter in issue between the defendant and the prosecution".

371.(1) For the purposes of section 369(1)(d) the matters in issue between the defendant and the prosecution include–

(a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;

(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

(2) If subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without affecting any other way of doing so) be established by evidence that he has been convicted of–

(a) an offence of the same description as the one with which he is charged; or

(b) an offence of the same category as the one with which he is charged.

(3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.

(4) For the purposes of subsection (2)–

(a) 2 offences are of the same description as each other if the statement of the offence in an indictment would, in each case, be in the same terms;

(b) 2 offences are of the same category as each other if they belong to the same category of offences as set out in Schedule 8.

(5) Only prosecution evidence is admissible under section 369(1)(d).

"Matter in issue between the defendant and a co-defendant".

372.(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 369(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

(2) Only evidence–

(a) which is to be (or has been) adduced by the co-defendant; or

(b) which a witness is to be invited to give (or has given) in cross- examination by the co-defendant,

is admissible under section 369(1)(e).

Evidence to correct a false impression.

373.(1) For the purposes of section 369(1)(f)–

(a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;

(b) evidence to correct such an impression is evidence which has probative value in correcting it.

(2) A defendant is treated as being responsible for the making of an assertion if–

(a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him);

(b) the assertion was made by the defendant–

(i) on being questioned under caution, before charge, about the offence with which he is charged; or

(ii) on being charged with the offence or officially informed he might be prosecuted for it,

and evidence of the assertion is given in the proceedings;

(c) the assertion is made by a witness called by the defendant;

(d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so; or

(e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion is not to be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) If it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In subsection (4) "conduct" includes appearance or dress.

(6) Evidence is admissible under section 369(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under section 369(1)(f).

Attack on another person's character.

374.(1) For the purposes of section 369(1)(g) a defendant makes an attack on another person's character if–

(a) he adduces evidence attacking the other person's character;

(b) he (or any legal representative appointed under section 454(4) to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so; or

(c) evidence is given of an imputation about the other person made by the defendant–

(i) on being questioned under caution, before charge, about the offence with which he is charged; or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it.

(2) In subsection (1) "evidence attacking the other person's character" means evidence to the effect that the other person–

(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one); or

(b) has behaved, or is disposed to behave, in a reprehensible way;

and "imputation about the other person" means an assertion to that effect.

(3) Only prosecution evidence is admissible under section 369(1)(g).

Stopping the case if evidence contaminated.

375.(1) If on a defendant's trial before a judge and jury for an offence–

(a) evidence of his bad character has been admitted under any of paragraphs (c) to (g) of section 369(1); and

(b) the court is satisfied at any time after the close of the case for the prosecution that–

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) If–

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1)(b) in respect of it.

(3) If–

(a) a jury is required to decide under section 660 whether a person charged on an indictment with an offence did the act or made the omission charged;

(b) evidence of the person's bad character has been admitted under any of paragraphs (c) to (g) of section 369(1); and

(c) the court is satisfied at any time after the close of the case for the prosecution that–

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

(5) For the purposes of this section a person's evidence is contaminated if–

(a) as a result of an agreement or understanding between the person and one or more others; or

(b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

Offences committed by defendant when a child.

376.(1) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his conviction for an offence when under the age of 14 is not admissible unless–

(a) both of the offences are triable only on indictment; and

(b) the court is satisfied that the interests of justice require the evidence to be admissible.

(2) Subsection (1) applies in addition to section 369.

Assumption of truth in assessment of relevance or probative value.

377.(1) Subject to subsection (2), a reference in any of sections 365 to 379 to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.

(2) In assessing the relevance or probative value of an item of evidence for any purpose of sections 365 to 379, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter) that no court or jury could reasonably find it to be true.

Court's duty to give reasons for rulings.

378.(1) If the court makes a relevant ruling–

(a) it must state in open court (but in the absence of the jury, if there is one) its reasons for the ruling;

(b) if it is the Magistrates' Court - it must cause the ruling and the reasons for it to be entered in the register of the court's proceedings.

(2) In this section "relevant ruling" means–

(a) a ruling on whether an item of evidence is evidence of a person's bad character;

(b) a ruling on whether an item of such evidence is admissible under section 368 or 369 (including a ruling on an application under section 369(3));

(c) a ruling under section 375.

Rules of court.

379.(1) Further provision for the purposes of sections 365 to 378 may be made by rules of court, and if made, must include a provision requiring a prosecutor who proposes–

(a) to adduce evidence of a defendant's bad character; or

(b) to cross-examine a witness with a view to eliciting such evidence,

to serve on the defendant such notice, and such particulars of or relating to the evidence, as are prescribed.

(2) The rules may provide that the court or the defendant may, in prescribed circumstances, dispense with a requirement imposed by virtue of subsection (1).

(3) In considering the exercise of its powers with respect to costs, the court may take into account any failure by a party to comply with a requirement imposed by virtue of subsection (1) and not dispensed with by virtue of subsection (2).

(4) The rules may–

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(5) Nothing in this section limits any enactment conferring power to make rules of court; and no particular provision of this section limits any general provision of it.

Derogatory assertions

Orders in respect of certain assertions.

380.(1) This section applies where a person has been convicted of an offence and a speech in mitigation is made by him or on his behalf before–

(a) a court deciding what sentence should be passed on him in respect of the offence; or

(b) the Magistrates' Court deciding whether he should be committed to the Supreme Court for sentence.

(2) This section also applies where a sentence has been passed on a person in respect of an offence and a submission relating to the sentence is made by him or on his behalf before–

(a) a court hearing an appeal against or reviewing the sentence; or

(b) a court deciding whether to grant leave to appeal against the sentence.

(3) If it appears to the court that there is a real possibility that an order under subsection (8) will be made in relation to the assertion, the court may make an order under subsection (7) in relation to the assertion.

(4) If there are substantial grounds for believing–

(a) that an assertion forming part of the speech or submission is derogatory to a person's character (for instance, because it suggests that his conduct is or has been criminal, immoral or improper); and

(b) that the assertion is false or that the facts asserted are irrelevant to the sentence,

the court may make an order under subsection (8) in relation to the assertion.

(5) An order under subsection (7) or (8) must not be made in relation to an assertion if it appears to the court that the assertion was previously made–

(a) at the trial at which the person was convicted of the offence; or

(b) during any other proceedings relating to the offence.

(6) Sections 381 and 382 have effect if a court makes an order under subsection (7) or (8).

(7) An order under this subsection–

(a) may be made at any time before the court has made a decision with regard to sentencing;

(b) may be revoked at any time by the court;

(c) subject to paragraph (b), ceases to have effect when the court makes a decision with regard to sentencing.

(8) An order under this subsection–

(a) may be made after the court has made a decision with regard to sentencing, but only if it is made as soon as is reasonably practicable after the making of the decision;

(b) may be revoked at any time by the court;

(c) subject to paragraph (b), ceases to have effect after 12 months;

(d) may be made whether or not an order has been made under subsection (7) with regard to the case concerned.

(9) For the purposes of subsections (7) and (8) the court makes a decision with regard to sentencing–

(a) when it decides what sentence should be passed (if this section applies by virtue of subsection (1)(a));

(b) when it decides whether the person should be committed to the Supreme Court for sentence (if this section applies by virtue of subsection (1)(b));

(c) when it decides what the sentence should be (if this section applies by virtue of subsection (2)(a));

(d) when it decides whether to grant leave to appeal (if this section applies by virtue of subsection (2)(b)).

Restriction on reporting of assertions.

381.(1) If a court makes an order under section 380(7) or (8) in relation to any assertion, at any time when the order has effect the assertion must not–

(a) be published in Gibraltar in a publication available to the public (other than an indictment or other document prepared for use in particular legal proceedings); or

(b) be included in a relevant programme for reception in Gibraltar.

(2) For the purposes of this section an assertion is published or included in a programme if the material published or included–

(a) names the person about whom the assertion is made or, without naming him, contains enough to make it likely that members of the public will identify him as the person about whom it is made; and

(b) reproduces the actual wording of the matter asserted or contains its substance.

Reporting of assertions: Offences.

382.(1) If an assertion is published or included in a relevant programme in contravention of section 381, each of the following commits an offence–

(a) in the case of publication in a newspaper or periodical - any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of publication in any other form - the person who publishes the assertion;

(c) in the case of an assertion included in a relevant programme - any person corporate engaged in providing the service in which the programme is included and any person who has functions in relation to the programme corresponding to those of an editor of a newspaper.

(2) A person who commits an offence under this section is liable on summary conviction to a fine at level 5 on the standard scale.

(3) If a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence–

(a) he was not aware, and neither suspected nor had reason to suspect, that an order under section 380(7) or (8) had effect at that time; or

(b) he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the assertion in question.

(4) Section 18 of the Crimes Act 2011 (Liability of corporate bodies) applies to an offence under this section.

(5) Subsection (2) of section 381 applies for the purposes of this section as it applies for the purposes of that section.

Expert evidence

Expert reports.

383.(1) Subject to the following sections, an expert report is admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If the person making the report does not give oral evidence, the report is only admissible with the leave of the court.

(3) In deciding whether to give leave the court must have regard to–

(a) the contents of the report;

(b) the reasons why it is proposed that the person making the report should not give oral evidence;

(c) 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 defendant or, if there is more than one, to any of them; and

(d) any other circumstances that appear to the court to be relevant.

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

(5) In proceedings before the Magistrates' Court inquiring into an offence as examining magistrates, this section has effect with the omission of–

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

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

(6) 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.

384.(1) For the purpose of helping the members of a jury to understand complicated issues of fact or technical terms in any proceedings, the court may, subject to rules of court, provide, or give leave for one of the parties to provide to the jury–

(a) evidence in any form, even if there exists admissible material from which the evidence to be given in that form would be derived; and

(b) one or more glossaries for specified purposes.

(2) Rules of court may provide for the circumstances in which, and the manner in which, provision as described in subsection (1) may be made.

Expert evidence: Preparatory work.

385.(1) This section applies if–

(a) a statement has been prepared for the purposes of criminal proceedings;

(b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated;

(c) notice is given pursuant to rules made under section 386 that another person ("the expert") will in evidence given in the proceedings orally, or under section 405 (Proof by written statement), base an opinion or inference on the statement; and

(d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.

(2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.

(3) If evidence based on the statement is given under subsection (2) the statement is to be treated as evidence of what it states.

(4) This section does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.

(5) The matters to be considered by the court in deciding whether to make an order under subsection (4) include–

(a) the expense of calling as a witness the person who prepared the statement;

(b) whether relevant evidence could be given by that person which could not be given by the expert;

(c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

(6) Subsections (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.

Advance notice of expert evidence in court.

386.(1) Rules of court may–

(a) require 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) prohibit 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) Rules of court made pursuant to subsection (1) may–

(a) specify the kinds of expert evidence to which they apply; and

(b) exempt facts or matters of any description specified in the rules.

(3) Until rules of court are made under this section, notice of an intention to adduce expert evidence must be given in accordance with the Criminal Procedure Rules.

Proof of non-payment of sum adjudged

Proof of non-payment of sum adjudged.

387. If a court has ordered one person to pay to another any sum of money, and proceedings are taken before that or any other court to enforce payment of that sum, then–

(a) if the person to whom the sum is ordered to be paid is the Registrar or the clerk of the Magistrates' Court - a certificate purporting to be signed by the Registrar or clerk that the sum has not been paid to him; and

(b) in any other case - a document purporting to be a statutory declaration by the person to whom the sum is ordered to be paid that the sum has not been paid to him,

is admissible as evidence that the sum has not been paid to him, unless the court requires the Registrar or clerk or other person to be called as a witness.

PART 17 – HEARSAY AND DOCUMENTARY EVIDENCE

Interpretation of Part.

388.(1) In this Part–

"oral evidence" includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

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

(2) If a defendant is charged with 2 or more offences in the same criminal proceedings, this Part has effect as if each offence were charged in separate proceedings.

Hearsay: Main provisions

Admissibility of hearsay evidence.

389.(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if–

(a) any provision of this Part or any other statutory provision makes it admissible;

(b) any rule of law preserved by section 393 makes it admissible;

(c) all parties to the proceedings agree to it being admissible; or

(d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1)(d), the court must have regard to the following factors (and to any others it considers relevant)–

(a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;

(b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);

(c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;

(d) the circumstances in which the statement was made;

(e) how reliable the maker of the statement appears to be;

(f) how reliable the evidence of the making of the statement appears to be;

(g) whether oral evidence of the matter stated can be given and, if not, why it cannot;

(h) the amount of difficulty involved in challenging the statement;

(i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

Statements and matters stated.

390.(1) In this Part references to a statement or to a matter stated are to be read as follows.

(2) A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

(3) A matter stated is one to which this Part applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been–

(a) to cause another person to believe the matter; or

(b) to cause another person to act or a machine to operate on the basis that the matter is as stated.

Principal categories of admissibility

Cases where a witness is unavailable.

391.(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if–

(a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;

(b) the person who made the statement (the relevant person) is identified to the court's satisfaction; and

(c) any of the five conditions mentioned in subsection (2) is satisfied.

(2) The conditions are that–

(a) the relevant person is dead;

(b) the relevant person is unfit to be a witness because of his bodily or mental condition;

(c) the relevant person is outside Gibraltar and it is not reasonably practicable to ensure his attendance;

(d) the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;

(e) through fear or because he is kept out of the way the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of subsection (2)(e) "fear" is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

(4) Leave may be given under subsection (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard to–

(a) the statement's contents;

(b) any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence);

(c) in appropriate cases - the fact that a direction under section 431 (Special measures direction relating to eligible witness) could be made in relation to the relevant person; and

(d) any other relevant circumstances.

(5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused–

(a) by the person in support of whose case it is sought to give the statement in evidence; or

(b) by a person acting on his behalf,

in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

(6) The requirements of subsection (2)(c) or (e) are not to be regarded as satisfied if the failure to ensure the attendance of the person who made the statement or the failure of that person to give oral evidence as the case may be is principally due to the fact that the person making the statement is directly or indirectly subject to superior instructions to the effect that he should not attend before the Court in Gibraltar or give oral evidence before it by virtue of that superior authority's non-recognition of Her Majesty's courts in Gibraltar or any other political reason.

(7) A certificate in writing signed by the Chief Secretary as to any fact referred to in subsection (6) is conclusive as to the facts certified.

Business and other documents.

392.(1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if –

(a) oral evidence given in the proceedings would be admissible as evidence of that matter; and

(b) the requirements of subsection (2) are satisfied.

(2) The requirements of this subsection are satisfied if–

(a) the document or the part containing the statement 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;

(b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and

(c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

(3) The persons mentioned in paragraphs (a) and (b) of subsection (2) may be the same person.

(4) A statement is not admissible under this section if the court makes a direction to that effect under subsection (5).

(5) The court may make a direction under this subsection if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of–

(a) its contents;

(b) the source of the information contained in it;

(c) the way in which or the circumstances in which the information was supplied or received; or

(d) the way in which or the circumstances in which the document concerned was created or received.

Preservation of certain common law categories of admissibility.

393.(1) The following rules of law are preserved so far as they allow the court to treat such evidence as proving the matter concerned–

A. Public information, etc.

Any rule of law under which in criminal proceedings–

(a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;

(b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them;

(c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them; or

(d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

B. Reputation as to character

Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his good or bad character, so far as it allows the court to treat such evidence as proving the matter concerned.

C. Reputation or family tradition

Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving–

(a) pedigree or the existence of a marriage;

(b) the existence of any public or general right; or

(c) the identity of any person or thing,

so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

D. Res gestae

Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if–

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded;

(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement; or

(c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

E. Confessions, etc.

Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

F. Admissions by agents, etc.

Any rule of law under which in criminal proceedings–

(a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated; or

(b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

G. Common enterprise

Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

H. Expert evidence

Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his field.

(2) With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.

Inconsistent statements.

394.(1) If in criminal proceedings a person gives oral evidence and–

(a) he admits making a previous inconsistent statement; or

(b) a previous inconsistent statement made by him is proved by virtue of section 395 and 396,

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under section 400(2)(c) the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

Witness may be discredited by the party producing.

395.(1) A party producing a witness–

(a) may not impeach his credit by general evidence of bad character; but

(b) may, if the witness in the opinion of the judge proves adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony.

(2) Before proof can be given as in subsection (1)(b), the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Proof of contradictory statements of adverse witness.

396.(1) If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it.

(2) Before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

(3) A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the indictment or proceeding, without such writing being shown to him.

(4) If it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him.

(5) The judge, at any time during the trial, may require the production of the writing for his inspection, and may thereupon make such use of it for the purposes of the trial as he thinks fit.

Other previous statements of witnesses.

397.(1) This section applies when a person (the witness) is called to give evidence in criminal proceedings.

(2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(3) A statement made by the witness in a document–

(a) which is used by him to refresh his memory while giving evidence;

(b) on which he is cross-examined; and

(c) which as a consequence is received in evidence in the proceedings,

is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if–

(a) any of the following three conditions is satisfied; and

(b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.

(5) The first condition is that the statement identifies or describes a person, object or place.

(6) The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.

(7) The third condition is that–

(a) the witness claims to be a person against whom an offence has been committed;

(b) the offence is one to which the proceedings relate;

(c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence;

(d) the complaint was not made as a result of a threat or a promise; and

(e) before the statement is adduced the witness gives oral evidence in connection with its subject matter.

(8) For the purposes of subsection (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

Hearsay: Supplementary

Additional requirement for admissibility of multiple hearsay.

398.(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless–

(a) either of the statements is admissible under section 392, 394 or 397;

(b) all parties to the proceedings so agree; or

(c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

(2) In this section "hearsay statement" means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

Capability to make statement.

399.(1) Nothing in section 391, 394 or 397 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he made the statement.

(2) Nothing in section 392 makes a statement admissible as evidence if any person who, in order for the requirements of section 392(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned–

(a) did not have the required capability at that time; or

(b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.

(3) For the purposes of this section a person has the required capability if he is capable of–

(a) understanding questions put to him about the matters stated; and

(b) giving answers to such questions which can be understood.

(4) Where by reason of this section there is an issue as to whether a person had the required capability when he made a statement–

(a) proceedings held for deciding the issue must take place in the absence of the jury (if there is one);

(b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;

(c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

Credibility.

400.(1) This section applies if in criminal proceedings–

(a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated; and

(b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.

(2) In such a case–

(a) any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;

(b) evidence may with the court's leave be given of any matter which (if he had given such evidence) could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party;

(c) evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.

(3) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

(4) In the case of a statement in a document which is admitted as evidence under section 391 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of subsections (1) to (3) of this section.

Stopping the case where evidence is unconvincing.

401.(1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that–

(a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and

(b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) If–

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be convicted of another offence,

the defendant may not be convicted of that other offence if the court is satisfied as mentioned in subsection (1) in respect of it.

(3) If–

(a) a jury is required to decide under section 660 whether a person charged on an indictment with an offence did the act or made the omission charged; and

(b) the court is satisfied as mentioned in subsection (1) at any time after the close of the case for the prosecution that–

(i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and

(ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

Court's general discretion to exclude evidence.

402.(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if–

(a) the statement was made otherwise than in oral evidence in the proceedings; and

(b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.

(2) Nothing in this Part affects–

(a) any power of a court to exclude evidence under section 332(Exclusion of unfair evidence); or

(b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

Representations other than by a person.

403.(1) If a representation of any fact–

(a) is made otherwise than by a person; but

(b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.

(2) Subsection (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

Rules of court.

404.(1) Rules of court may make such provision as appears to the Chief Justice to be necessary or expedient for the purposes of this Part.

(2) The rules may–

(a) make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Part;

(b) require a party proposing to tender the evidence to serve on each party to the proceedings such notice, and such particulars of or relating to the evidence, as are prescribed;

(c) provide that the evidence is to be treated as admissible by agreement of the parties if–

(i) a notice has been served in accordance with provision made under paragraph (b); and

(ii) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.

(3) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it–

(a) the evidence is not admissible except with the court's leave;

(b) if leave is given the court or jury may draw such inferences from the failure as appear proper.

(4) In considering whether or how to exercise any of its powers under subsection (3) the court must have regard to whether there is any justification for the failure to comply with the requirement.

(5) A person is not to be convicted of an offence solely on an inference drawn under subsection (3)(b).

(6) Rules under this section may–

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(7) Nothing in this section limits any enactment conferring power to make rules of court; and no particular provision of this section prejudices any general provision of it.

Documents

Proof by written statement.

405.(1) In any criminal proceedings, a written statement by any person is, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, admissible as evidence to the same extent as oral evidence to the same 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 legal representatives, within 7 days after 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.

(3) The conditions mentioned in paragraphs (c) and (d) of subsection (2) do not apply if the parties agree before or during the hearing that the statement may be tendered in evidence.

(4) The following provisions 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 18, it must give his age;

(b) if it is made by a person who cannot read it, it must be read to him before he signs it and be accompanied by a declaration by the person who 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 subsection (2)(c) must be accompanied by a copy of that document or by any information necessary to enable the party on whom it is served to inspect the document or a copy of it.

(5) Even if a written statement made by a person is 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 the person to give evidence; and

(b) the court may, on its own initiative or on the application of any party to the proceedings, require the person to attend before the court and give evidence.

(6) An application under subsection (5)(b) to a court other than the Magistrates' Court may be made before the hearing, and on any such application the powers of the court are exercisable by any person entitled to sit as a judge of the court.

(7) If a statement is admitted in evidence by virtue of this section–

(a) the statement must, unless the court otherwise directs, be read aloud at the hearing;

(b) if the court so directs, an account must be given orally of any of the statement that is not read aloud.

(8) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section must be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(9) A document required by this section to be served on any person may be served–

(a) by delivering it to him or to his legal representative;

(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 legal representative 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 legal representative at his office; or

(d) in the case of a corporate body, 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.

Evidence by certificate.

406.(1) In any proceedings, a certificate purporting to be signed by a police officer and certifying that–

(a) a plan or drawing exhibited thereto is a plan or drawing made by him of the place or object specified in the certificate; and

(b) the plan or drawing is correctly drawn to a scale so specified,

is 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 2005, 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,

is 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,

is admissible as evidence of the facts stated in the declaration.

(4) Nothing in this section makes 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 same effect would have been admissible in those proceedings.

(5) Nothing in this section makes a certificate or statutory declaration admissible as evidence in proceedings for any offence–

(a) unless a copy of it has, not less than 7 days before the hearing or trial, been served on the person charged with the offence; or

(b) if that person, not later than 3 days before the hearing or trial, or within any further time the court in special circumstances allows, 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.

Proof of identity of driver of vehicle.

407. If on the summary trial of an information for an offence in the case of which section 96 of the Traffic Act 2005 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 defendant by post; and

(b) a statement in writing is produced to the court purporting to be signed by the defendant that the defendant 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.

Proof of statements in documents.

408.(1) If a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved–

(a) by the production of the document; or

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

authenticated in such manner as the court may approve.

(2) It is immaterial for the purposes of this section how many removes there are between a copy and the original.

Use of documents to refresh memory.

409.(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if–

(a) he states in his oral evidence that the document records his recollection of the matter at that earlier time; and

(b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) If–

(a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time;

(b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence; and

(c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

Microfilm copies.

410.(1) 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 manner as the court may approve.

(2) If the proceedings concerned are proceedings before the Magistrates' Court inquiring into an offence as examining magistrates subsection (1) has effect with the omission of the words "authenticated in such manner as the court may approve".

Video recordings

Evidence by video recording.

411.(1) This section applies if–

(a) a person is called as a witness in proceedings for an offence triable only on indictment, or for a prescribed offence triable either way;

(b) the person claims to have witnessed (whether visually or in any other way)–

(i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or

(ii) events closely connected with such events;

(c) he has previously given an account of the events in question (whether in response to questions asked or otherwise);

(d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in paragraph (b));

(e) a video recording was made of the account;

(f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded; and

(g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the recorded account, they are to be treated as if made by him in that evidence.

(3) A direction under subsection (1)(f)–

(a) may not be made in relation to a recorded account given by the defendant;

(b) may be made only if it appears to the court that–

(i) the witness's recollection of the events in question is likely to have been significantly better when he gave the recorded account than it will be when he gives oral evidence in the proceedings; and

(ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are–

(a) the interval between the time of the events in question and the time when the recorded account was made;

(b) any other factors that might affect the reliability of what the witness said in that account;

(c) the quality of the recording;

(d) any views of the witness as to whether his evidence in chief should be given orally or by means of the recording.

(5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

(6) In this section "prescribed" means of a description specified in an order made by the Minister.

Video recordings: Further provisions.

412.(1) The reference in subsection (1)(f) of section 411 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness's recorded account are, where appropriate, to be read accordingly.

(2) In considering whether any part of a recording should be admitted under section 411, the court must consider–

(a) whether admitting that part would carry a risk of prejudice to the defendant; and

(b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(3) A court may not make a direction under section 411(1)(f) in relation to any proceedings unless–

(a) the Minister has notified the court that arrangements can be made for implementing directions under that section; and

(b) the notice has not been withdrawn.

(4) Nothing in section 411 affects the admissibility of any video recording which would be admissible apart from that section.

Documentary evidence: Supplementary

Documentary evidence: Supplementary.

413.(1) This Part is in addition to and does not displace the provisions of the Evidence Act or any other written law governing the reception of evidence in Gibraltar so far as those provisions are relevant to criminal proceedings.

(2) A statement in a document is not 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 must be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

Documents produced as exhibits.

414. If on a trial before a judge and jury for an offence–

(a) a statement made in a document is admitted in evidence under section 394 or 397; and

(b) the document or a copy of it is produced as an exhibit,

the exhibit must not accompany the jury when they retire to consider their verdict unless–

(c) the court considers it appropriate; or

(d) all the parties to the proceedings agree that it should accompany the jury.

PART 18 – LIVE LINK EVIDENCE, ETC.

Interpretation and savings.

415.(1) In this Part "live link" means an arrangement by which a person (when not in the place where the hearing is being held) is able–

(a) to see and hear a person there; and

(b) to be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are–

(a) the judge, magistrate or other person presiding;

(b) any other judge or magistrate taking part in the proceedings;

(c) the registrar or clerk while taking part in the proceedings;

(d) the defendant or defendants and the prosecutor;

(e) legal representatives appearing for the defence or prosecution and persons assisting them;

(f) the jury or lay assessors, if any; and

(g) any interpreter appointed to assist a defendant, while performing that role.

(3) Nothing in this Part affects any power of a court–

(a) to make an order, give directions or give leave of any description in relation to any witness (including the defendant or defendants);

(b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise);

(c) to give a direction for live link evidence to be received under section 437 (Evidence by live link) or 446 (Live link direction).

Evidence by live link

Evidence by live link by persons outside Gibraltar.

416.(1) A person other than the defendant may, with the leave of the court, give evidence through a live television link in proceedings to which subsection (2) applies, if the person is outside Gibraltar.

(2) This subsection applies to–

(a) trials on indictment, appeals to the Court of Appeal and hearings of references under Part 11; and

(b) proceedings in Juvenile Courts, appeals to the Supreme Court arising out of such proceedings and hearings of references under Part 11 so arising.

Evidence by live link by persons generally.

417.(1) A witness (other than the defendant) may, if the court so directs, give evidence through a live link in the following criminal proceedings–

(a) a summary trial;

(b) an appeal to the Supreme Court arising out of such a trial;

(c) a trial on indictment;

(d) an appeal in a criminal matter to the Court of Appeal;

(e) the hearing of a reference under Part 11; and

(f) a hearing before the Magistrates' Court or the Supreme Court after the defendant has entered a plea of guilty.

(2) A direction may be given under this section–

(a) on an application by a party to the proceedings; or

(b) on the court's own initiative,

but may not be given unless the court is satisfied–

(c) that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link; and

(d) that suitable facilities for receiving evidence through a live link are available in the place in which it appears to the court that the proceedings will take place.

(3) In deciding whether to give a direction under this section the court must consider all the circumstances of the case, including, but not limited to–

(a) the availability of the witness;

(b) the need for the witness to attend in person;

(c) the importance of the witness's evidence to the proceedings;

(d) the views of the witness;

(e) the suitability of the facilities at the place where the witness would give evidence through a live link; and

(f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.

(4) The court must state in open court its reasons for granting or refusing an application for a direction under this section and, if it is the Magistrates' Court, must cause them to be entered in the register of its proceedings.

Effect of, and rescission of, a direction under section 417.

418.(1) If the court gives a direction under section 417 for a person to give evidence through a live link in particular proceedings, the person concerned may not give evidence in those proceedings after the direction is given except through a live link, subject to the following provisions of this section.

(2) The court may rescind a direction under section 417 if it appears to the court to be in the interests of justice to do so.

(3) If the court rescinds a direction, the person concerned may no longer give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 417 in relation to him.

(4) A direction under section 417 may be rescinded under subsection (2)–

(a) on an application by a party to the proceedings; or

(b) on the court's own initiative,

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

(5) The court must state in open court its reasons for–

(a) rescinding a direction under section 417; or

(b) refusing an application to rescind such a direction,

and, if it is the Magistrates' Court, must cause the reasons to be entered in the register of its proceedings.

Warning to jury.

419. If, by virtue of section 416 or 417, evidence has been given through a live link in criminal proceedings before the Supreme Court, the judge must give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

Live links in certain preliminary and sentencing hearings

Introductory.

420.(1) Sections 421 to 423–

(a) apply to preliminary hearings and sentencing hearings in the course of proceedings for an offence; and

(b) enable the court in the circumstances provided for in sections 421 and 423 to direct the use of a live link for securing the defendant's attendance at a hearing to which those sections apply.

(2) The defendant is to be treated as present in court when, by virtue of a live link direction under any of those sections, he attends a hearing through a live link.

(3) In sections 421 to 423–

"custody" includes police detention;

"preliminary hearing" means any stage in the proceedings at which the presence of the detained person is required by the court before the commencement of the trial;

"sentencing hearing" means any hearing following conviction which is held for the purpose of–

(a) proceedings relating to the giving or rescinding of a direction under section 423;

(b) proceedings in the Magistrates' Court relating to committal to the Supreme Court for sentencing; or

(c) sentencing the offender or determining how the court should deal with him in respect of the offence.

Use of live link at preliminary hearings when defendant is in custody.

421.(1) This section applies in relation to a preliminary hearing in the Magistrates' Court or the Supreme Court.

(2) If it appears to the court before which the preliminary hearing is to take place that the defendant is likely to be held in custody during the hearing, the court may give a live link direction under this section in relation to the attendance of the defendant at the hearing.

(3) A live link direction under this section is a direction requiring the defendant, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

(4) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit a person attending the hearing to do so through a live link.

(5) The court must not give or rescind such a direction (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.

(6) If in a case where it has power to do so the Magistrates' Court decides not to give a live link direction under this section, it must–

(a) state in open court its reasons for not doing so; and

(b) cause those reasons to be entered in the register of its proceedings.

(7) The following functions of the Magistrates' Court under this section may be discharged by a single magistrate–

(a) giving a live link direction under this section;

(b) rescinding a live link direction before a preliminary hearing begins; and

(c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).

Continued use of live link for sentencing hearing following a preliminary hearing.

422 .(1) Subsection (2) applies if–

(a) a live link direction under section 421 is in force;

(b) the defendant is attending a preliminary hearing through a live link by virtue of the direction;

(c) the court convicts him of the offence in the course of that hearing (whether by virtue of a guilty plea or an indication of an intention to plead guilty); and

(d) the court proposes to continue the hearing as a sentencing hearing in relation to the offence.

(2) The defendant may continue to attend through the live link by virtue of the direction if–

(a) the hearing is continued as a sentencing hearing in relation to the offence; and

(b) the court is satisfied that the defendant continuing to attend through the live link is not contrary to the interests of justice.

(3) The defendant may not give oral evidence through the live link during a continued hearing under subsection (2) unless the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

Use of live link in sentencing hearings.

423.(1) This section applies if the defendant is convicted of the offence.

(2) If it appears to the court by or before which the defendant is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this section in relation to that hearing.

(3) A live link direction under this section is a direction requiring the defendant, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

(4) Such a direction may be given–

(a) by the court on its own initiative or on an application by a party; and

(b) in relation to all subsequent sentencing hearings before the court or to the hearing or hearings specified or described in the direction.

(5) The court may not give such a direction unless the court is satisfied that it is not contrary to the interests of justice to give the direction.

(6) The court may–

(a) rescind such a direction at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so, without affecting the court's power to give a further live link direction in relation to the offender;

(b) exercise this power on its own initiative or on an application by a party.

(7) The defendant may not give oral evidence while attending a hearing through a live link by virtue of this section unless the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

(8) The court must–

(a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and

(b) if it is the Magistrates' Court, cause those reasons to be entered in the register of its proceedings.

Miscellaneous

Magistrates' Court may sit at other locations.

424. If–

(a) the Magistrates' Court proposes to hear evidence by live link by virtue of any provision of this Part; and

(b) suitable facilities for receiving such evidence are not available at the place at which the court usually sits,

the court may sit for the purposes of the whole or any part of the proceedings at any place at which such facilities are available.

Rules of court.

425.(1) Rules of court may make such provision as appears to the Chief Justice to be necessary or expedient for the purposes of this Part.

(2) The rules may in particular make provision–

(a) as to the procedure to be followed in connection with applications under section 416 or 417; and

(b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision–

(a) for uncontested applications to be decided by the court without a hearing;

(b) for preventing the renewal of an unsuccessful application under section 416 unless there has been a material change of circumstances;

(c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 416 or 417, and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) This section does not limit any enactment conferring power to make criminal procedure rules.

Offence of perjury.

426. A statement made on oath by a witness and given in evidence through a live link by virtue of this Part is to be treated for the purposes of Part 18 of the Crimes Act 2011 (Perjury and false statements) as having been made in the proceedings in which it is given in evidence.

PART 19 – VULNERABLE WITNESSES

Interpretation of Part.

427.(1) In this Part, unless the context otherwise requires–

"child witness" has the meaning given to it by section 433(1);

"eligible witness" means a witness eligible for assistance by virtue of section 428 or 429;

"picture" includes a likeness however produced;

"relevant recording", in relation to a witness or a complainant, is a video recording of an interview of the witness or complainant made with a view to its admission as evidence in chief of the witness or complainant;

"relevant time" in relation to a direction under this Part means–

(a) the time when the direction was given; or

(b) if a previous application has been made for a direction, the time when the application (or last application) was made;

"special measures direction" means a direction given under section 431;

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

"witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings;

"witness anonymity order" has the meaning given by section 469.

(2) In this Part–

(a) references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively;

(b) references to the special measures available in relation to a witness are to be construed in accordance with section 430;

(c) references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing;

(d) a reference to cross-examination includes a reference to further cross-examination;

(e) a reference to an offence includes a reference to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence;

(f) in proceedings in which there is more than one defendant, a reference to the defendant includes a reference to all or any of the defendants, as the court determines.

(3) For the purposes of this Part–

(a) the age of a person is to be taken to be that which it appears to the court to be after considering any available evidence;

(b) if it is alleged that an offence to which this Part applies has been committed, the fact that any person has consented to an act which, on a prosecution for that offence, would fall to be proved by the prosecution, does not prevent that person from being regarded as a person against whom the alleged offence was committed;

(c) if it is alleged that an offence of conspiracy or incitement of another to commit an offence has been committed, the person against whom the substantive offence is alleged to have been intended to be committed is to be regarded as the person against whom the conspiracy or incitement is alleged to have been committed;

(d) if a person is accused of an offence under any of sections 221 to 227 (Child sex offences) or any of sections 236 to 240 (Familial sex offences) of the Crimes Act 2011, the other party to the act in question is to be taken to be a person against whom the offence was committed even though he consented to that act;

(e) a person is accused of an offence if–

(i) an information is laid alleging that he has committed the offence;

(ii) he appears before a court charged with the offence;

(iii) a court before which he is appearing sends him to the Supreme Court for trial on a new charge alleging the offence; or

(iv) part of an indictment charging him with the offence is preferred before the Supreme Court.

Special measures: Eligible witnesses

Witnesses eligible for assistance on grounds of age or incapacity.

428.(1) A witness in criminal proceedings (other than the defendant) is eligible for assistance by virtue of this section if–

(a) the witness is under the age of 18 at the time of the hearing; or

(b) the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are–

(a) that the witness–

(i) suffers from mental disorder; or

(ii) otherwise has a significant impairment of intelligence and social functioning;

(b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) "the time of the hearing", in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 431 in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.

Witnesses eligible for assistance on grounds of fear or distress about testifying.

429.(1) For the purposes of this Part, a witness in criminal proceedings (other than the defendant) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) In determining whether a witness falls within subsection (1) the court must take into account, in particular–

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) any of the following matters that appear to the court to be relevant, namely–

(i) the social and cultural background and ethnic origins of the witness;

(ii) the domestic and employment circumstances of the witness; and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of–

(i) the defendant;

(ii) members of the family or associates of the defendant; or

(iii) any other person who is likely to be a defendant or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) If the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.

Special measures available to eligible witnesses.

430.(1) For the purposes of this Part–

(a) the provision which may be made by a special measures direction by virtue of each of sections 436 to 443 is a special measure available in relation to a witness eligible for assistance by virtue of section 428; and

(b) (subject to subsection (3)) the provision which may be made by such a direction by virtue of each of sections 436 to 441 is a special measure available in relation to a witness eligible for assistance by virtue of section 429.

(2) The Minister, in consultation with the Chief Justice, may by notice published in the Gazette specify the arrangements that can be made available in specified courts for the purposes of this Part.

(3) A court must not make a special measures direction pursuant to subsection (1)(a) or (b) in relation to a witness in any proceedings unless the Minister has by a notice under subsection (2) indicated that relevant arrangements can be made available in the court where the proceedings will take place.

(4) In subsection (3) "relevant arrangements" means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(5) The Minister may by order add any new measure to the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 428 or (as the case may be) section 429.

Special measures direction relating to eligible witness.

431.(1) This section applies when in any criminal proceedings–

(a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the defendant; or

(b) the court on its own initiative raises the issue whether such a direction should be given.

(2) If the court determines that the witness is eligible for assistance by virtue of section 428 or 429, the court must–

(a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and

(b) if so–

(i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and

(ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular–

(a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

General provisions about directions.

432.(1) Subject to subsection (2) and section 433(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either determined or abandoned, in relation to the defendant or (if there is more than one) in relation to each of the defendants.

(2) The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either–

(a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) Nothing in section 437(2) and (3), 440(4) to (7) or 441(4) to (6) affects the power of the court to vary or discharge a special measures direction under subsection (2).

(4) The court must state in open court its reasons for–

(a) giving or varying;

(b) refusing an application for, or for the variation or discharge of; or

(c) discharging,

a special measures direction and, if it is the Magistrates' Court, must cause the reasons to be entered in the register of its proceedings.

(5) Rules of court may make provision for–

(a) uncontested applications to be determined by the court without a hearing;

(b) preventing the renewal of an unsuccessful application for a special measures direction unless there has been a material change of circumstances;

(c) expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;

(d) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Special provisions relating to child witnesses.

433.(1) For the purposes of this section–

(a) a witness in criminal proceedings is a "child witness" if he is under the age of 18 (whether or not he is an eligible witness by reason of any other provision of section 428 or 429);

(b) a child witness is "in need of special protection" if the offence (or any of the offences) to which the proceedings relate is a sexual offence or an offence of violence.

(2) If the court, in making a determination for the purposes of section 431(2), determines that a witness in criminal proceedings is a child witness, the court must–

(a) first have regard to subsections (3) to (7) of this section; and

(b) then have regard to section 431(2).

(3) For the purposes of section 431(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section are to be treated as if they were measures determined by the court, pursuant to section 431(2)(a) and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(4) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which–

(a) provides for any relevant recording to be admitted under section 440 (Video recorded evidence in chief); and

(b) provides for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 437.

(5) The primary rule is subject to the following limitations–

(a) the requirement in subsection (4)(a) or (b) is subject to the availability (within the meaning of section 430(2)) of the special measure in question in relation to the witness;

(b) the requirement in subsection (4)(a) is subject to section 440(2);

(c) if the witness informs the court of his wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and.

(d) except in relation to a child witness in need of special protection, the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable.

(6) If as a consequence of all or part of the primary rule being disapplied under subsection (5)(c) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in section 436 for the evidence or that part of it.

(7) The requirement in subsection (6) is subject to the following limitations–

(a) if the witness informs the court of his wish that the requirement in subsection (6) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and

(b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(8) Not used.

(9) In making a decision under subsection (5)(c) or (7)(a), the court must take into account the following factors (and any others it considers relevant)–

(a) the age and maturity of the witness;

(b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in subsection (4) or (as the case may be) subsection (6);

(c) the relationship (if any) between the witness and the defendant;

(d) the witness's social and cultural background and ethnic origins;

(e) the nature and alleged circumstances of the offence to which the proceedings relate.

(10) If a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 428(1)(a), then–

(a) subject to subsection (11); and

(b) unless the witness has already begun to give evidence in the proceedings,

the direction ceases to have effect when the witness attains the age of 18.

(11) If a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 428(1)(a) and–

(a) the direction provides for–

(i) any relevant recording to be admitted under section 440 as evidence in chief of the witness; or

(ii) the special measure available under section 441 to apply in relation to the witness; and

(b) (if the direction provides for that special measure to so apply) the witness is still under the age of 18 when the video recording is made for the purposes of section 441,

then, so far as it provides as mentioned in paragraph (a)(i) or (ii), the direction continues to have effect in accordance with section 431(1) even though the witness subsequently attains that age.

Extension of section 433 to certain witnesses.

434.(1) For the purposes of this section, a witness in criminal proceedings (other than the defendant) is a "qualifying witness" if he–

(a) is not an eligible witness at the time of the hearing (as defined in section 428(3)); but

(b) was under the age of 18 when a relevant recording was made.

(2) Subsections (2) to (4) and (9) of section 433, so far as relating to the giving of a direction complying with the requirement contained in section 433(4)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section).

(3) Subsection (5) of section 433 applies (so far as it relates to the giving of such a direction) to a qualifying witness in need of special protection as it applies to a child witness in need of special protection (within the meaning of that section).

(4) Subsections (6) and (7) of section 433 apply to a qualifying witness in need of special protection by virtue of subsection (1)(b) of this section as they apply to a child witness as mentioned in subsection (6) of that section.

(5) For the purposes of this section a qualifying witness is "in need of special protection" if the offence (or any of the offences) to which the proceedings relate is a sexual offence or an offence of violence.

Special provisions relating to sexual offences.

435.(1) This section applies if in criminal proceedings in the Supreme Court relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.

(2) This section does not apply if the complainant is under 18 (whether or not the complainant is an eligible witness by reason of any other provision of section 428 or 429).

(3) If a party to the proceedings makes an application under section 431(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 440 (video recorded evidence in chief).

(4) Subsection (5) applies if–

(a) a party to the proceedings makes a request under subsection (3) with respect to the complainant; and

(b) the court determines for the purposes of section 431(2) that the complainant is eligible for assistance by virtue of section 428(1)(b) or 429.

(5) The court must–

(a) first have regard to subsections (6) and (7); and

(b) then have regard to section 431(2);

and for the purposes of section 431(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this section is to be treated as if it were a measure determined by the court, pursuant to section 431(2)(a) and (b)(i), to be one that (whether on its own or with any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant's evidence.

(6) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 440.

(7) The requirement in subsection (6)–

(a) has effect subject to section 440(2);

(b) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the complainant would have that result or for any other reason).

Special measures: General

Screening witness from defendant.

436.(1) Subject to subsection (2), a special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the defendant.

(2) The screen or other arrangement provided under subsection (1) must not prevent the witness from being able to see, and to be seen by–

(a) the judge, magistrate or magistrates and the jury (if there is one);

(b) legal representatives acting in the proceedings; and

(c) any interpreter or other person appointed to assist the witness.

(3) If 2 or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by live link.

437.(1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(3) In determining who may accompany the witness, the court must have regard to the wishes of the witness.

(4) If a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(5) The court may give permission for the purposes of subsection (4) if it appears to the court to be in the interests of justice to do so, and may do so either–

(a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(6) In this section, "live link" means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 436(2)(a) to (c).

Evidence given in private.

438.(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness's evidence, of persons of any description specified in the direction.

(2) The persons who may be excluded under subsection (1) do not include–

(a) the defendant;

(b) legal representatives acting in the proceedings;

(c) any interpreter or other person appointed by the court to assist the witness.

(3) If a special measures direction provides for representatives of news gathering or reporting organisations to be excluded, it must be expressed in relation to a named person who–

(a) is a representative of the organisation; and

(b) has been nominated for the purpose by the organisations,

unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section if–

(a) the proceedings relate to a sexual offence; or

(b) it appears to the court that there are reasonable grounds for believing that any person other than the defendant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) are, despite the exclusion, to be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

Removal of wigs and gowns.

439. A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

Video recorded evidence in chief.

440.(1) Subject to subsection (2), a special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) If a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if–

(a) it appears to the court that–

(i) the witness will not be available for cross-examination; and

(ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

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

(5) If a recording is admitted under this section–

(a) the witness must be called by the party tendering it in evidence, unless–

(i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court; or

(ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and

(b) the witness may not without the permission of the court give evidence in chief except by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded testimony.

(6) If, pursuant to subsection (2), a special measures direction provides for part only of a recording to be admitted, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of subsection (5)(b) if it appears to the court to be in the interests of justice to do so, and may do so either–

(a) on an application by a party to the proceedings; or

(b) on its own initiative.

(8) The court may, in giving permission for the purposes of subsection (5)(b), direct that the evidence in question is to be given by the witness by means of a live link, and section 437 applies in relation to that evidence as it applies in relation to evidence which is to be given in accordance with a special measures direction.

(9) The Magistrates' Court inquiring into an offence as examining justices under Part 9 may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this section.

(10) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Video recorded cross-examination or re-examination.

441.(1) If a special measures direction provides for a video recording to be admitted under section 440 as evidence in chief of the witness, the direction may also provide–

(a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and

(b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) A recording referred to in subsection (1) must be made in the presence of such persons as rules of court or the direction may provide and in the absence of the defendant, but in circumstances in which–

(a) the judge, magistrate or magistrates and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and

(b) the defendant is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) If 2 or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) If a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of court or the direction has not been complied with to the satisfaction of the court.

(5) If in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the

proceedings unless the court gives a further special measures direction making a provision as mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court–

(a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or

(b) that for any other reason it is in the interests of justice to give the further direction.

(7) This section does not apply in relation to any cross-examination of the witness by the defendant in person.

Examination of witness through intermediary.

442.(1) A special measures direction may provide for any examination of the witness to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(2) The function of an intermediary is to communicate–

(a) to the witness, questions put to the witness; and

(b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person.

(3) Any examination of the witness pursuant to subsection (1) must take place in the presence of such persons as rules of court or the direction provide, but so that–

(a) the judge, magistrate or magistrates and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

(b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) If 2 or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in a form prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 441 if the interview was conducted through an intermediary and–

(a) that person complied with subsection (5) before the interview began; and

(b) the court's approval for the purposes of this section is given before the direction is given.

(7) Part 18 of the Crimes Act 2011 (Perjury and False Statements) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, if a person acts as an intermediary in any proceeding which is not a judicial proceeding for the

purposes of that Part, that proceeding is to be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to communication.

443. A special measures direction may provide for the witness, while giving evidence, to be provided with a device the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

Status of evidence given under special measures.

444.(1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.

(2) The statement is to be treated as if made by the witness in direct oral testimony in court; and accordingly it is–

(a) admissible evidence of any fact of which such testimony from the witness would be admissible;

(b) not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under section 440 or 441 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight (if any) to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn.

(5) If any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes of Part 18 of the Crimes Act 2011 is received in evidence in pursuance of a special measures direction, that proceeding is to be taken for the purposes of that Part to be part of the judicial proceeding in which the statement is so received in evidence.

(6) If in any proceeding which is not a judicial proceeding for the purposes of Part 18 of the Crimes Act 2011–

(a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence pursuant to a special measures direction; and

(b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,

the person commits an offence and is liable on summary conviction to imprisonment for 6 months, or to a fine at level 5 on the standard scale, or both.

(7) In this section "statement" includes any representation of fact, whether made in words or otherwise.

(8) In relation to a person under the age of 14, subsection (6) has effect as if for the words "a fine at level 5" there were substituted "a fine at level 3".

Special measures: Warning to jury.

445. If on a trial on indictment with a jury evidence has been given in accordance with a special measures direction, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the defendant.

Use of live link and intermediary for evidence of certain defendants

Live link directions.

446.(1) This section applies to any proceedings (whether in the Magistrates' Court or before the Supreme Court) against a person for an offence.

(2) The court may, on the application of the defendant, give a live link direction if it is satisfied that–

(a) the conditions in subsection (4) or, as the case may be, subsection (5) are met in relation to the defendant; and

(b) it is in the interests of justice for the defendant to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the defendant is to be given through a live link.

(4) If the defendant is aged under 18 when the application is made, the conditions are that–

(a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and

(b) use of a live link would enable him to participate more effectively in the proceedings as a witness.

(5) If the defendant has attained the age of 18 when the application is made, the conditions are that–

(a) he suffers from a mental disorder or otherwise has a significant impairment of intelligence and social function;

(b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and

(c) use of a live link would enable him to participate more effectively in the proceedings as a witness.

(6) While a live link direction has effect the defendant may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so, without affecting the power to give a further live link direction in relation to the defendant.

(8) The court may exercise the power conferred by subsection (7) on its own initiative or on an application by a party.

(9) The court must state in open court its reasons for–

(a) giving or discharging a live link direction; or

(b) refusing an application for or for the discharge of a live link direction,

and if it is the Magistrates' Court, must cause those reasons to be entered in the register of its proceedings.

Meaning of "live link".

447.(1) In section 446 "live link" means an arrangement by which the defendant, while absent from the place where the proceedings are being held, is able to–

(a) see and hear a person there; and

(b) be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are–

(a) the judge, magistrate or magistrates and the jury (if there is one);

(b) if there are 2 or more defendant in the proceedings – the other defendant or each of the other defendants;

(c) legal representatives acting in the proceedings; and

(d) any interpreter or other person appointed by the court to assist the defendant.

Examination of defendant through intermediary.

448.(1) This section applies to any proceedings (whether in the Magistrates' Court or the Supreme Court) against a person for an offence.

(2) The court may, on the application of the defendant, give a direction under this section if it is satisfied that–

(a) the condition in subsection (5) is or, as the case may be, the conditions in subsection (6) are met in relation to the defendant; and

(b) making the direction is necessary in order to ensure that the defendant receives a fair trial.

(3) A direction under this section is a direction that provides for any examination of the defendant to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(4) The function of an intermediary is to communicate–

(a) to the defendant, questions put to him; and

(b) to any person asking such questions, the answers given by the defendant in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the defendant or the person in question.

(5) If the defendant is aged under 18 when the application is made, the condition is that the defendant's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the defendant's level of intellectual ability or social functioning.

(6) If the defendant has attained the age of 18 when the application is made, the conditions are that the defendant–

(a) suffers from a mental disorder or otherwise has a significant impairment of intelligence and social function; and

(b) is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

(7) Any examination of the defendant pursuant to a direction under this section must take place in the presence of such persons as rules of court or the direction provide, and in circumstances in which–

(a) the judge, magistrate or magistrates and legal representatives acting in the proceedings are able to see and hear the examination of the defendant and to communicate with the intermediary,

(b) the jury (if there is one) are able to see and hear the examination of the defendant; and

(c) if there are 2 or more defendant in the proceedings, each of the other defendants is able to see and hear the examination of the defendant.

For the purposes of this subsection any impairment of eyesight or hearing is to be disregarded.

(8) If 2 or more legal representatives are acting for a party to the proceedings, subsection (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(9) A person may not act as an intermediary in a particular case except after making a declaration, in a form prescribed by rules of court, that the person will faithfully perform the function of an intermediary.

(10) Part 18 of the Crimes Act 2011 applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

Further provision as to directions under section 448.

449.(1) The court may discharge a direction given under section 448 at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the defendant receives a fair trial (but this does not affect the power to give a further direction under that section in relation to the defendant).

(2) The court may vary (or further vary) a direction given under section 448 at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the defendant receives a fair trial.

(3) The court may exercise the power in subsection (1) or (2) on its own in initiative or on an application by a party.

(4) The court must state in open court its reasons for–

(a) giving, varying or discharging a direction under section 448; or

(b) refusing an application for, or for the variation or discharge of, a direction under that section,

and, if it is the Magistrates' Court, it must cause the reasons to be entered in the register of its proceedings.

Protection of witnesses from cross-examination by defendant in person

Complainants in proceedings for sexual offences.

450. No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either–

(a) in connection with that offence; or

(b) in connection with any other offence with which that person is charged in the proceedings.

Child complainants and other child witnesses.

451.(1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either–

(a) in connection with that offence; or

(b) in connection with any other offence with which that person is charged in the proceedings.

(2) For the purposes of subsection (1) a "protected witness" is a witness who–

(a) is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies; and

(b) is a child or falls to be cross-examined after giving evidence in chief–

(i) by means of a video recording made (for the purposes of section 440) at a time when the witness was a child; or

(ii) in any other way at a time when the witness was a child.

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

(a) any sexual offence or offence of violence;

(b) any other offence that involves an assault on, or injury or a threat of injury to, any person.

(4) In this section "child" means–

(a) if the offence falls within subsection (3)(a), a person under the age of 18;

(b) if the offence falls within subsection (3)(b), a person under the age of 14.

(5) For the purposes of this section "witness" includes a witness who is charged with an offence in the proceedings.

Direction prohibiting defendant from cross-examining particular witness.

452.(1) This section applies if, in a case in which neither section 450 or 451 operates to prevent a defendant in any criminal proceedings from cross-examining a witness in person–

(a) the prosecutor applies for the court to give a direction under this section in relation to the witness; or

(b) the court on its own initiative raises the issue whether such a direction should be given.

(2) If it appears to the court–

(a) that the quality of evidence given by the witness on cross-examination–

(i) is likely to be diminished if the cross-examination is conducted by the defendant in person; and

(ii) would be likely to be improved if a direction were given under this section; and

(b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the defendant from cross-examining the witness in person.

(3) In deciding whether subsection (2)(a) applies in the case of a witness, the court must have regard, in particular, to–

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the defendant in person;

(b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);

(c) any behaviour on the part of the defendant at any stage of the proceedings, both generally and in relation to the witness;

(d) any relationship between the witness and the defendant;

(e) whether any person other than the defendant is or has at any time been charged in the proceedings with an offence to which section 451 applies, and (if so) whether section 450 or 451 operates or would have operated to prevent that person from cross-examining the witness in person;

(f) any direction under section 431 which the court has given, or proposes to give, in relation to the witness.

(4) For the purposes of this section–

(a) "witness", in relation to a defendant, does not include any other person who is charged with an offence in the proceedings; and

(b) any reference to the quality of a witness's evidence is to be construed in accordance with section 428(2)(a).

Further provisions about directions under section 452.

453.(1) Subject to subsection (2), a direction under section 452 has binding effect from the time it is made until the witness to whom it applies is discharged.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either–

(a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) The court must state in open court its reasons for–

(a) giving;

(b) refusing an application for, or for the discharge of; or

(c) discharging,

a direction and, if it is the Magistrates' Court, must cause the reasons to be entered in the register of its proceedings.

(4) Rules of court may make provision for–

(a) uncontested applications to be determined by the court without a hearing;

(b) preventing the renewal of an unsuccessful application for a direction unless there has been a material change of circumstances;

(c) expert evidence to be given in connection with an application for, or for discharging, a direction;

(d) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(5) In this section "direction" means a direction under section 452.

Defence representation for purposes of cross-examination.

454.(1) This section applies if a defendant is prevented from cross-examining a witness in person by virtue of section 450, 451 or 452.

(2) If it appears to the court that this section applies, it must–

(a) invite the defendant to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and

(b) require the defendant to notify the court, by the end of a period specified by the court, whether a legal representative is to act for him for that purpose.

(3) If by the end of the period specified under subsection (2)(b) either–

(a) the defendant has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness; or

(b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the defendant.

(4) If the court determines that it is necessary for the witness to be so cross-examined, the court must choose and appoint a legal representative to cross-examine the witness in the interests of the defendant.

(5) In the circumstances described in subsection (4)–

(a) a person so appointed is not responsible to the defendant;

(b) the court may order such sums as appear to the court to be reasonably necessary to cover the proper fee or costs of the legal representative and any expenses incurred in providing him with evidence or other material in connection with his appointment to be paid out of public funds.

(6) Rules of court may make provision–

(a) as to the time when, and the manner in which, subsection (2) is to be complied with;

(b) in connection with the appointment and payment of a legal representative under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

Cross-examination: Warning to jury.

455. If on a trial on indictment with a jury a defendant is prevented from cross-examining a witness in person by virtue of section 450, 451 or 452, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the defendant is not prejudiced–

(a) by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness in person;

(b) if the witness has been cross-examined by a legal representative appointed under section 454(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the defendant's own legal representative.

Protection of complainants in proceedings for sexual offences

Restriction on evidence or questions about complainant's sexual history.

456.(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court–

(a) no evidence may be adduced; and

(b) no question may be asked in cross-examination, by or on behalf of any defendant at the trial,

about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of a defendant, and may not give such leave unless it is satisfied that–

(a) subsection (3) or (5) applies; and

(b) a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either–

(a) that issue is not an issue of consent;

(b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the defendant; or

(c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar to–

(i) any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the defendant) took place as part of the event which is the subject matter of the charge against the defendant; or

(ii) any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3), no evidence or question is to be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question–

(a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and

(b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the defendant.

(6) For the purposes of subsections (3) and (5), the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant.

(7) If this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence–

(a) it ceases to apply if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it does not cease to apply upon that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

Interpretation and application of section 456.

457.(1) In section 456–

(a) "relevant issue in the case" means any issue falling to be proved by the prosecution or defence in the trial of the defendant;

(b) "issue of consent" means any issue whether the complainant in fact consented to the conduct constituting the offence with which the defendant is charged;

(c) "sexual behaviour" means any sexual behaviour or other sexual experience, whether or not involving any defendant or other person, but excluding (except in section 456(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the defendant; and

(d) subject to any order made under subsection (2), "sexual offence" has the meaning given it in section 2 of this Act.

(2) The Minister may by order make any provision he considers appropriate for adding or removing, for the purposes of section 456, any offence to or from the offences which are sexual offences for the purposes of this Part.

(3) Section 456 applies in relation to the following proceedings as it applies to a trial–

(a) proceedings before the Magistrates' Court inquiring into an offence as examining justices;

(b) any hearing held between conviction and sentencing for the purpose of determining matters relevant to the court's decision as to how the defendant is to be dealt with; and

(c) the hearing of an appeal,

and references in this section and section 456 to a person charged with an offence include a person convicted of an offence.

Procedure on applications under section 456.

458.(1) An application for leave under section 456 must be heard in private and in the absence of the complainant.

(2) If such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one)−

(a) its reasons for giving or refusing leave; and

(b) if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

and, if it is the Magistrates' Court, must cause those matters to be entered in the register of its proceedings.

(3) Rules of court may make provision–

(a) requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of subsection (3) or (5) of section 456;

(b) enabling the court to request a party to the proceedings to provide the court with information which it considers would assist it in determining an application for leave;

(c) for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

Reporting restrictions: General

Restrictions on reporting alleged offences involving persons under 18.

459.(1) This section applies (subject to subsection (3)) when a criminal investigation has begun in respect of an alleged offence against the law of Gibraltar.

(2) No matter relating to any person involved in the offence may, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person involved in the offence.

(3) The restrictions imposed by subsection (2) cease to apply once there are proceedings in a court in respect of the offence.

(4) For the purposes of subsection (2), a reference to a person involved in the offence is to–

(a) a person by whom the offence is alleged to have been committed; or

(b) if this paragraph applies to the publication in question by virtue of subsection (5)–

(i) a person against or in respect of whom the offence is alleged to have been committed; or

(ii) a person who is alleged to have been a witness to the commission of the offence,

except that paragraph (b)(i) does not include a person in relation to whom section 466 (Restriction on reporting of identity) applies in connection with the offence.

(5) The matters relating to a person in relation to which the restrictions imposed by subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular–

(a) his name;

(b) his address;

(c) the identity of any school or other educational establishment attended by him;

(d) the identity of any place where he works; and

(e) any still or moving picture of him.

(6) Subject to subsection (7), the court may by order dispense, to the extent specified in the order, with the restrictions imposed by subsection (2) in relation to a person if it is satisfied that it is necessary in the interests of justice to do so.

(7) When deciding whether to make an order under subsection (6) dispensing (to any extent) with the restrictions imposed by subsection (2) in relation to a person, the court must have regard to the welfare of that person.

(8) If the Magistrates' Court makes or refuses to make an order under subsection (6), any person who was a party to the proceedings on the application for the order may, in accordance with rules of court, appeal to the Supreme Court against that decision and appear or be represented at the hearing of the appeal.

(9) In this section–

(a) "offence" includes an act or omission outside Gibraltar which, if committed in Gibraltar, would be an offence against the law of Gibraltar;

(b) any reference to a criminal investigation, in relation to an alleged offence, is to an investigation conducted by police officers, or other persons charged with the duty of investigating offences, with a view to ascertaining whether a person should be charged with the offence.

Power to restrict reporting of criminal proceedings involving persons under 18.

460.(1) This section applies in relation to any criminal proceedings in any court in Gibraltar.

(2) The court may direct that no matter relating to any person concerned in the proceedings may, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.

(3) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in that direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that it is necessary in the interests of justice to do so.

(4) The court or an appellate court may also by an excepting direction dispense, to any extent specified in that direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that–

(a) their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and

(b) it is in the public interest to remove or relax that restriction.

(5) No excepting direction may be given under subsection (4) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(6) When deciding whether to make–

(a) a direction under subsection (2) in relation to a person; or

(b) an excepting direction under subsection (3) or (4) by virtue of which the restrictions imposed by a direction under subsection (2) would be dispensed with (to any extent) in relation to a person,

the court or (as the case may be) the appellate court must have regard to the welfare of that person.

(7) For the purposes of subsection (2), any reference to a person concerned in the proceedings is to a person–

(a) against or in respect of whom the proceedings are taken; or

(b) who is a witness in the proceedings.

(8) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular–

(a) his name;

(b) his address;

(c) the identity of any school or other educational establishment attended by him;

(d) the identity of any place where he works; and

(e) any still or moving picture of him.

(9) A direction under subsection (2) may be revoked by the court or an appellate court.

(10) An excepting direction–

(a) may be given at the time the direction under subsection (2) is given or subsequently; and

(b) may be varied or revoked by the court or an appellate court.

Power to restrict reports about certain adult witnesses in criminal proceedings.

461.(1) This section applies if in any criminal proceedings in any court in Gibraltar a party to the proceedings makes an application for the court to give a reporting direction in relation to a witness in the proceedings (other than the defendant) who has attained the age of 18.

(2) If the court determines–

(a) that the witness is eligible for protection; and

(b) that giving a reporting direction in relation to the witness is likely to improve–

(i) the quality of evidence given by the witness; or

(ii) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

the court may give a reporting direction in relation to the witness.

(3) For the purposes of this section a witness is eligible for protection if the court is satisfied–

(a) that the quality of evidence given by the witness; or

(b) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness in the proceedings.

(4) In determining whether a witness is eligible for protection the court must take into account, in particular–

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) such of the following matters as appear to the court to be relevant, namely–

(i) the social and cultural background and ethnic origins of the witness;

(ii) the domestic and employment circumstances of the witness; and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of–

(i) the defendant;

(ii) members of the family or associates of the defendant; or

(iii) any other person who is likely to be a defendant or a witness in the proceedings.

(5) In determining that question the court must in addition consider any views expressed by the witness.

(6) For the purposes of this section a reporting direction in relation to a witness is a direction that no matter relating to the witness may during the witness's lifetime be included in any publication if it is likely to lead members of the public to identify him as being a witness in the proceedings.

(7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if their inclusion in any publication is likely to have the result mentioned in subsection (6)) include in particular–

(a) the witness's name;

(b) the witness's address;

(c) the identity of any educational establishment attended by the witness;

(d) the identity of any place where the witness works; and

(e) any still or moving picture of the witness.

(8) In determining whether to give a reporting direction the court must consider–

(a) whether it would be in the interests of justice to do so; and

(b) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

(9) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in that direction, with the restrictions imposed by a reporting direction if it is–

(a) satisfied that it is necessary in the interests of justice to do so; or

(b) satisfied that–

(i) the effect of those restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and

(ii) it is in the public interest to remove or relax that restriction,

but no excepting direction may be given under paragraph (b) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(10) A reporting direction may be revoked by the court or an appellate court.

(11) An excepting direction–

(a) may be given at the time the reporting direction is given or subsequently; and

(b) may be varied or revoked by the court or an appellate court.

(12) In this section–

(a) references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose "coherence" refers to a witness's ability in giving

evidence to give answers which address the questions put to the witness and can be understood both individually and collectively);

(b) references to the preparation of the case of a party to any proceedings include, if the party is the prosecution, the carrying out of investigations into any offence at any time charged in the proceedings.

Restrictions on reporting directions given under this Part.

462.(1) Except as provided by this section, no publication may include a report of a matter falling within subsection (2).

(2) The matters falling within this subsection are–

(a) a direction under section 431, 448 or 452 or an order discharging, or in the case of a direction under section 431 varying, such a direction;

(b) proceedings–

(i) on an application for such a direction or order; or

(ii) if the court acts on its own initiative to determine whether to give or make any such direction or order.

(3) The court dealing with a matter falling within subsection (2) may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of that matter.

(4) If–

(a) there is only one defendant in the relevant proceedings; and

(b) he objects to the making of an order under subsection (3),

then–

(c) the court must make the order if (and only if) satisfied after hearing the representations of the defendant that it is in the interests of justice to do so; and

(d) if the order is made it does not apply to the extent that a report deals with any such objections or representations.

(5) If–

(a) there are 2 or more defendants in the relevant proceedings; and

(b) one or more of them object to the making of an order under subsection (3),

then–

(c) the court must make the order if (and only if) satisfied after hearing the representations of each of the defendant that it is in the interests of justice to do so; and

(d) if the order is made it does not apply to the extent that a report deals with any such objections or representations.

(6) Subsection (1) does not apply to the inclusion in a publication of a report of matters after the relevant proceedings are either–

(a) determined (by acquittal, conviction or otherwise); or

(b) abandoned, in relation to the defendant or (if there is more than one) in relation to each of the defendants.

(7) In this section "the relevant proceedings" means the proceedings to which any such direction as is mentioned in subsection (2) relates or would relate.

(8) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of matter in a publication.

Offences relating to reporting.

463.(1) This section applies if a publication–

(a) includes any matter in contravention of section 459(2) or of a direction under section 460(2) or 461(2); or

(b) includes a report in contravention of section 462.

(2) If the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical commits an offence.

(3) If the publication is a radio or television broadcast–

(a) any corporate body engaged in providing the service in which the broadcast is included; and

(b) any person having functions in relation to the broadcast corresponding to those of an editor of a newspaper,

commits an offence.

(4) In the case of any other publication, any person publishing it commits an offence.

(5) A person who commits an offence under this section is liable on summary conviction to a fine at level 5 on the standard scale.

(6) Proceedings for an offence under this section in respect of a publication falling within subsection (1)(b) may not be instituted otherwise than by or with the consent of the Attorney-General.

Defences relating to reporting.

464.(1) If a person is charged with an offence under section 463, it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question.

(2) If–

(a) a person is charged with an offence under section 463; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of section 459(2),

it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the criminal investigation in question had begun.

(3) If–

(a) paragraphs (a) and (b) of subsection (2) apply; and

(b) the contravention of section 459(2) does not relate to either–

(i) the person by whom the offence mentioned in that provision is alleged to have been committed; or

(ii) (if the offence is one in relation to which section 466 applies) a person who is alleged to be a witness to the commission of the offence,

it is a defence to show to the satisfaction of the court that the inclusion in the publication of the matter in question was in the public interest on the ground that, to the extent that they operated to prevent that matter from being so included, the effect of the restrictions imposed by section 459(2) was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence.

(4) Subsection (5) applies if–

(a) paragraphs (a) and (b) of subsection (2) apply; and

(b) the contravention of section 459(2) relates to a person ("the protected person") who is neither–

(i) the person mentioned in subsection (3)(b)(i); nor

(ii) a person within subsection (3)(b)(ii) who is under the age of 16.

(5) In a case mentioned in subsection (4), it is a defence, subject to subsection (6), to prove–

(a) that written consent to the inclusion of the matter in question in the publication had been given–

(i) by an appropriate person, if at the time when the consent was given the protected person was under the age of 16; or

(ii) by the protected person, if that person was aged 16 or 17 at that time; and

(b) if the consent was given by an appropriate person - that written notice had been previously given to that person drawing to his attention the need to consider the welfare of the protected person when deciding whether to give consent.

(6) The defence provided by subsection (5) is not available if–

(a) the consent was given by an appropriate person and it is proved that written or other notice withdrawing the consent–

(i) was given to the appropriate recipient by any other appropriate person or by the protected person; and

(ii) was so given in sufficient time to enable the inclusion in the publication of the matter in question to be prevented; or

(b) subsection (8) applies.

(7) If–

(a) a person is charged with an offence under section 463; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of a direction under section 461(2),

it is a defence, unless subsection (8) applies, to prove that the person in relation to whom the direction was given had given written consent to the inclusion of that matter in the publication.

(8) Written consent is not a defence if it is proved that any person interfered–

(a) with the peace or comfort of the person giving the consent; or

(b) (if the consent was given by an appropriate person), with the peace or comfort of either that person or the protected person,

with intent to obtain the consent.

(9) In this section–

"appropriate person" means (subject to subsections (10) and (11)) a person who is a parent or guardian of the protected person;

"guardian", in relation to the protected person, means any person who is not a parent of the protected person but who has parental responsibility for the protected person within the meaning of the Children Act 2009.

(10) If the protected person is a child who is looked after by the Care Agency, "an appropriate person" means a person who is–

(a) a representative of the Agency; or

(b) a parent or guardian of the protected person with whom the protected person is allowed to live.

(11) No person by whom the offence mentioned in section 459(2) is alleged to have been committed is, by virtue of subsections (9) or (10), an appropriate person for the purposes of this section.

(12) In this section "appropriate recipient", in relation to a notice under subsection (6)(a), means–

(a) the person to whom the notice giving consent was given;

(b) the person by whom the matter in question was published (if different); or

(c) any other person exercising, on behalf of the person mentioned in paragraph (b), any responsibility in relation to the publication of that matter,

and for this purpose "person" includes a body of persons and a partnership.

Decisions as to public interest in relation to reporting.

465.(1) If for the purposes of sections 459 to 462 it falls to a court to decide whether anything is (or, as the case may be, was) in the public interest, the court must have regard, in particular, to the matters referred to in subsection (2) (so far as relevant).

(2) Those matters are–

(a) the interest in–

(i) the open reporting of crime;

(ii) the open reporting of matters relating to human health or safety; and

(iii) the prevention and exposure of miscarriages of justice;

(b) the welfare of any person in relation to whom the relevant restrictions imposed by or under any of sections 459 to 462 apply or would apply (or, as the case may be, applied); and

(c) any views expressed–

(i) by an appropriate person on behalf of a person within paragraph (b) who is under the age of 16 ("the protected person"); or

(ii) by a person within that paragraph who has attained that age.

(3) In subsection (2) "appropriate person", in relation to the protected person, has the same meaning as it has for the purposes of section 464.

Reporting restrictions: Identity of victims

Restriction on reporting of identity of victims of sexual offences.

466.(1) If an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person may during that person's lifetime be included in any publication, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.

(2) If a person is accused of an offence to which this section applies, no matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed ("the complainant") may during the complainant's lifetime be included in any publication.

(3) This section–

(a) does not apply in relation to a person by virtue of subsection (1) at any time after a person has been defendant of the offence; and

(b) in its application in relation to a person by virtue of subsection (2), has effect subject to any direction given under section 468.

(4) The matters relating to a person in relation to which the restrictions imposed by subsection (1) or (2) apply, if their inclusion in any publication is likely to have the result mentioned in that subsection, include in particular–

(a) the person's name;

(b) the person's address;

(c) the identity of any school or other educational establishment attended by the person;

(d) the identity of any place where the person works; and

(e) any still or moving picture of the person.

(5) Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the defendant is charged with the offence.

Power to displace section 466.

467.(1) If, before the commencement of a trial at which a person is charged with an offence to which section 466 applies, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the judge for a direction under this subsection and satisfies the judge–

(a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and

(b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge must direct that section 466 does not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.

(2) If at a trial the judge is satisfied–

(a) that the effect of section 466 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and

(b) that it is in the public interest to remove or relax the restriction,

the judge must direct that that section does not apply to any matter specified in the direction.

(3) A direction must not be given under subsection (2) by reason only of the outcome of the trial.

(4) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this subsection and satisfies the court–

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the court must direct that section 466 does not, by virtue of an accusation which alleges an offence to which that section applies and is specified in the direction, apply in relation to a complainant so specified.

(5) A direction given under this section does not affect the operation of section 466 before the direction is given.

(6) In subsections (1) and (2), "judge" means–

(a) in the case of an offence which is to be tried summarily or for which the mode of trial has not been determined - any magistrate;

(b) in any other case - any judge of the Supreme Court.

(7) If, after the commencement of a trial at which a person is charged with an offence to which section 466 applies, a new trial of the person for that offence is ordered, the commencement of any previous trial is to be disregarded for the purposes of subsection (1).

Offences relating to reporting of identity of victims.

468.(1) If any matter is included in a publication in contravention of section 466, the following persons commit an offence and are liable on summary conviction to a fine at level 5 on the standard scale–

(a) if the publication is a newspaper or periodical - any proprietor, any editor and any publisher of the newspaper or periodical;

(b) if the publication is a radio or television broadcast–

(i) any corporate body engaged in providing the service in which the broadcast is included; and

(ii) any person having functions in relation to the broadcast corresponding to those of an editor of a newspaper;

(c) in the case of any other publication, any person publishing it.

(2) If a person is charged with an offence under this section in respect of the inclusion of any matter in a publication, it is a defence, subject to subsection (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the offence mentioned in section 466 is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it, or that person was under the age of 16 at the time when it was given.

(4) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney-General.

(5) If a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question.

(6) If–

(a) a person is charged with an offence under this section; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of section 466,

it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

Anonymity of witnesses

Witness anonymity orders.

469.(1) In this Part, a "witness anonymity order" is an order made by a court requiring specified measures to be taken in relation to a witness in criminal proceedings that the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The kinds of measures that may be required to be taken in relation to a witness include–

(a) that the witness's name and other identifying details may be–

(i) withheld; or

(ii) removed from materials disclosed to any party to the proceedings;

(b) that the witness may use a pseudonym;

(c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;

(d) that the witness is screened to any specified extent;

(e) that the witness's voice is subjected to modulation to any specified extent.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) Nothing in this section authorises the court to require–

(a) the witness to be screened to such an extent that the witness cannot be seen by–

(i) the judge or other members of the court (if any);

(ii) the jury (if there is one); or

(iii) any interpreter or other person appointed by the court to assist the witness;

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) to (iii).

(5) In this section "specified" means specified in the witness anonymity order concerned.

Applications for orders.

470.(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant.

(2) If the application is made by the prosecutor, the prosecutor–

(a) must (unless the court directs otherwise) inform the court of the identity of the witness; but

(b) need not disclose in connection with the application–

(i) the identity of the witness; or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings or his legal representatives.

(3) If the application is made by the defendant, the defendant–

(a) must inform the court and the prosecutor of the identity of the witness; but

(b) (if there is more than one defendant) need not disclose in connection with the application–

(i) the identity of the witness; or

(ii) any information that might enable the witness to be identified,

to any other defendant or his legal representatives.

(4) If the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent–

(a) the identity of the witness; or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) In subsection (4), "relevant material" means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) Subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(8) Nothing in this section is to be taken as restricting any power to make rules of court.

Conditions for making order.

471.(1) This section applies when an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make such an order only if it is satisfied that Conditions A to C below are met.

(3) Condition A is that the measures to be specified in the order are necessary to–

(a) protect the safety of the witness or another person or to prevent any serious damage to property; or

(b) prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise.

(4) Condition B is that, having regard to all the circumstances, the taking of those measures would be consistent with the defendant receiving a fair trial.

(5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and–

(a) the witness would not testify if the proposed order were not made, or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(6) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness that–

(a) the witness or another person would suffer death or injury; or

(b) there would be serious damage to property,

if the witness were to be identified.

Relevant considerations.

472.(1) When deciding whether Conditions A to C in section 471 are met in the case of an application for a witness anonymity order, the court must have regard to–

(a) the considerations mentioned in subsection (2) of this section; and

(b) any other matters the court considers relevant.

(2) The considerations are–

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness–

(i) has a tendency to be dishonest; or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

Warning to jury.

473.(1) Subsection (2) applies if, on a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

Discharge or variation of order.

474.(1) A court that has made a witness anonymity order in relation to any criminal proceedings may subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 471 and 472 that applied to the making of the order.

(2) The court may discharge or vary a witness anonymity order–

(a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) The court must give every party to the proceedings the opportunity to be heard–

(a) before determining an application made to it under subsection (2);

(b) before discharging or varying the order on its own initiative.

(4) Subsection (3) does not prevent the court hearing one or more of the parties to the proceedings in the absence of a defendant in the proceedings and his legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) In subsection (2), "relevant time" means–

(a) the time when the order was made; or

(b) if a previous application has been made under subsection (2) - the time when the application (or the last application) was made.

Discharge or variation after proceedings.

475.(1) This section applies if–

(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings ("the old proceedings"), and

(b) the old proceedings have come to an end.

(2) The court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of–

(a) the provisions of sections 471 and 472 that apply to the making of a witness anonymity order; and

(b) any other matters the court considers relevant.

(3) The court may do so–

(a) on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time; or

(b) on an application made by the witness if there has been a material change of circumstances since the relevant time.

(4) The court may not determine an application made to it under subsection (3) unless in the case of each of the parties to the old proceedings and the witness–

(a) it has given the person the opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the person.

(5) Subsection (4) does not prevent the court hearing one or more of the persons mentioned in that subsection in the absence of a person who was a defendant in the old proceedings and his legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(6) "The relevant time" means–

(a) the time when the old proceedings came to an end; or

(b) if a previous application has been made under subsection (3) - the time when the application (or the last application) was made.

Discharge or variation on appeal.

476.(1) This section applies if–

(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings ("the trial proceedings"); and

(b) a defendant in the trial proceedings has in those proceedings been–

(i) convicted;

(ii) found not guilty by reason of insanity; or

(iii) found to be under a disability and to have done the act charged in respect of an offence.

(2) The Court of Appeal may in proceedings on or in connection with an appeal by the defendant from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of–

(a) the provisions of sections 471 and 472 that apply to the making of a witness anonymity order; and

(b) any other matters the court considers relevant.

(3) The appeal court may not discharge or vary the order unless in the case of each party to the trial proceedings it–

(a) has given the person the opportunity to be heard; or

(b) is satisfied that it is not reasonably practicable to communicate with the person.

(4) Subsection (3) does not prevent the appeal court hearing one or more of the parties to the trial proceedings in the absence of a person who was a defendant in the trial proceedings and his legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) In this section a reference to the doing of an act includes a reference to a failure to act.

Miscellaneous provisions

Regulations, orders and rules of court.

477.(1) The Minister may make regulations and orders to implement this Part.

(2) Regulations and orders made by the Minister under this Part may make different provision for different cases or circumstances and may contain such incidental, supplemental, saving or transitional provisions as the Minister thinks fit.

(3) The Chief Justice may make any rules of court required by this Part or that the Chief Justice considers necessary or expedient for the purposes of this Part.

Savings.

478.(1) Except as expressly provided in this Part, nothing in this Part affects–

(a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including a defendant);

(b) the operation of any rule of law relating to evidence in criminal proceedings;

(c) any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this Part; or

(d) any prohibition or restriction imposed by virtue of this Act or any other enactment upon a publication or upon matter included in a radio or television broadcast.

(2) Nothing in this Part affects any power of a court to make an order or give leave of any description, in the exercise of its inherent jurisdiction or otherwise–

(a) in relation to a witness who is not an eligible witness; or

(b) in relation to an eligible witness if the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

(3) Nothing in this Part affects the common law rules as to the withholding of information on the grounds of public interest immunity.

PART 20 – SENTENCING: GENERAL PRINCIPLES

Principles for sentencing

Purposes of sentencing.

479.(1) A court dealing with an offender in respect of an offence must have regard to the following purposes of sentencing–

(a) the punishment of offenders;

(b) the reduction of crime (including its reduction by deterrence);

(c) the reform and rehabilitation of offenders;

(d) the protection of the public; and

(e) the making of reparation by offenders to persons affected by their offences.

(2) Subsection (1) does not apply–

(a) in relation to offenders who are aged under 18 at the time of conviction (as to whom Part 27 applies);

(b) to an offence the sentence for which is fixed by law; or

(c) in relation to the making of an order for a person's custody or detention in a hospital or place of safety under the Mental Health Act 2016.

(3) In this Part "sentence", in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and "sentencing" is to be construed accordingly.

Determining the seriousness of an offence.

480.(1) In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might forseeably have caused.

(2) In considering the seriousness of an offence ("the current offence") committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to–

(a) the nature of the offence to which the conviction relates and its relevance to the current offence; and

(b) the time that has elapsed since the conviction.

(3) In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

(4) Any reference in subsection (2) to a previous conviction is to be read as a reference to a previous conviction by a court in Gibraltar.

(5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside Gibraltar as an aggravating factor in any case where the court considers it appropriate to do so.

Reduction in sentences for guilty pleas.

481. In determining what sentence to pass on an offender who has pleaded guilty to an offence in criminal proceedings before that or another court, a court must take into account–

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty; and

(b) the circumstances in which this indication was given.

Powers to mitigate sentences and deal appropriately with mentally disordered offenders.

482.(1) Unless a provision of this Act otherwise provides, a court may mitigate an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) A court, after taking into account such matters, may pass a community sentence even though it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that a community sentence would not normally be justified for the offence.

(3) A court may–

(a) mitigate any penalty included in an offender's sentence by taking into account any other penalty included in that sentence; and

(b) in the case of an offender who is convicted of one or more other offences, mitigate his sentence by applying any rule of law as to the totality of sentences.

(4) Subsections (2) and (3) do not limit subsection (1).

(5) Nothing in this Act–

(a) requires a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or

(b) restricts any power which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

Mitigation of sentence in the Magistrates' Court.

483.(1) If 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, unless 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) If 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) If under any law the Magistrates' Court has power to sentence an offender to imprisonment but not to a fine, unless the law expressly provides to the contrary, the court may, instead of sentencing him to imprisonment, impose a fine–

(a) not exceeding level 3 on the standard scale; and

(b) 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.

Sentencing guidelines.

484.(1) The Chief Justice, after consulting the Minister and such other persons or bodies as the Chief Justice thinks fit, may issue guidelines relating to the sentencing of offenders ("sentencing guidelines"), which may be general in nature or limited to a particular category of offence or offenders.

(2) In issuing sentencing guidelines, the Chief Justice must have regard to–

(a) the need to promote consistency in sentencing;

(b) the sentences imposed by courts in other common law jurisdictions for offences to which the guidelines relate;

(c) the cost of different sentences and their relative effectiveness in preventing re-offending;

(d) the need to promote public confidence in the criminal justice system; and

(e) any views communicated to the Chief Justice in writing on the subject of sentencing.

(3) Every court must in sentencing an offender, have regard to any sentencing guidelines which are relevant to the offender's case.

(4) If and to the extent that sentencing guidelines have not been published under subsection (1), and subject to any common law provision, a court may, except where the circumstances of Gibraltar are such that it would not be appropriate to do so, have regard to the Sentencing Guidelines Council Guidelines for England and Wales published in December 2004 (as amended or replaced from time to time).

Duty to give reasons for, and explain effect of, sentence.

485.(1) Subject to subsection (4), a court passing sentence on an offender must–

(a) state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed; and

(b) explain to the offender in ordinary language–

(i) the effect of the sentence;

(ii) if the offender is required to comply with any order of the court forming part of the sentence - the effects of non-compliance with the order;

(iii) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence; and

(iv) if the sentence consists of or includes a fine - the effects of failure to pay the fine.

(2) In complying with subsection (1)(a), the court must–

(a) if applicable sentencing guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind, or is outside that range – state the court's reasons for deciding on a sentence of a different kind or outside that range;

(b) if the sentence is a custodial sentence and the duty in subsection (2) of section 499 is not excluded by subsection (1) of that section – state that it is of the opinion referred to in section 499(2) and why it is of that opinion;

(c) if the sentence is a community sentence - state that it is of the opinion that section 562(1) applies and why it is of that opinion;

(d) if, as a result of taking into account any matter referred to in section 481(1), the court imposes a penalty on the offender which is less severe than the penalty it would otherwise have imposed – state that fact; and

(e) in every case, mention any aggravating or mitigating factors which the court has regarded as being of particular importance.

(3) If the Magistrates' Court passes a custodial sentence, it must cause any reason stated by virtue of subsection (2)(b) to be specified in the warrant of commitment and entered on the court records.

(4) Subsection (1) does not apply to an offence the sentence for which is fixed by law.

Commencement and alteration of sentence

Commencement of sentence.

486.(1) A sentence imposed, or other order made, by a court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

(2) The power to give a direction under subsection (1) has effect subject to any restriction on consecutive sentences for released prisoners.

(3) In this section "sentence" is to be construed in accordance with section 487(8).

Alteration of Supreme Court sentence.

487.(1) Subject to the following provisions of this section, a sentence imposed, or other order made, by the Supreme Court when dealing with an offender may be varied or rescinded by the Supreme Court within the period of 28 days beginning with the day on which the sentence or other order was imposed or made or, if subsection (2) applies, within the time allowed by that subsection.

(2) If 2 or more persons are jointly tried on an indictment, then, subject to the following provisions of this section, a sentence imposed, or other order made, by the Supreme Court on conviction of any of those persons on the indictment may be varied or rescinded by the Supreme Court not later than–

(a) 28 days after the conclusion of the joint trial; or

(b) 56 days after the sentence or other order was imposed or made,

whichever is the earlier.

(3) For the purposes of subsection (2), the joint trial is concluded when any of the persons jointly tried is sentenced or is acquitted or when a special verdict is brought in, whichever is the later.

(4) A sentence or other order must not be varied or rescinded under this section except by the court constituted as it was when the sentence or other order was imposed or made.

(5) Subject to subsection (6), if a sentence or other order is varied under this section the sentence or other order, as so varied, takes effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

(6) For the purposes of an appeal or reference to the Court of Appeal, the sentence or other order is to be regarded as imposed or made on the day on which it is varied under this section.

(7) Rules of court may–

(a) as respects cases in which 2 or more persons are tried separately on the same or related facts alleged in one or more indictments, provide for extending the period fixed by subsection (1);

(b) subject to this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Supreme Court may be varied or rescinded by that court.

(8) In this section, "sentence" includes a recommendation for deportation made when dealing with an offender.

Deferment of sentence

Power to defer sentence.

488.(1) Subject to this section, a court may defer passing sentence on an offender for the purpose of enabling the court, or any other court to which it falls to deal with him, to have regard in dealing with him to–

(a) his conduct after conviction (including, where appropriate, the making by him of reparation for his offence); or

(b) any change in his circumstances.

(2) Without limiting subsection (1), the matters to which the court to which it falls to deal with the offender may have regard by virtue of paragraph (a) of that subsection include the extent to which the offender has complied with any requirements imposed under subsection (3)(b).

(3) The power conferred by subsection (1) is exercisable only if–

(a) the offender consents;

(b) the offender undertakes to comply with any requirements as to his conduct during the period of the deferment that the court considers it appropriate to impose; and

(c) 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 the power.

(4) Any deferment under this section–

(a) must be until a date not later than 6 months after the date on which the deferment is announced by the court;

(b) can only be done once.

(5) If sentence is deferred under subsection (1) a supervisor must be appointed to–

(a) monitor the offender's compliance with the requirements; and

(b) provide to the court to which it falls to deal with the offender in respect of the offence in question any information the court requires relating to the offender's compliance with the requirements.

(6) If a court has under this section deferred passing sentence on an offender, it must forthwith give a copy of the order deferring the passing of sentence and setting out any requirements imposed under subsection (3)(b)–

(a) to the offender;

(b) to the supervisor appointed under subsection (5).

(7) A court which under this section defers passing sentence on an offender must not on the same occasion remand him.

(8) If–

(a) a court which under this section has deferred passing sentence on an offender proposes to deal with him on the date originally specified by the court; but

(b) the offender does not appear on the day so specified,

the court may issue a summons requiring him to appear before the court at a time and place specified in the summons, or may issue a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

Breach of undertakings.

489.(1) A court which under section 488 has deferred passing sentence on an offender may deal with him before the end of the period of deferment if–

(a) he appears or is brought before the court under subsection (3); and

(b) the court is satisfied that he has failed to comply with one or more requirements imposed under section 488(3)(b) in connection with the deferment.

(2) Subsection (3) applies if–

(a) a court has under section 488 deferred passing sentence on an offender;

(b) the offender undertook to comply with one or more requirements imposed under paragraph (3)(b) of that section in connection with the deferment; and

(c) a supervisor appointed under section 488(5) in relation to the offender has reported to the court that the offender has failed to comply with one or more of those requirements.

(3) If this subsection applies, the court may issue–

(a) a summons requiring the offender to appear before the court at a time and place specified in the summons; or

(b) a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

Conviction of offence during period of deferment.

490.(1) A court which under section 488 has deferred passing sentence on an offender may deal with him before the end of the period of deferment if during that period he is convicted in Gibraltar of any offence.

(2) Subsection (3) applies if a court has under section 488 deferred passing sentence on an offender in respect of one or more offences and during the period of deferment the offender is convicted in Gibraltar of any offence ("the later offence").

(3) If this subsection applies, then (without affecting subsection (1) and whether or not the offender is sentenced for the later offence during the period of deferment), the court which passes sentence on him for the

later offence may also, if this has not already been done, deal with him for the offence or offences for which passing of sentence has been deferred, except that–

(a) the power conferred by this subsection may not be exercised by the Magistrates' Court if the court which deferred passing sentence was the Supreme Court; and

(b) the Supreme Court, in exercising that power in a case in which the court which deferred passing sentence was the Magistrates' Court, may not pass any sentence which could not have been passed by the Magistrates' Court in exercising that power.

(4) If a court which under section 488 has deferred passing sentence on an offender proposes to deal with him by virtue of subsection (1) of this section before the end of the period of deferment, the court may issue–

(a) a summons requiring him to appear before the court at a time and place specified in the summons; or

(b) a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

Deferment of sentence: Supplementary.

491.(1) In deferring the passing of sentence under section 488 a court is to be regarded as exercising a power of adjourning the trial and accordingly any provisions about non-appearance of the defendant apply if the offender does not appear on the date specified under section 490(4), but without affecting section 488(8).

(2) If the passing of sentence on an offender has been deferred by a court ("the original court") under section 488, the power of that court under that section to deal with the offender at the end of the period of deferment and any power of that court under section 489(1) or 490(1), or of any court under section 490(3), to deal with the offender–

(a) is power to deal with him, in respect of the offence for which passing of sentence has been deferred, in any way in which the original court could have dealt with him if it had not deferred passing sentence; and

(b) without limiting paragraph (a), in the case of the Magistrates' Court includes the power to commit him to the Supreme Court for sentence.

(3) If–

(a) the passing of sentence on an offender in respect of one or more offences has been deferred under section 488; and

(b) the Magistrates' Court deals with him in respect of the offence or any of the offences by committing him to the Supreme Court,

the power of the Supreme Court to deal with him includes the same power to defer passing sentence on him as if he had just been convicted of the offence or offences on indictment before the court.

(4) Nothing in this section or sections 488 or 490 affects–

(a) the power of the Supreme Court to bind over an offender to come up for judgment when called upon; or

(b) the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this section.

Pre-sentence reports

Pre-sentence reports and other requirements.

492.(1) In forming an opinion for the purposes of sentencing an offender, a court must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.

(2) Subject to subsection (4), a court must obtain and consider a pre-sentence report before imposing a custodial sentence other than one fixed by law.

(3) Subject to subsection (4), a court must obtain and consider a pre-sentence report before imposing a community sentence in order to form an opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community sentence.

(4) Subsection (2) or (3) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(5) In a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (4) unless–

(a) there exists a previous pre-sentence report obtained in respect of the offender; and

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(6) No custodial sentence or community sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report before imposing the sentence, but any court on an appeal against such a sentence must–

(a) subject to subsection (7), obtain a pre-sentence report if none was obtained by the court below; and

(b) consider any such report obtained by it or by that court.

(7) Subsection (6)(a) does not apply if the court is of the opinion that–

(a) the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or

(b) although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

(8) If the offender is aged under 18, the court must not form the opinion mentioned in subsection (7) unless–

(a) there exists a previous pre-sentence report obtained in respect of the offender; and

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(9) In this section, "pre-sentence report" means a report which is made or submitted by a probation officer with a view to assisting the court in determining the most suitable method of dealing with an offender.

Additional requirements in case of mentally disordered offender.

493.(1) Subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court must consider–

(a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence must–

(a) obtain a medical report if none was obtained by the court below; and

(b) consider any such report obtained by it or by that court.

(5) In this section, "medical report" means a report as to an offender's mental condition made or submitted orally or in writing by a medical practitioner, the responsible medical officer or a mental welfare officer as defined in the Mental Health Act 2016.

(6) If the court considers that a medical report is required, it may remand the offender for the purpose in accordance with sections 664 to 667.

Disclosure of pre-sentence reports.

494.(1) This section applies if the court obtains a pre-sentence report, other than a report given orally in open court.

(2) Subject to subsections (3) and (4), the court must give a copy of the report–

(a) to the offender or his legal representative;

(b) if the offender is aged under 18 - to any parent or guardian of his who is present in court; and

(c) to the person having the conduct of the proceedings in respect of the offence.

(3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

(4) No information obtained by virtue of subsection (2)(c) may be used or disclosed otherwise than for the purpose of–

(a) determining whether representations as to matters contained in the report need to be made to the court; or

(b) making such representations to the court.

(5) In relation to an offender aged under 18 for whom the Care Agency has responsibility and who–

(a) is in the care of the Agency; or

(b) is provided with accommodation by the Agency,

references in this section to his parent or guardian are to be read as references to the Agency.

Pre-sentence drug testing.

495.(1) If a person aged 14 or over is convicted of an offence and the court is considering passing a community sentence or a suspended sentence, it may make an order under subsection (2) for the purpose of ascertaining whether the offender has any controlled drug in his body.

(2) The order requires the offender to provide, in accordance with the order, samples of any description specified in the order.

(3) If the offender has not attained the age of 18, the order must provide for the samples to be provided in the presence of an appropriate adult.

(4) If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with the order it may impose on him a fine at level 4 on the standard scale.

Deportation

Power to recommend deportation.

496.(1) Subject to this section, if a person to whom section 12 of the Immigration, Asylum and Refugee Act applies and who has attained the age of 18 years is convicted in Gibraltar of an offence for which he is punishable with imprisonment, the court when sentencing him for that offence may, unless it commits him to be sentenced or further dealt with for that offence by another court, recommend, in addition to so sentencing him, that he be deported from Gibraltar.

(2) A court must not under this section recommend a person for deportation unless the person has been given not less than 7 days notice of the court's intention to do so, but the court may after convicting an offender adjourn the case for the purpose of enabling a notice to be given to him under this section or, if a notice was given to him less than 7 days previously, for the purpose of enabling the necessary 7 days to elapse.

(3) For the purposes of this section–

(a) a person is deemed to have attained the age of 18 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;

(b) the question whether an offence is one for which a person is punishable with imprisonment must be decided without regard to any enactment restricting the imprisonment of young offenders or first offenders; and

(c) if a person who on being charged with an offence is found to have committed it he is, notwithstanding any enactment to the contrary and even if the court does not proceed to conviction, to be regarded as a person convicted of the offence, and references to a conviction are to be construed accordingly.

(4) If a court recommends or purports to recommend a person for deportation, the validity of the recommendation is not to be called in question except on an appeal against the recommendation or against the

conviction on which it is made, but the recommendation is to be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

(5) Nothing in this section empowers a court to recommend the deportation of any person who is an EEA National within the meaning of the Immigration, Asylum and Refugee Act, except in a case in which the Principal Immigration Officer can refuse to allow the person to enter Gibraltar or cancel any residence permit issued to the person.

PART 21 – CUSTODIAL SENTENCES

Duration of sentences

Duration of sentences of imprisonment.

497.(1) If a sentence of imprisonment for an offence is passed on a person who has been in custody under an order of a court made in connection with the proceedings for that offence, the length of the sentence is to be reduced by the period during which he was in custody.

(2) The length of sentence is to be also reduced by the time for which the offender was in police detention in connection with the offence.

(3) If a sentence of imprisonment for an offence is passed on a person who was previously subject to a probation order, an order for conditional discharge or a suspended sentence in respect of that offence, any period of custody falling before the order was made or suspended sentence passed is to be disregarded for the purposes of this section.

(4) For the purposes of this section a suspended sentence is to be treated as a sentence of imprisonment when it takes effect under section 509 and as being imposed by the order under which it takes effect.

(5) A reference in this Act or any other enactment to the length of any sentence of imprisonment is, unless the context otherwise requires, a reference to the sentence pronounced by the court and not the sentence as reduced by this section.

Time in custody pending appeal.

498.(1) The time during which an appellant is in custody pending the determination of his appeal is, subject to any direction to the contrary by the court hearing the appeal, to be reckoned as part of the term of any sentence to which he is for the time being subject.

(2) If a court gives a contrary direction under subsection (1) it must state its reasons.

(3) The Court of Appeal must not give a contrary direction if it has given leave to appeal under section 9(1)(b) or (c) of the Court of Appeal Act or if the Supreme Court has granted a certificate under section 9(1)(b) of that Act.

Restrictions on sentences of imprisonment

General restrictions on imposing discretionary custodial sentences.

499.(1) This section applies if a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.

(3) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if–

(a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community sentence and which requires an expression of such willingness; or

(b) he fails to comply with an order under section 495 (Pre-sentence drug testing).

(4) If a court passes a custodial sentence, it must–

(a) in a case not falling within subsection (3) - state in open court that it is of the opinion that subsection (2) applies and why it is of that opinion; and

(b) in any case - explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(5) The Magistrates' Court must cause a reason stated by it under subsection (4) to be specified in the warrant of commitment and to be entered in the register.

Length of discretionary custodial sentences.

500. If a court passes a custodial sentence other than one fixed by law, the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

Liability to imprisonment on conviction on indictment.

501. If a person is convicted on indictment of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted is liable to imprisonment for not more than 2 years.

General limit on Magistrates' Court's power to impose imprisonment.

502.(1) The Magistrates' Court does not have power to impose imprisonment for more than 12 months in respect of any one offence.

(2) Subsection (1) does not affect–

(a) section 506 (consecutive terms of imprisonment);

(b) any power of the Magistrates' Court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine.

(3) In subsection (2) "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

(4) In this section "impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay 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.

(5) The Magistrates' Court must not impose imprisonment for less than 5 days.

Imprisonment of children and young persons.

503.(1) A child must not be imprisoned for any offence or be committed to prison in default of payment of a fine, damages or costs.

(2) A young person must not be imprisoned for more than 2 years for any offence.

(3) This section does not affect the operation of sections 629 and 630 as regards sentences of detention on juveniles or section 631 as regards imprisonment for life of offenders under 21.

Restriction on imposing custodial sentences on persons not legally represented.

504.(1) The Magistrates' Court on summary conviction, or the Supreme Court on committal for sentence or on conviction on indictment, must not pass a custodial sentence on a person who–

(a) is not legally represented in that court; and

(b) has not been previously sentenced to the same kind of sentence by a court in Gibraltar,

unless he is a person to whom subsection (2) applies.

(2) This subsection applies to a person if either–

(a) he was granted a right to legal aid but the right was withdrawn because of his conduct; or

(b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply.

(3) For the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of a legal representative to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.

(4) For the purposes of subsection (1)(b) a previous sentence of imprisonment which has been suspended and which has not taken effect under section 509 is to be disregarded.

Consecutive sentences

Consecutive sentences: General.

505. When a sentence of imprisonment for an offence is passed on a person who is already imprisoned under a sentence for another offence, the court may order imprisonment for the subsequent offence to commence at the expiration of the imprisonment for that other offence, even if the total term of imprisonment exceeds the term for which the person can be sentenced for either offence on its own.

Consecutive sentences: Magistrates' Court.

506.(1) The Magistrates' Court when imposing imprisonment on any person may order that the term of imprisonment is to commence on the expiration of any other term of imprisonment imposed by that or any other court, but if the court imposes 2 or more terms of imprisonment to run consecutively, the total of the terms must not, subject to this section, exceed 12 months.

(2) If 2 or more of the terms imposed by the court are imposed in respect of an indictable offence tried summarily, the total of the terms so imposed and any other terms imposed by the court may exceed 12 months but must not, subject to this section, exceed 24 months.

(3) The limitations imposed by subsections (1) and (2) do not operate to reduce the total 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) If 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, is not subject to the limitations imposed by subsections (1), (2) and (3).

(5) For the purposes of this section a term of imprisonment is 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.

Suspended sentences

Suspended sentences.

507.(1) A court which passes a sentence of imprisonment of not more than 2 years for an offence may order that the sentence is not to take effect unless–

(a) during a period specified in the order (the "operational period") being not less than one year or more than 3 years from the date of the order, the offender commits in Gibraltar another offence punishable with imprisonment; and

(b) a court orders under section 509 that the original sentence is to take effect.

(2) On passing a suspended sentence the court must explain to the offender, in ordinary language, the liability under section 509 if during the operational period he commits an offence punishable with imprisonment.

(3) Subject to any provision to the contrary in this Act or any other enactment–

(a) a suspended sentence which has not taken effect under section 509 is to be treated as a sentence of imprisonment for the purpose of all enactments except any enactment which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment; and

(b) if a suspended sentence has taken effect under that section, the offender is to be treated for the purposes of those excepted enactments as having been convicted on the 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.

508.(1) If a court passes on an offender a sentence of imprisonment of not less than 3 months and not more than 2 years, it may order that, after he has served part of the sentence in prison, the remainder of it is to be held in suspense.

(2) The part of the sentence to be served in prison must be not less than 28 days and the part to be held in suspense must be not less than one-quarter of the whole term, and the offender does not need to serve the latter part unless it is restored under subsection (3), and this must be explained to him by the court, using ordinary language and stating the substantial effect of subsection (3).

(3) If at any time after the making of an order under subsection (1) the offender 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 it.

(4) If a court, on 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 must–

(a) restore a lesser part of the sentence held in suspense; or

(b) make no order under subsection (3),

and in either event must give reasons for its decision.

(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) If a court exercises the power under subsection (3) or (4)(a), 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.

Powers of court on conviction for further offence.

509.(1) If 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 must consider his case and deal with him by one of the methods mentioned in subsection (2).

(2) The methods referred to in subsection (1) are that the court may–

(a) order that the suspended sentence is to take effect with the original term unaltered;

(b) order that the sentence is to take effect with the substitution of a lesser term for the original term;

(c) by order vary the original order under section 507(1) by substituting for the period specified in it a period expiring not later than 3 years after the date of the variation; or

(d) make no order with respect to the suspended sentence.

(3) A court must make an order under subsection (2)(a) unless it 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 if it is of that opinion must state its reasons.

(4) If a court orders that a suspended sentence is to take effect, with or without variation of the original term, the court may order that the sentence is to take effect immediately or that it is to commence at the expiration of another term of imprisonment passed on the offender by that or another court.

(5) For the purposes of any enactment conferring rights of appeal in criminal cases, an order made by a court under subsection (4) is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

(6) 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.

(7) 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 is to be decided by the court and not by a jury.

(8) If 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–

(a) if it thinks fit - may commit him in custody or on bail to the Supreme Court; and

(b) if it does not commit him - must give written notice of the conviction to the Registrar.

(9) If it appears to a judge, or a magistrate in the case of a suspended sentence imposed by the Magistrates' Court, that–

(a) an offender has been convicted in Gibraltar of an offence punishable with imprisonment committed during the operational period of a suspended sentence; and

(b) he has not been dealt with in respect of the suspended sentence,

the judge or magistrate, as the case may be, may issue a summons requiring the offender to appear at the place and time specified in it, or may issue a warrant for his arrest.

Detention

Detention in police cells.

510.(1) If the Magistrates' Court has power to impose imprisonment on any person, it may instead of doing so order him to be detained for a period not exceeding 4 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 cell or similar place provided by the Commissioner of Police.

(3) A woman or girl must not be detained in any such place except under the supervision of women.

(4) Rules of court may be made for the inspection of places certified by the Chief Justice under this section, for the treatment of persons detained in them and generally for the purpose of carrying this section into effect.

Detention for one day.

511.(1) If the Magistrates' Court has power to commit to prison a person convicted of an offence, or would have that power but for section 581, 582 or 586**,** 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 8.00 p.m. on the day on which the order is made, as the court directs, and, if it does so, must not commit him to prison.

(2) The court must 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.

512.(1) If the Magistrates' Court has power to commit to prison a person in default of payment of a fine on summary conviction, or would have that power but for section 581 or 582**,** the court may issue a warrant for his detention in a police station, and, if it does so, must not commit him to prison.

(2) A warrant under this section must–

(a) authorise any police officer to arrest the defaulter and take him to a police station, unless the sum adjudged to be paid by the conviction is paid before arrest; and

(b) require the officer in charge of the station to detain him there until 8.00a.m. on the day following that on which he is arrested, or, if he is arrested between midnight and 8.00 a.m., until 8.00 a.m. on the day on which he is arrested.

(3) The officer may release the detained person at any time within 4 hours before 8.00 a.m. 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.

Life sentences

Recommendation as to minimum term.

513.(1) If a person is sentenced to a mandatory life sentence for an offence, the court may state the minimum term that the court recommends the person should serve in prison, by reference to the starting points specified in the following subsections.

(2) If–

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and

(b) the offender was aged 21 or over when he committed the offence,

the appropriate starting point is a whole life order.

(3) Cases that would normally fall within subsection (2)(a) include–

(a) the murder of 2 or more persons, where each murder involves any of the following–

(i) a substantial degree of premeditation or planning;

(ii) the abduction of the victim; or

(iii) sexual or sadistic conduct;

(b) the murder of a juvenile if it involves the abduction of the juvenile or sexual or sadistic motivation;

(c) a murder done for the purpose of advancing a political, religious or ideological cause, or

(d) a murder by an offender previously convicted of murder.

(4) If–

(a) the case does not fall within subsection (3) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high; and

(b) the offender was aged 18 or over when he committed the offence,

the appropriate starting point, in determining the minimum term, is 30 years.

(5) Cases not falling within subsection (3) that would normally fall within subsection (4) include–

(a) the murder of a police officer or prison officer in the course of his duty;

(b) a murder involving the use of a firearm or explosive;

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death);

(d) a murder intended to obstruct or interfere with the course of justice;

(e) a murder involving sexual or sadistic conduct;

(f) the murder of 2 or more persons;

(g) a murder that is racially or religiously aggravated; or

(h) a murder falling within subsection (3) committed by an offender who was aged under 21 when he committed the offence.

(6) If the offender was aged 18 or over when he committed the offence and the case does not fall within subsection (3) or (5), the appropriate starting point, in determining the minimum term, is 15 years.

(7) If the offender was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

(8) In this section, "life sentence" means–

(a) a sentence of imprisonment for life; or

(b) a sentence of detention during Her Majesty's pleasure.

Aggravating and mitigating factors.

514.(1) Once a court has chosen a starting point for a minimum term pursuant to section 513, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

(2) Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

(3) Aggravating factors (additional to those mentioned in section 513(3) or (5)) that may be relevant to the offence of murder include–

(a) a significant degree of planning or premeditation;

(b) the fact that the victim was particularly vulnerable because of age or disability;

(c) mental or physical suffering inflicted on the victim before death;

(d) the abuse of a position of trust;

(e) the use of duress or threats against another person to facilitate the commission of the offence;

(f) the fact that the victim was providing a public service or performing a public duty; and

(g) concealment, destruction or dismemberment of the body.

(4) Mitigating factors that may be relevant to the offence of murder include–

(a) an intention to cause serious bodily harm rather than to kill;

(b) lack of premeditation;

(c) the fact that the offender suffered from any abnormality of mental functioning which, although not falling within section 151 of the Crimes Act 2011 (Diminished responsibility), lowered his degree of culpability;

(d) the fact that the offender was provoked (for example, by prolonged stress);

(e) the fact that the offender acted to any extent in self-defence or in fear of violence;

(f) a belief by the offender that the murder was an act of mercy; and

(g) the age of the offender.

Duty to give reasons.

515.(1) A court making a recommendation under section 513 must state in open court, in ordinary language, its reasons for deciding on the order made.

(2) In stating its reasons the court must, in particular state–

(a) which of the starting points in that section it has chosen and its reasons for doing so; and

(b) its reasons for any departure from that starting point.

PART 22 – NON-CUSTODIAL SENTENCES

Interpretation of Part.

516.(1) In this Part, unless the contrary intention appears–

"relevant order" means–

(a) a community order; or

(b) a youth rehabilitation order;

"responsible officer" means, in relation to an offender to whom an order relates–

(a) if the only requirement imposed by the order is an unpaid work requirement - the Community Service Officer;

(b) in any other case - the probation officer;

"review hearing" means a hearing as described in section 533(1)(b);

"warned period" in relation to a warning under section 546 means the period of 12 months beginning with the date on which the warning was given.

(2) Any reference in this Part to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders.

(3) If the Care Agency has parental responsibility for an offender who is in its care or provided with accommodation by it, any reference in this Part to the offender's parent or guardian is to be read as a reference to that authority.

(4) In subsection (3) "parental responsibility" has the same meaning as in the Children Act 2009.

Discharge

Absolute and conditional discharge.

517.(1) If a court by or before which a person is convicted of an offence, not being an offence for which the sentence is fixed by law, is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to impose a penalty, the court may make an order either–

(a) discharging him absolutely; or

(b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding 3 years from the date of the order, as may be specified in the order.

(2) An order discharging a person subject to a condition as mentioned in subsection (1)(b) is in this Act referred to as an "order for conditional discharge" and the period specified in any such order is referred to as "the period of conditional discharge".

(3) If by virtue of section 518 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 ceases to have effect.

(4) On making the order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.

(5) Nothing in this section prevents a court, on discharging an offender absolutely or conditionally in respect of any offence, from imposing a disqualification on him or from making in respect of the offence an order for forfeiture of property under an enactment which so provides.

Commission of further offence by person conditionally discharged.

518.(1) If it appears to the Supreme Court or a magistrate, where that court or magistrate has jurisdiction in accordance with subsection (2), that a person in whose case an order for conditional discharge has been made–

(a) has been convicted by a court in Gibraltar of an offence committed during the period of conditional discharge; and

(b) has been dealt with in respect of that offence,

that court or magistrate may, subject to subsection (3), issue a summons requiring the person to appear at the place and time specified in it or a warrant for his arrest.

(2) Jurisdiction for the purposes of subsection (1) may be exercised–

(a) if the order for conditional discharge was made by the Supreme Court - by a judge of that court;

(b) if the order was made by the Magistrates' Court – by a magistrate.

(3) A magistrate must not issue a summons under this section except on information and must not issue a warrant except on information in writing and on oath.

(4) A summons or warrant issued under this section must direct the person to whom it relates to appear or be brought before the court by which the order for conditional discharge was made.

(5) If a person in whose case an order for conditional discharge has been made by the Supreme Court is convicted by the Magistrates' Court of an offence committed during the period of conditional discharge, the Magistrates' Court–

(a) may commit him to custody or release him on bail until he can be brought or appear before the Supreme Court; and

(b) if it does so, must send to the Supreme Court a copy of the minute or memorandum of the conviction entered in the register, signed by the clerk of the Magistrates' Court.

(6) If it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted by a court in Gibraltar of an offence committed during the period of conditional discharge, the court may deal with him for the offence for which the order was made in any way in which it could deal with him if he had just been convicted by or before that court of that offence.

(7) If a person in whose case an order for conditional discharge has been made by the Magistrates' Court is–

(a) convicted before the Supreme Court of an offence committed during the period of conditional discharge; or

(b) dealt with by the Supreme Court for any such offence in respect of which he was committed for sentence to the Supreme 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.

(8) If an order for conditional discharge has been made by the Magistrates' Court in the case of an offender under 18 years of age in respect of an offence which is triable only on indictment in the case of an adult, any powers exercisable under subsection (6) or (7) by that or any other court in respect of the offender after he attains the age of 18 are powers to do either or both of the following–

(a) impose a fine not exceeding £5,000 for the offence in respect of which the order was made;

(b) deal with the offender for that offence in any way in which the Magistrates' Court could deal with him if it had just convicted him of an offence punishable with imprisonment for not more than 6 months.

Effect of discharge.

519.(1) Subject to subsection (2), a conviction of an offence for which an order is made under section 517 discharging the offender absolutely or conditionally is not 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 section 518.

(2) If the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently sentenced under section 518 for that offence, subsection (1) does not apply to the conviction.

(3) Without affecting subsections (1) and (2), the conviction of an offender who is discharged absolutely or conditionally under section 517 is to be disregarded for the purposes of any law which–

(a) imposes any disqualification or disability upon convicted persons; or

(b) authorises or requires the imposition of any such disqualification or disability.

(4) Subsections (1) to (3) do not affect–

(a) any right of an offender discharged absolutely or conditionally under section 517 to rely on his conviction in bar of any subsequent proceedings for the same offence;

(b) any right of any such offender to appeal against the conviction or otherwise; or

(c) the restoration of any property in consequence of the conviction of any such offender.

Discharge: Supplementary.

520.(1) If an order for conditional discharge has been made on appeal, for the purposes of section 518 it is deemed–

(a) if it was made on an appeal brought from the Magistrates' Court - to have been made by the Magistrates' Court;

(b) if it was made on an appeal brought from the Supreme Court or from the Court of Appeal - to have been made by the Supreme Court.

(2) In proceedings before the Supreme Court under section 518, 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 is to be decided by the court and not by the verdict of a jury.

Community sentences

Community orders.

521.(1) If an adult is convicted of an offence punishable with imprisonment, not being an offence for which the sentence is fixed by law, the court by or before which he is convicted may make an order (a "community order") imposing on him any one or more of the following requirements–

(a) an unpaid work requirement;

(b) an activity requirement;

(c) a programme requirement;

(d) a prohibited activity requirement;

(e) a curfew requirement;

(f) an exclusion requirement;

(g) a residence requirement;

(h) a mental health treatment requirement;

(i) a drug rehabilitation requirement;

(j) an alcohol treatment requirement;

(k) a supervision requirement.

(2) Subsection (1) has effect subject to the provisions of this Part relating to particular requirements.

(3) A community order must specify a date, not more than 3 years after the date of the order, by which all the requirements in it must have been complied with.

(4) A community order which imposes 2 or more requirements under subsection (1) may also specify an earlier date or dates in relation to compliance with any one or more of them.

(5) Before making a community order imposing 2 or more different requirements falling under subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

Youth rehabilitation orders.

522.(1) If a juvenile is convicted of an offence punishable with imprisonment, not being an offence for which the sentence is fixed by law, the court by or before which the person is convicted may make an order (a "youth rehabilitation order") imposing on the person any one or more of the following requirements–

(a) if the offender is aged 16 or 17 at the time of conviction - an unpaid work requirement;

(b) an activity requirement;

(c) a programme requirement;

(d) a prohibited activity requirement;

(e) a curfew requirement;

(f) an exclusion requirement;

(g) a residence requirement;

(h) a mental health treatment requirement;

(i) a drug rehabilitation requirement;

(j) an intoxicating substance treatment requirement.

(k) a supervision requirement.

(2) Subsection (1) has effect subject to the provisions of this Part relating to particular requirements.

(3) A youth rehabilitation order must specify a date, not more than 3 years after the date of the order, by which all the requirements in it must have been complied with.

(4) A youth rehabilitation order which imposes 2 or more requirements under subsection (1) may also specify an earlier date or dates in relation to compliance with any one or more of them.

(5) Before making a youth rehabilitation order imposing 2 or more different requirements falling under subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

(6) Before making a youth rehabilitation order, the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances.

Unpaid work requirement.

523.(1) In this Part "unpaid work requirement" means a requirement that the offender must perform unpaid work in accordance with this section.

(2) The number of hours which a person may be required to work under an unpaid work requirement must be specified in the order and must be in aggregate–

(a) not less than 40;

(b) in relation to a community order - not more than 300; and

(c) in relation to a youth rehabilitation order - not more than 240.

(3) A court may not impose an unpaid work requirement in respect of an offender unless–

(a) after hearing (if the courts thinks necessary) a probation officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement; and

(b) it is satisfied that provision for the offender to work under such a requirement can be made.

(4) An offender in respect of whom an unpaid work requirement of an order is in force must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer.

(5) Subject to section 558(1)(Extension of unpaid work requirement), the work required to be performed under an unpaid work requirement must be performed during a period of 12 months.

(6) Unless revoked, an order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.

Activity requirement.

524.(1) In this Part "activity requirement" means a requirement that the offender must do either or both of the following–

(a) present himself to a person or persons specified in the order at a place or places so specified on such number of days as may be so specified;

(b) participate in activities specified in the order on such number of days as may be so specified.

(2) The specified activities may consist of or include activities whose purpose is that of reparation, such as activities involving contact between offenders and persons affected by their offences.

(3) A court may not include an activity requirement in an order unless the court–

(a) has consulted a probation officer;

(b) is satisfied that it is feasible to ensure compliance with the requirement; and

(c) is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made.

(4) A court may not include an activity requirement in an order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.

(5) The aggregate number of days specified under subsection (1)(a) and (b) must not exceed 60.

(6) The requirement mentioned in subsection (1)(a) means that the offender must–

(a) in accordance with instructions given by his responsible officer, present himself at a place or places on the number of days specified in the order; and

(b) while at any place, comply with instructions given by, or under the authority of, the person in charge of that place or activity.

(7) The requirement mentioned in subsection (1)(b) means that the offender must–

(a) in accordance with instructions given by his responsible officer, participate in activities on the number of days specified in the order; and

(b) while participating, comply with instructions given by, or under the authority of, the person in charge of the activities.

Programme requirement.

525.(1) In this Part "programme requirement" means a requirement that the offender must participate in a programme specified in the order at a place so specified on such number of days as may be so specified.

(2) A court may not include a programme requirement in an order unless–

(a) the programme which the court proposes to specify in the order has been recommended to the court as being suitable for the offender by a probation officer; and

(b) the court is satisfied that the programme is available at the place proposed to be specified.

(3) A court may not include a programme requirement in an order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.

(4) A requirement to participate in a programme means that the offender must–

(a) in accordance with instructions given by the responsible officer, participate in the programme at the place specified in the order on the number of days specified in the order; and

(b) while at that place, comply with any instructions given by, or under the authority of, the person in charge of the programme.

Prohibited activity requirement.

526.(1) In this Part "prohibited activity requirement" means a requirement that the offender must refrain from participating in activities specified in the order–

(a) on a day or days so specified; or

(b) during a period so specified.

(2) A court may not include a prohibited activity requirement in an order unless it has consulted a probation officer.

(3) The requirements that may by virtue of this section be included in an order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act.

Curfew requirement.

527.(1) In this Part "curfew requirement" means a requirement that the offender must remain, for periods specified in the order, at a place so specified.

(2) An order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than 2 hours or more than 12 hours in any day.

(3) An order which imposes a curfew requirement may not specify periods which fall outside the period of 6 months beginning with the day on which it is made.

(4) Before making an order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order, including information as to the attitude of persons likely to be affected by the enforced presence of the offender.

Exclusion requirement.

528.(1) In this Part "exclusion requirement" means a provision prohibiting the offender from entering a place specified in the order for a period so specified.

(2) An exclusion requirement may–

(a) provide for the prohibition to operate only during the periods specified in the order; and

(b) specify different places for different periods or days.

(3) The period specified in–

(a) a youth rehabilitation order must be no more than 3 months; and

(b) a community order must be no more than 2 years.

Residence requirement.

529.(1) In this Part, "residence requirement" means a requirement that, during a period specified in the order, the offender must–

(a) reside at a place specified in the order; or

(b) in relation to a youth rehabilitation order – reside with an individual specified in the order.

(2) If the order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.

(3) Before making an order containing a residence requirement, the court must consider the home surroundings of the offender.

(4) A court may not specify a hostel or other institution as the place where the offender must reside, except on the recommendation of a probation officer.

(5) A court may not by virtue of subsection (1)(b) include in an order a requirement that the offender reside with an individual unless that individual has consented to the requirement.

Mental health treatment requirement.

530.(1) In this Part, "mental health treatment requirement" means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.

(2) The treatment required must be such one of the following kinds of treatment as may be specified in the order–

(a) treatment as a volunteer patient under section 4 of the Mental Health Act 2016 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 in or at an institution or place specified in the order; or

(d) treatment by or under the direction of a specified registered medical practitioner,

but the nature of the treatment is not to be specified in the order except as mentioned in paragraphs (a) to (d).

(3) A court may not by virtue of this section include a mental health treatment requirement in an order unless–

(a) the court is satisfied, on the evidence of a registered medical practitioner appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of the offender–

(i) is such as requires and may be susceptible to treatment; and

(ii) is not such as to justify his being detained under Part II of the Mental Health Act 2016;

(b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he is required to submit to treatment as a resident patient or as a voluntary patient; and

(c) the offender has expressed his willingness to comply with such a requirement.

(4) While the offender is under treatment as a resident patient or is to be treated as a voluntary patient pursuant to a mental health requirement of an order, his responsible officer must carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

Mental health treatment at place other than as specified in order.

531.(1) If the medical practitioner by whom or under whose direction an offender is being treated for his mental condition pursuant to a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which–

(a) is not specified in the order; and

(b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner,

the medical practitioner may, with the consent of the offender, make arrangements for the offender to be treated accordingly.

(2) The arrangements mentioned in subsection (1) may provide for the offender to receive part of his treatment as a resident patient in or at an institution or place even if it is not one which could have been specified for that purpose in the order.

(3) If arrangements as mentioned in subsection (1) are made for the treatment of an offender–

(a) the medical practitioner by whom the arrangements are made must give notice in writing to the offender's responsible officer, 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 are deemed to be treatment to which he is required to submit pursuant to the order.

Drug rehabilitation requirement.

532.(1) In this Part "drug rehabilitation requirement" means a requirement that during a period specified in an order ("the treatment and testing period") the offender–

(a) must submit to treatment by or under the direction of a specified person who has the necessary qualifications or experience ("the treatment provider") with a view to reducing or eliminating the offender's dependency on or propensity to misuse controlled drugs; and

(b) for the purpose of ascertaining whether he has any controlled drug in his body during that period, must provide samples of a description, and at times or in circumstances (subject to the provisions of the order) decided by the responsible officer or by the treatment provider.

(2) A court may not impose a drug rehabilitation requirement unless–

(a) it is satisfied–

(i) that the offender is dependent on, or has a propensity to misuse, controlled drugs; and

(ii) that his dependency or propensity is such as requires and may be susceptible to treatment;

(b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he is to be required to submit to treatment as a resident;

(c) the requirement has been recommended to the court as being suitable for the offender by a probation officer; and

(d) the offender expresses his willingness to comply with the requirement.

(3) The treatment and testing period must be at least 6 months.

(4) The required treatment for any particular period may be–

(a) treatment as a resident in or at an institution or place specified in the order; or

(b) treatment as a non-resident in or at an institution or place, and at intervals, so specified,

but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a) or (b).

(5) An order imposing a drug rehabilitation requirement must provide that the results of tests carried out on any samples provided by the offender pursuant to the requirement to a person other than the responsible officer are to be communicated to the responsible officer.

Drug rehabilitation requirement: Provision for review by court.

533.(1) An order imposing a drug rehabilitation requirement may, and must if the treatment and testing period is for more than 12 months–

(a) provide for the requirement to be reviewed periodically at intervals of not less than one month;

(b) provide for each review of the requirement to be made, subject to section 534(5), at a hearing held for the purpose by the court responsible for the order;

(c) require the offender to attend each review hearing;

(d) provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the requirement; and

(e) provide for each such report to include the test results communicated to the responsible officer under section 532(5).

(2) In this section a reference to the court responsible for an order imposing a drug rehabilitation requirement is a reference to the court by which the order is made.

(3) If an order imposing a drug rehabilitation requirement has been made on an appeal brought from the Supreme Court or from the Court of Appeal, for the purposes of subsection (2), it is to be taken to have been made by the Supreme Court.

Periodic review of drug rehabilitation requirement.

534.(1) At a review hearing the court may, after considering the responsible officer's report referred to in that subsection, amend the order, so far as it relates to the drug rehabilitation requirement.

(2) The court–

(a) may not amend the drug rehabilitation requirement unless the offender expresses his willingness to comply with the requirement as amended;

(b) may not amend any provision of the order so as to reduce the period for which the drug rehabilitation requirement has effect below the minimum specified in section 532(3); and

(c) except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending.

(3) If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may–

(a) revoke the order; and

(b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(4) In dealing with the offender under subsection (3)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.

(5) If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may amend the order so as to provide for each subsequent review to be made by the court without a hearing.

(6) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(7) At that hearing the court, after considering that report, may–

(a) exercise the powers conferred by this section as if the hearing were a review hearing; and

(b) so amend the order as to provide for each subsequent review to be made at a review hearing.

(8) In this section a reference to the court, in relation to a review without a hearing, is to be read–

(a) in the case of the Supreme Court - as a reference to a judge of the court;

(b) in the case of the Magistrates' Court - as a reference to a magistrate.

Alcohol treatment requirement.

535.(1) In this Part "alcohol treatment requirement" means a requirement that the offender must submit, during a period specified in the order, to treatment by or under the direction of a specified person who has the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol.

(2) A court may not impose an alcohol treatment requirement in respect of an offender unless it is satisfied that–

(a) he is dependent on alcohol;

(b) his dependency is such as requires and may be susceptible to treatment; and

(c) arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he is required to submit to treatment as a resident.

(3) A court may not impose an alcohol treatment requirement unless the offender expresses his willingness to comply with its requirements.

(4) The period for which the alcohol treatment requirement has effect must not be less than 6 months.

(5) The treatment required by an alcohol treatment requirement for any particular period must be–

(a) treatment as a resident in or at an institution or place specified in the order;

(b) treatment as a non-resident in or at an institution or place, and at intervals, so specified; or

(c) treatment by or under the direction of a person with the necessary qualifications or experience who is so specified,

but the nature of the treatment must not be specified in the order except as mentioned in paragraph (a), (b) or (c).

Intoxicating substance treatment requirement.

536.(1) In this Part, "intoxicating substance treatment requirement" means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified who has the necessary qualifications or experience, with a view to the reduction or elimination of the offender's dependency on or propensity to misuse intoxicating substances.

(2) A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless it is satisfied that–

(a) the offender is dependent on, or has propensity to misuse, intoxicating substances; and

(b) the offender's dependency or propensity is such as requires and may be susceptible to treatment.

(3) The treatment required during a period specified under subsection (1) must be–

(a) treatment as a resident in or at an institution or place specified in the order;

(b) treatment as a non-resident in or at an institution or place, and at intervals, as so specified; or

(c) treatment by or under the direction of a person with the necessary qualifications or experience as so specified,

but the nature of the treatment must not be specified in the order except as mentioned in paragraph (a), (b) or (c).

(4) A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless–

(a) the requirement has been recommended to the court as suitable to the offender by a probation officer;

(b) the offender has expressed his willingness to comply with the requirement; and

(c) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he is required to submit to treatment as a resident.

(5) In this section "intoxicating substance" means–

(a) alcohol;

(b) any other substance or product (other than a controlled drug) which is, or the fumes of which are, capable of being inhaled or otherwise used for the purpose of causing intoxication.

Supervision requirement.

537.(1) In this Part "supervision requirement" means a requirement that, during the period for which the order remains in force, the offender must attend appointments with the responsible officer or another person decided by the responsible officer, at a time and place decided by the responsible officer.

(2) The purpose for which a supervision requirement may be imposed is that of promoting the offender's rehabilitation.

Further provisions about relevant orders

Relevant order made by Supreme Court: Direction in relation to further proceedings.

538.(1) If the Supreme Court imposes a relevant order under this Part, it may include in the order a direction that further proceedings relating to the sentence are to be in the Magistrates' Court.

(2) If a direction is given under subsection (1), and the Magistrates' Court would be required, or has the power, to deal with the offender in one of the ways mentioned in section 550, the court may instead–

(a) commit the offender in custody; or

(b) release the offender on bail,

until the offender can be brought or appear before the Supreme Court.

(3) If the Magistrates' Court deals with the case under subsection (2) it must send to the Supreme Court–

(a) a certificate signed by a magistrate certifying that the offender has failed to comply with the community sentence in the respect specified in the certificate; and

(b) such other particulars of the case as are appropriate,

and a certificate purporting to be so signed is admissible as evidence of the failure before the Supreme Court.

(4) In subsection (1), "further proceedings", in relation to an order, means proceedings–

(a) for any failure to comply with the order; or

(b) on any application for amendment or revocation of the order.

Relevant orders made on appeal.

539. If a relevant order has been made on appeal, for the purposes of this Part it is to be treated–

(a) if it was made on appeal from the Magistrates' Court - as having been made by the Magistrates' Court;

(b) if it was made on an appeal brought from the Supreme Court or the Court of Appeal - as having been made by the Supreme Court.

Duties of responsible officer.

540. When a relevant order has effect, it is the duty of the responsible officer–

(a) to make any arrangements that are necessary in connection with the requirements imposed by the order;

(b) to promote the offender's compliance with those requirements; and

(c) where appropriate, to take steps to enforce those requirements.

Requirement must avoid conflict with religious beliefs, etc.

541. The court must ensure, as far as practicable, that any requirement imposed by a relevant order is such as to avoid–

(a) any conflict with the offender's religious beliefs; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

Provision of copies of relevant orders.

542.(1) The appropriate officer of the court by which any relevant order is made must provide copies of the order–

(a) to the offender;

(b) if the offender is aged under 14 - to the offender's parent or guardian; and

(c) to the responsible officer.

(2) If an order imposes any of the following requirements, the court by which the order is made must also provide the person specified in relation to that requirement with a copy of so much of the order as relates to that requirement–

(a) an activity requirement. - the person specified in section 524(1)(a);

(b) an exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender - the person intended to be protected;

(c) a residence requirement requiring residence with an individual - the individual specified in section 529(1)(b);

(d) a residence requirement relating to residence in an institution - the person in charge of the institution;

(e) a mental health treatment requirement - the person specified under section 530(2)(d) or the person in charge of the institution or place specified under section 530(2)(a), (b) or (c);

(f) a drug rehabilitation requirement - the person in charge of the institution or place specified under section 531(3)(a) or (b);

(g) an alcohol treatment requirement - the person specified under section 535(5)(c) or the person in charge of the institution or place specified under section 535(5)(a) or (b);

(h) an intoxicating substance treatment requirement - the person specified in section 536(3)(c) or the person in charge of the institution or place specified under section 536(3)(a) or (b).

(3) On the making of an order revoking or amending a relevant order, the appropriate officer of the court must–

(a) provide copies of the revoking or amending order to–

(i) the offender;

(ii) if the offender is aged under 14 - the offender's parent or guardian; and

(iii) the responsible officer;

(b) in the case of an amending order which imposes or amends a requirement specified in subsection (2)(a) to (h) - provide a copy of the revoking or amending order to the person specified in relation to that requirement.

(4) In this section "appropriate officer" means–

(a) in relation to the Magistrates' Court - the clerk or some other officer authorised by him to act for that purpose; and

(b) in relation to the Supreme Court - the Registrar or some other officer authorised by him to act for that purpose.

Duty of offender to keep in touch with responsible officer.

543.(1) An offender in respect of whom a relevant order is in force–

(a) must keep in touch with the responsible officer in accordance with any instructions as he is from time to time given by that officer; and

(b) must notify him of any change of address.

(2) The obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the order.

Breach of requirement of community sentence

Community order: Duty to give warning.

544.(1) If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the requirements of a community order, the officer must give him a warning under this section unless–

(a) the offender has within the previous 12 months been given a warning under this section in relation to a failure to comply with any of the requirements of the community order; or

(b) the officer causes an information to be laid before a magistrate.

(2) A warning under this section must–

(a) describe the circumstances of the failure;

(b) state that the failure is unacceptable; and

(c) inform the offender that, if within the next 12 months he again fails to comply with any requirement of the order, he will be liable to be brought before a court.

(3) The responsible officer must, as soon as practicable after the warning has been given, record that fact.

(4) In relation to any community order which was made by the Supreme Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court, the reference in subsection (1)(b) to a magistrate is to be read as a reference to the Supreme Court.

Community order: Breach of order after warning.

545.(1) If–

(a) the responsible officer has given a warning under section 544 to the offender in respect of a community order; and

(b) at any time within the 12 months beginning with the date on which warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the requirements of the community order,

the officer must cause an information to be laid before a magistrate in respect of the failure in question.

(2) In relation to any community order which was made by the Supreme Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court, the reference in subsection (1) to a magistrate is to be read as a reference to the Supreme Court.

Youth rehabilitation order: Duty to give warning.

546.(1) If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, the responsible officer must give the offender a warning under this section unless under section 547(1) or (3) the responsible officer causes an information to be laid before a magistrate in respect of that failure.

(2) A warning under this section must–

(a) describe the circumstances of the failure;

(b) state that the failure is unacceptable; and

(c) state that the offender will be liable to be brought before a court–

(i) if the warning was given during the warned period relating to a previous warning under this section - if during that period the offender again fails to comply with the order; or

(ii) in any other case - if during the warned period relating to the warning, the offender fails on more than one occasion to comply with the order.

(3) The responsible officer must, as soon as practicable after the warning has been given, record that fact.

(4) In relation to a youth rehabilitation order which was made by the Supreme Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court, the reference in subsection (1) to a magistrate is to be read as a reference to the Supreme Court.

Youth rehabilitation order: Breach of order after warning.

547.(1) If the responsible officer–

(a) has given a warning (the "first warning") under section 546 to the offender in respect of a youth rehabilitation order;

(b) during the warned period relating to the first warning, has given another warning under that section to the offender in respect of a failure to comply with the order; and

(c) is of the opinion that, during the warned period relating to the first warning, the offender has again failed without reasonable excuse to comply with the order,

the responsible officer must cause an information to be laid before a magistrate in respect of the failure mentioned in paragraph (c).

(2) Subsection (1) does not apply if the responsible officer is of the opinion that there are exceptional circumstances which justify not causing an information to be so laid.

(3) If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order and subsection (1) does not apply, the responsible officer may cause an information to be laid before a magistrate in respect of that failure.

(4) In relation to any youth rehabilitation order which was made by the Supreme Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court, the reference in subsections (1) and (3) to a magistrate is to be read as a reference to the Supreme Court.

Issue of summons or warrant by magistrate.

548.(1) This section applies to–

(a) a relevant order made by the Magistrates' Court;

(b) a relevant order made by the Supreme Court which includes a direction that a failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court.

(2) If at any time while a relevant order to which this section applies is in force it appears to a magistrate that the offender has failed to comply with any of the requirements of the order, the magistrate may–

(a) issue a summons requiring the offender to appear at the place and time specified in it; or

(b) if the information is in writing and on oath - issue a warrant for his arrest.

(3) A summons or warrant issued under this section must direct the offender to appear or be brought before the Magistrates' Court.

Issue of summons or warrant by Supreme Court.

549.(1) This section applies to a relevant order made by the Supreme Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court.

(2) If at any time while an order to which this section applies is in force it appears on information to the Supreme Court that the offender has failed to comply with any of the requirements of the order, the Supreme Court may–

(a) issue a summons requiring the offender to appear at the place and time specified in it; or

(b) if the information is in writing and on oath - issue a warrant for his arrest.

(3) Any summons or warrant issued under this section must direct the offender to appear or be brought before the Supreme Court.

(4) If a summons issued under subsection (2)(a) requires the offender to appear before the Supreme Court and the offender does not appear in answer to the summons, the Supreme Court may issue a warrant for the arrest of the offender.

Powers of Magistrates' Court on breach.

550.(1) If an offender appears or is brought before the Magistrates' Court under section 548 and the court is satisfied that he has failed without reasonable excuse to comply with any of the requirements of the order, the court must deal with him in respect of the failure in one of the following ways–

(a) if the offender is aged under 18, or if the order is a youth rehabilitation order - by ordering the offender to pay a fine limited to the amount specified in Schedule 9 Part B or C, as the case may be;

(b) subject to relevant requirements of this Part, by amending the terms of the order so as to impose more onerous requirements which the court could include if it were then making an order;

(c) if the order was made by the Magistrates' Court - by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence.

(2) In dealing with an offender under subsection (1), the Magistrates' Court must take into account the extent to which the offender has complied with the requirements of the order.

(3) In dealing with an offender under subsection (1)(b), the court may extend the duration of particular requirements, subject to any limit imposed by this Part, but may not extend the period specified under section 521(3) or 522(3).

(4) If–

(a) the court is dealing with the offender under subsection (1)(b); and

(b) the order does not contain an unpaid work requirement,

section 523(2)(a) applies in relation to the inclusion of a requirement as if for "40" there were substituted "20".

(5) If the court deals with an offender under subsection (1)(c) it must first revoke the order if it is still in force.

(6) If an order was made by the Supreme Court and the Magistrates' Court would, apart from this subsection, be required to deal with the offender under subsection (1), it may instead commit him to custody or release him on bail until he can be brought or appear before the Supreme Court.

(7) If the Magistrates' Court deals with an offender under subsection (6) it must send to the Supreme Court–

(a) a certificate signed by a magistrate certifying that the offender has failed to comply with the requirements of the order in the respect specified in the certificate; and

(b) any other particulars of the case that are appropriate,

and a certificate purporting to be so signed is admissible as evidence of the failure before the Supreme Court.

(8) A person sentenced under subsection (1)(c) for an offence may appeal to the Supreme Court against the sentence.

(9) A fine imposed under subsection (1)(a) is to be treated as a sum adjudged to be paid on a conviction.

Powers of Supreme Court on breach.

551.(1) If under section 549 or by virtue of section 550(6) an offender appears or is brought before the Supreme Court and it is proved to the satisfaction of that court that he has failed without reasonable excuse to comply with any of the requirements of the order, the Supreme Court must–

(a) if the offender is aged under 18, or if the order is a youth rehabilitation order, order the offender to pay a fine limited to the amount specified in Schedule 9 Part B or C, as the case may be;

(b) subject to relevant requirements of this Part, amend the terms of the order so as to impose more onerous requirements which the Supreme Court could impose if it were then making the order; or

(c) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(2) In dealing with an offender under subsection (1), the Supreme Court must take into account the extent to which the offender has complied with the requirements of the order.

(3) In dealing with an offender under subsection (1)(b), the court may extend the duration of particular requirements, subject to any limit imposed by this Part, but may not extend the period specified under section 521(3) or 522(3).

(4) If–

(a) the court is dealing with the offender under subsection (1)(b); and

(b) the order does not contain an unpaid work requirement,

section 523(2)(a) applies in relation to the inclusion of such a requirement as if for "40" there were substituted "20".

(5) If the Supreme Court deals with an offender under subsection (1)(c), it must first revoke the order if it is still in force.

(6) In proceedings before the Supreme Court under this section any question whether the offender has complied with the requirements of the order is to be decided by the court and not by the verdict of the jury.

(7) A fine imposed under subsection (1)(a) is to be treated as a sum adjudged to be paid on a conviction.

Restriction of powers when treatment required.

552.(1) An offender who is required by any of the following requirements of an order–

(a) a mental health treatment requirement;

(b) a drug rehabilitation requirement;

(c) an alcohol treatment requirement; or

(d) an intoxicating substance treatment requirement,

to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs, alcohol, or any other intoxicating substance, is not to be treated for the purposes of section 550 or 551 as having failed to comply with that requirement on the ground only that he had 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.

(2) A court may not under section 550(1)(b) or 551(1)(b) amend a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an intoxicating substance treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

Revocation and amendment of relevant orders

Revocation of relevant order by Magistrates' Court.

553.(1) This section applies if a relevant order, other than an order made by the Supreme Court and falling within section 554(1)(a), is in force and on the application of the offender or the responsible officer it appears to the Magistrates' Court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice–

(a) for the order to be revoked; or

(b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.

(2) The Magistrates' Court may–

(a) revoke the order; or

(b) both–

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.

(3) The circumstances in which a relevant order may be revoked under subsection (2) include the offender making good progress or his responding satisfactorily to supervision or treatment, as the case requires.

(4) In dealing with an offender under subsection (2)(b), the Magistrates' Court must take into account the extent to which the offender has complied with the requirements of the order.

(5) A person sentenced under subsection (2)(b) for an offence may appeal to the Supreme Court against that sentence.

(6) If the Magistrates' Court proposes to exercise its powers under this section otherwise than on the application of the offender, it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

Revocation of relevant order by Supreme Court.

554.(1) This section applies if–

(a) there is in force a relevant order made by the Supreme Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court; and

(b) the offender or the responsible officer applies to the Supreme Court for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made.

(2) If it appears to the Supreme Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Supreme Court may–

(a) revoke the order; or

(b) both–

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(3) The circumstances in which an order may be revoked under subsection (2) include the offender making good progress or his responding satisfactorily to supervision or treatment, as the case requires.

(4) In dealing with an offender under subsection (2)(b), the Supreme Court must take into account the extent to which the offender has complied with the requirements of the order.

(5) If the Supreme Court proposes to exercise its powers under this section otherwise than on the application of the offender, it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

Amendment of requirements of a relevant order.

555.(1) The appropriate court may, on the application of the offender or the responsible officer, by order amend a relevant order–

(a) by cancelling any of the requirements of the order; or

(b) subject to relevant requirements of this Part, by replacing any of those requirements with a requirement of the same kind, which the court could include if it were then making the order.

(2) The court may not under this section amend a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an intoxicating substance treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

(3) If the offender fails to express his willingness to comply with one of those requirements as proposed to be amended by the court under this section, the court may–

(a) revoke the order; and

(b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(4) In dealing with the offender under subsection (3)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.

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

(a) in relation to any relevant order imposing a drug rehabilitation requirement which is subject to review - the court responsible for the order;

(b) in relation to any relevant order which was made by the Supreme Court and does not include any direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrates' Court - the Supreme Court; and

(c) in relation to any other relevant order - the Magistrates' Court.

Amendment of treatment requirements.

556.(1) If the medical practitioner or other person by whom or under whose direction an offender is, pursuant to a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an intoxicating substance treatment requirement, being treated for his mental condition or his dependency on or propensity to misuse drugs, alcohol or any other intoxicating substance–

(a) is of the opinion mentioned in subsection (2); or

(b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he must make a report in writing to that effect to the responsible officer and that officer must apply under section 555 to the appropriate court for the variation or cancellation of the requirement.

(2) The opinion mentioned in subsection (1) is that–

(a) the treatment of the offender should be continued beyond the period specified in the order;

(b) the offender needs different treatment;

(c) the offender is not susceptible to treatment; or

(d) the offender does not require further treatment.

(3) In this section "appropriate court" has the same meaning as in section 555.

Amendment in relation to review of drug rehabilitation requirement.

557. If the responsible officer is of the opinion that an order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each subsequent periodic review required by section 534 (Periodic review of drug rehabilitation requirement) to be made without a hearing instead of at a review hearing, or *vice versa*, he must apply under section 555 to the court responsible for the order for the variation of the order.

Extension of unpaid work requirement.

558.(1) If–

(a) an order imposing an unpaid work requirement is in force in respect of any offender; and

(b) on the application of the offender or the responsible officer, it appears to the appropriate court, that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,

the court may extend the period of 12 months specified in section 523.

(2) In this section "the appropriate court" has the same meaning as in section 555.

Powers of court following subsequent conviction

Powers of Magistrates' Court following subsequent conviction.

559.(1) This section applies if–

(a) an offender in respect of whom a relevant order made by the Magistrates' Court is in force is convicted of an offence by the Magistrates' Court; and

(b) it appears to the court that it would be in the interests of justice to exercise its powers under this section, having regard to circumstances which have arisen since the order was made.

(2) The Magistrates' Court may–

(a) revoke the order; or

(b) both–

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(3) In dealing with an offender under subsection (2)(b), the Magistrates' Court must take into account the extent to which the offender has complied with the requirements of the order.

(4) A person sentenced under subsection (2)(b) for an offence may appeal to the Supreme Court against that sentence.

Powers when relevant order made by Supreme Court.

560.(1) If an offender in respect of whom a relevant order made by the Supreme Court is in force is convicted of an offence by the Magistrates' Court, the Magistrates' Court may commit the offender in custody or release him on bail until he can be brought before the Supreme Court.

(2) If the Magistrates' Court deals with an offender under subsection (1), it must send to the Supreme Court such particulars of the case as are appropriate.

Powers of Supreme Court following subsequent conviction.

561.(1) This section applies if–

(a) an offender in respect of whom a relevant order is in force–

(i) is convicted of an offence by the Supreme Court; or

(ii) is brought or appears before the Supreme Court by virtue of section 560 or having been committed by the Magistrates' Court to the Supreme Court for sentence; and

(b) it appears to the Supreme Court that it would be in the interests of justice to exercise its powers under this section, having regard to circumstances which have arisen since the order was made.

(2) The Supreme Court may–

(a) revoke the order; or

(b) both–

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(3) In dealing with an offender under subsection (2)(b), the Supreme Court must take into account the extent to which the offender has complied with the requirements of the order.

Supplementary

Restrictions on imposing community sentences.

562.(1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) If a court passes a community sentence which consists of or includes a community order or a youth rehabilitation order–

(a) the particular requirement or requirements forming part of the order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender; and

(b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) In determining the restrictions on liberty to be imposed by a community order or youth rehabilitation order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

No relevant order to be made while appeal pending.

563.(1) Subject to subsection (2), no application in respect of a relevant order may be made under any of sections 553 to 558 while an appeal against the order is pending.

(2) Subsection (1) does not apply to an application under 555 which–

(a) relates to a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an intoxicating substance treatment requirement; and

(b) is made by the responsible officer with the consent of the offender.

Issue of summons or warrant under certain sections.

564.(1) Subject to subsection (2), if a court proposes to exercise its powers under any of sections 555 to 561, otherwise than on the application of the offender, the court–

(a) must summon him to appear before the court; and

(b) if he does not appear in answer to the summons, may issue a warrant for his arrest.

(2) This section does not apply to an order cancelling a requirement of an order or reducing the period of any requirement, or substituting a new place for the one specified in the order.

Regulations.

565.(1) The Minister may by regulations regulate–

(a) the supervision of persons who are subject to relevant orders;

(b) without limiting paragraph (a), the functions of responsible officers in relation to offenders subject to an order;

(c) the arrangements to be made by the probation officer or the Care Agency, as the case may be, for persons subject to unpaid work requirements to perform work and the performance of such work;

(d) the attendance of persons subject to activity requirements at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records.

(2) Regulations made under subsection (1)(c) may, in particular, make provision–

(a) limiting the number of hours of work to be done by a person on any one day;

(b) as to the reckoning of hours worked and the keeping of work records; and

(c) for the payment of travelling and other expenses in connection with the performance of work.

Hearing by Magistrates' Court.

566.(1) This section applies to any hearing in relation to an offender held by the Magistrates' Court in any proceedings under this Part.

(2) The court may adjourn the hearing, and if it does so may–

(a) direct that the offender be released forthwith; or

(b) remand the offender.

(3) If the court remands the offender under subsection (2)–

(a) it must fix the time and place at which the hearing is to be resumed; and

(b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

(4) If the court adjourns the hearing under subsection (2) but does not remand the offender–

(a) it may fix the time and place at which the hearing is to be resumed;

(b) if it does not do so, it must not resume the hearing unless it is satisfied that the offender, the responsible officer and, if the offender is aged under 14, a parent or guardian of the offender, have had adequate notice of the time and place for the resumed hearing.

Power to provide for court review of relevant orders.

567. Rules of court may make provision–

(a) enabling or requiring a court that makes a relevant order, or another court, to review the order periodically;

(b) enabling a court to amend a relevant order so as to include or remove a provision for review by a court; and

(c) for the timing and conduct of reviews and the powers of the court on a review.

PART 23 – FINES AND RECOGNIZANCES

Imposing of fines

Power to order statement as to offender's financial circumstances.

568.(1) If an individual has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.

(2) If the Magistrates' Court has been notified that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.

(3) In this section "a financial circumstances order" means, in relation to any individual, an order requiring him to give to the court, within a period specified in the order, such a statement of his financial circumstances as the court requires.

(4) An individual who without reasonable excuse fails to comply with a financial circumstances order is liable on summary conviction to a fine at level 3 on the standard scale.

(5) If an individual, in furnishing any statement for purposes of a financial circumstances order–

(a) makes a statement which he knows to be false in a material particular;

(b) recklessly furnishes a statement which is false in a material particular; or

(c) knowingly fails to disclose any material fact,

he is liable on summary conviction to a fine at level 4 on the standard scale.

(6) Proceedings in respect of an offence under subsection (5) may, notwithstanding any rule about limitation of time, be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from its first discovery by the prosecutor, whichever period expires the earlier.

General power of Supreme Court to fine offender convicted on indictment.

569.(1) If a person is convicted on indictment of any offence, other than an offence for which the sentence is fixed by law, the Supreme Court may impose a fine instead of or in addition to dealing with him in any other way in which the court has power to deal with him.

(2) Subsection (1)–

(a) does not apply if the court is precluded from sentencing an offender by its exercise of some other power;

(b) is subject to any enactment requiring the offender to be dealt with in a particular way.

Standard scale of fines.

570.(1) The standard scale of fines for offences is as set out in Part A of Schedule 9.

(2) The statutory maximum fine is the highest level of fine on the standard scale.

(3) Any provision in an enactment that provides–

(a) that a person convicted of an offence is liable on conviction to the statutory maximum fine, or a fine at a specified level on the standard scale; or

(b) confers power by subsidiary legislation to make a person liable on conviction of an offence to the statutory maximum fine, or a fine at a specified level on the standard scale,

is to be construed as referring respectively to the statutory maximum fine or the standard scale as set out in Schedule 9 from time to time.

Fixing of fines.

571.(1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his financial circumstances.

(2) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.

(3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.

(5) If an offender has–

(a) been convicted in his absence;

(b) failed to comply with an order under section 568(1); or

(c) otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

Remission of fines.

572.(1) This section applies if a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 571.

(2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would–

(a) have fixed a smaller amount; or

(b) not have fined him,

it may remit the whole or part of the fine.

(3) If under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 579 it must reduce the term by the corresponding proportion.

(4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.

(5) The Magistrates' Court must not remit the whole or any part of a fine imposed by, or sum due under a recognizance forfeited by–

(a) the Supreme Court;

(b) the Court of Appeal; or

(c) Her Majesty in Council,

without the consent of the Supreme Court.

Power to allow time, etc.

573.(1) If a fine is imposed by, or a recognizance is forfeited before a court, the court, on application by or on behalf of the person liable to make the payment, may make an order–

(a) allowing time for the payment of the fine or the amount due under the recognizance;

(b) directing payment of that amount by instalments of the amounts and on the dates specified in the order;

(c) in the case of a recognizance - discharging the recognizance or reducing the amount due under it.

(2) The court on ordering a person to pay a fine or recognizance must, unless a warrant of distress is issued under section 581, allow him at least 7 days to pay the sum or the first instalment of the sum.

(3) If the court has allowed time for payment, the court may allow further time or order payment by instalments.

(4) If a court refuses to allow time for payment, it must state the reasons for not allowing the person time to pay.

(5) If time is allowed for payment, or payment by instalments is ordered, the court must not when convicting impose a term of imprisonment in the event of a future default in paying the sum unless the offender is present and the court decides 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 in default of payment he should be imprisoned without further inquiry.

(6) If 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 remaining unpaid.

(7) The power conferred by this section to discharge a recognizance or reduce the amount due under it is in addition to the powers conferred by any other law relating to the discharge, cancellation, mitigation or reduction of recognizances or sums forfeited under them.

(8) This section does not apply to a fine imposed by the Supreme Court on appeal from a decision of the Magistrates' Court.

Part payment and defaults of instalments.

574.(1) If an order is made under section 573 directing payment by instalments of a fine or an 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) When an order as mentioned in subsection (1) has been made, then–

(a) on payment of the fine or the amount to the appropriate authority or, if the person in respect of whom the order is made is in prison, the Superintendent - the order ceases to have effect, and, if the person is in prison and is not liable to be detained for any other cause, he must forthwith be discharged;

(b) on payment to the appropriate authority or the Superintendent of part of the fine or of the amount - the total number of days in the term of imprisonment must be reduced 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) must be paid by him to the appropriate authority.

(4) In this section, "appropriate authority" means–

(a) in relation to the Magistrates' Court - the clerk of the court;

(b) in any other case - the Registrar.

Juvenile offenders

Limit on fines imposed by Magistrates' Court in respect of juveniles.

575.(1) The maximum fine that can be imposed on a child for any offence is as prescribed in Part B of Schedule 9.

(2) The maximum fine that can be imposed on a young person for any offence is as prescribed in Part C of Schedule 9.

Power to order statement as to financial circumstances of parent or guardian.

576.(1) Before exercising its powers under section 577 against the parent or guardian of an individual who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.

(2) In this section "financial circumstances order" has the meaning given by subsection (3) of section 568, and subsections (4) to (6) of that section apply in relation to a financial circumstances order made under this section as they apply in relation to such an order made under that section.

Power to order parent or guardian to pay fine, costs or compensation.

577.(1) If–

(a) a juvenile is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made; and

(b) the court is of the opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other penalty,

the court must order that the fine, compensation or costs awarded be paid by the parent or guardian of the juvenile instead of by the juvenile himself, unless the court is satisfied–

(a) that the parent or guardian cannot be found; or

(b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(2) If but for this subsection a court would impose a fine on a juvenile for a breach of any order or condition imposed by a court, the court must order that the fine be paid by the parent or guardian of the juvenile instead of by the juvenile himself, unless the court is satisfied–

(a) that the parent or guardian cannot be found; or

(b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(3) In the case of a young person aged 16 or over, subsections (1) and (2) have effect as if, instead of imposing a duty, they conferred a power to make an order as mentioned in those subsections.

(4) Subject to subsection (5), no order may be made under this section without giving the parent or guardian an opportunity of being heard.

(5) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so.

(6) A parent or guardian may appeal to the Supreme Court against an order under this section made by the Magistrates' Court.

(7) A parent or guardian may appeal to the Court of Appeal against an order under this section made by the Supreme Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction.

(8) In relation to a juvenile for whom the Care Agency has parental responsibility and who–

(a) is in the Agency's care; or

(b) is provided with accommodation by the Agency in the exercise of any statutory functions,

references in this section to his parent or guardian are to be construed as references to that authority.

Fixing of fine or compensation to be paid by parent or guardian.

578.(1) For the purposes of any order under section 577 made against the parent or guardian of a juvenile–

(a) section 571 has effect as if any reference in subsections (1) to (4) of that section to the financial circumstances of the offender were a reference to the financial circumstances of the parent or guardian, and as if subsection (5) were omitted;

(b) section 596(3) (amount payable under a compensation order) has effect as if any reference to the means of the person against whom the compensation order is made were a reference to the financial circumstances of the parent or guardian; and

(c) section 596(4) (preference to be given to compensation if insufficient means to pay both compensation and a fine) has effect as if the reference to the offender were a reference to the parent or guardian;

but in relation to an order under section 577 made against the Care Agency this subsection has effect subject to subsection (2) of this section.

(2) For the purposes of any order under section 577 made against the Care Agency, sections 571(1) and 596(3) do not apply.

(3) For the purposes of an order under section 577, if the parent or guardian of an offender who is a juvenile–

(a) has failed to comply with an order under section 576; or

(b) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances, it may make such determination as it thinks fit.

(4) If a court has, in fixing the amount of a fine, decided the financial circumstances of a parent or guardian under subsection (3), subsections (2) to (4) of section 572 have effect as they have effect in the case mentioned in section 572(1), but as if the reference in section 572(2) to the offender's financial circumstances were a reference to the financial circumstances of the parent or guardian.

Enforcement of fines and recognizances

Imprisonment for non-payment of a fine.

579.(1) Subject to this section, if the court imposes a fine on any person or forfeits his recognizance, the court must make an order fixing a term of imprisonment or of detention for default which he is to undergo if any sum which he is liable to pay is not duly paid or recovered.

(2) A person must not when a fine is imposed on him or his recognizance is forfeited by the court be committed to prison or detained pursuant to an order under subsection (1) unless–

(a) the person appears to the court to have sufficient means to pay the sum forthwith;

(b) on being asked by the court whether he wishes to have time for payment, the person does not ask for time;

(c) the person asks the court to commit him to prison immediately;

(d) it appears to the court that the person is unlikely to remain long enough at a place of abode in Gibraltar to enable payment of the sum to be enforced by other methods;

(e) when the order is made the court sentences him to immediate imprisonment, custody for life or detention in the prison for that or another offence, or so sentences him for an offence in addition to forfeiting his recognizance, or he is already serving a sentence of custody for life or a term–

(i) of imprisonment; or

(ii) of detention in the prison; or

(f) there are other special circumstances appearing to the court to justify immediate committal.

(3) The periods set out in the second column of Schedule 10 are the maximum periods of imprisonment or detention under subsection (1) applicable respectively to the amounts set out opposite them.

(4) If a person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve a term of imprisonment or detention in the prison**,** the court may order that any term of imprisonment or detention fixed under subsection (1) does not begin to run until after the end of the first-mentioned term.

(5) This section does not apply to a fine imposed by the Supreme Court on appeal against a decision of the Magistrates' Court, but subsections (1) to (3) apply in relation to a fine imposed or recognizance forfeited by the Court of Appeal, or by Her Majesty in Council on appeal from that court, as they apply in relation to a fine imposed or recognizance forfeited by a court.

(6) For the purposes of any reference in this section, however expressed, to the term of imprisonment or other detention to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent are, unless the context otherwise requires, to be treated as a single term.

(7) Any reference in this section, however expressed, to a previous sentence is to be construed as a reference to a previous sentence passed by a court in Gibraltar.

Enforcement of fines imposed and recognizances forfeited by Supreme Court.

580.(1) Subject to subsection (5), a fine imposed or a recognizance forfeited by the Supreme Court is to be treated for the purposes of collection and enforcement of the fine or other sum as having been imposed or forfeited by the Magistrates' Court and, in the case of a fine, as having been so imposed on conviction by that court.

(2) Subsection (3) applies if the Magistrates' Court issues a warrant of commitment on a default in the payment of–

(a) a fine imposed by the Supreme Court; or

(b) a sum due under a recognizance forfeited by the Supreme Court.

(3) In such a case, the term of imprisonment or detention specified in the warrant of commitment as the term which the offender is liable to serve is–

(a) the term fixed by the Supreme Court under section 579(1); or

(b) if that term has been reduced under section 572 or section 574, that term as so reduced.

(4) Subsections (1) to (3) apply in relation to a fine imposed or recognizance forfeited by the Court of Appeal, or by Her Majesty in Council on appeal from that court, as they apply in relation to a fine imposed or recognizance forfeited by the Supreme Court.

Enforcement by distress or committal.

581.(1) Subject to the following provisions of this Part, if default is made in paying a fine or recognizance, the Magistrates' Court may issue a warrant of distress for the purpose of paying the sum or issue a warrant committing the defaulter to prison pursuant to section 579(1).

(2) A warrant of committal may be issued in respect of a person for failure to pay a fine or recognizance if it appears on the return to a warrant of distress that the money and goods of the person are insufficient to pay the fine or recognizance with the costs and charges of levying the sum.

(3) The period for which a person may be committed to prison under such a warrant must not, subject to the provisions of any other law, exceed the period applicable to the case under section 579(3).

Restriction on committal and means inquiry.

582.(1) A court must not commit a person to prison for failing to pay a fine or recognizance or for want of sufficient distress to pay a fine or recognizance unless the court has inquired into the person's means in his presence.

(2) Subsection (1) does not apply if the person is in prison.

(3) The court may, for the purpose of enabling inquiry to be made under this section–

(a) issue a summons requiring the person 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.

(4) On the failure of a person 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.

(5) 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 581.

(6) A warrant under this section ceases to have effect when the sum in respect of which the warrant is issued is paid to the police officer holding the warrant.

Defect in distress warrant and irregularity in execution.

583.(1) A warrant of distress issued for the purpose of paying a fine or recognizance must not, if it states that the fine or recognizance has been ordered to be paid, be held void by reason of any defect in the warrant.

(2) A person acting under a warrant of distress is not a trespasser *ab initio* by reason only of any irregularity in the execution of the warrant.

(3) Nothing in this section affects 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, commits an offence and is liable on summary conviction, to a fine at level 1 on the standard scale.

(5) A person who has the duty of executing a warrant of distress who–

(a) wilfully retains from the proceeds of a sale of the goods on which distress is levied;

(b) otherwise exacts any greater costs and charges than those properly payable; or

(c) makes any improper charge,

commits an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

Release from custody, etc., on payment.

584.(1) If imprisonment or other detention has been imposed on any person by the order of the Magistrates' Court in default of payment of a fine or recognizance, or for want of sufficient distress to pay a fine or recognizance, then, on the payment of the fine or recognizance, together with the costs and charges, if any, of the commitment and distress–

(a) the order ceases to have effect; and

(b) if the person has been committed to custody he must be released unless he is in custody for some other cause.

(2) If, after a period of imprisonment or other detention has been imposed on any person in default of payment of a fine or recognizance, or for want of sufficient distress to pay a fine or recognizance, payment is made of part of the fine or recognizance, the period of detention is to 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 fine and the costs and charges of any distress levied to pay it, as was due when the period of detention was imposed.

(3) In calculating the reduction required under subsection (2) any fraction of a day is to be ignored.

Power of court to order search of person and application of money found.

585.(1) If a court, on convicting a person, or on an appeal brought by any person–

(a) imposes a fine on a person or forfeits his recognizance;

(b) makes against a person any order for the payment of costs by a defendant;

(c) makes a compensation order against a person; or

(d) makes against a parent or guardian an order under section 577,

then, if that person is before it, the court may order him to be searched.

(2) Any money found–

(a) on a search under subsection (1); or

(b) on the arrest of a person ordered to pay a fine or recognizance; or

(c) on a person being taken to a prison or other place of detention in default of payment of the fine or recognizance,

may, unless the court otherwise directs, be applied towards payment of the fine or recognizance, and the balance, if any, must be returned to him.

(3) The court must not allow the application of any money found on a person if it is satisfied that–

(a) the money does not belong to him; or

(b) the loss of the money would be more injurious to his family than would be his detention.

Supervision pending payment.

586.(1) If a person is fined on 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 a person the court from time to time appoints.

(2) An order placing a person under supervision in respect of any sum remains 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 affecting the power to make a new order.

(4) If a juvenile has been ordered to pay a fine on summary conviction and the court does not commit him to prison forthwith in default of payment, the court must not commit him to prison in default of payment of the fine, or for want of sufficient distress to pay the fine, 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) If a court, being satisfied as aforesaid, commits a juvenile to prison without an order under this section having been made, the court must state the grounds on which it is so satisfied in the warrant of commitment.

(6) If an order placing a person under supervision with respect to a sum is in force, the Magistrates' Court must 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 before committing him has–

(a) taken all reasonably practicable steps to obtain from the person appointed for his supervision an oral or written report on the offender's conduct and means; and

(b) considered any report so obtained, and, in a case where an inquiry is required by section 582, any report of that inquiry.

Amendment of Schedules.

587. If it appears to the Minister that there has been a change in the value of money since the date on which the sums specified in Schedule 9 or 10 were last decided, he may by order substitute for any sum in either Schedule any other sum that appears to him to be justified by the change.

PART 24 – COSTS, COMPENSATION, RESTITUTION, FORFEITURE, ETC.

Costs

Award of costs by Magistrates' Court.

588.(1) On the summary trial of an information the Magistrates' Court may make any 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, subject to the following subsections.

(2) If 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 must not order the defendant to pay any costs under this section unless in any particular case it thinks fit to do so.

(3) If the defendant is a juvenile, the amount of the costs ordered to be paid by the defendant himself under this subsection must not exceed the amount of any fine ordered to be so paid.

(4) The court must 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).

(5) If examining magistrates decide not to commit the defendant 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 in relation to the defence.

(6) If the amount ordered to be paid under subsection (5) exceeds £500, the prosecutor may appeal within 14 days to the Supreme Court, and no proceedings may 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 decided or ceases to be prosecuted.

Costs in other matters.

589.(1) The provisions of this Part apply if a person is committed by the Magistrates' Court to the Supreme Court under Part 10 with a view to his being sentenced for an indictable offence.

(2) The provisions of this Part apply if a person committed or sent for trial is not ultimately tried, in which case the Supreme Court has the same power to order the payment of costs as if the examining magistrates had not committed the defendant for trial.

Costs of defective or redundant indictments.

590. If 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.

591.(1) If a person is acquitted on indictment brought by a private prosecutor or on a voluntary bill of indictment, the Supreme Court may order the prosecutor to pay the whole or any part of the costs incurred in or in relation to the defence, including any proceedings before the examining magistrates.

(2) Costs payable under this section, if any, are to be assessed by the Registrar.

Award of costs on appeal.

592.(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 the appeal, including any preliminary or incidental proceedings, or in carrying on his defence.

(3) Costs payable under this section, if any, are to be assessed by the Registrar.

Enforcement of orders.

593.(1) If the Supreme Court orders the payment of costs by a defendant or appellant or the prosecutor under this Part the payment is enforceable–

(a) 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;

(b) 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) If the Magistrates' Court orders the payment of costs by the defendant or the prosecutor, then–

(a) payment of costs by the defendant is enforceable as a sum adjudged to be paid by the conviction;

(b) payment of costs by the prosecutor is enforceable as a sum adjudged summarily to be paid as a civil debt.

Saving.

594. Nothing in this Part affects 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 orders against convicted persons.

595.(1) A court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (a "compensation order") requiring him–

(a) 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; or

(b) to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road,

subject to the following subsections and section 596.

(2) If the person is convicted of an offence the sentence for which is fixed by law subsection (1) has have effect as if the words "instead of or" were omitted.

(3) A court must give reasons, on passing sentence, if it does not make a compensation order in a case in which this section empowers it to do so.

(4) In the case of an offence under Part 16 of the Crimes Act 2011, if the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for the

purposes of subsection (1) as having resulted from the offence, however and by whomever the damage was caused.

(5) A compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person's dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if it is in respect of damage which is treated by subsection (4) as resulting from an offence under Part 16 of the Crimes Act 2011.

(6) If a compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

(7) A vehicle the use of which is exempted from insurance by section 3 of the Insurance (Motor Vehicles) (Third Party Risks) Act 1986 is not uninsured for the purposes of subsection (6).

(8) A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.

Amount payable under a compensation order.

596.(1) Subject to subsection (2), compensation under section 595 must be of an amount the court considers appropriate, having regard to any evidence and to any representations made by or on behalf of the defendant or the prosecutor.

(2) In the case of the Magistrates' Court, the compensation must not exceed £20,000.

(3) In deciding whether to make a compensation order against any person, and if so the amount to be paid by the person under the order, the court must have regard to his means so far as they appear or are known to the court.

(4) If the court considers that–

(a) it would be appropriate both to impose a fine and to make a compensation order; but

(b) the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court must give priority to compensation, though it may impose a fine as well.

Compensation orders: Appeals.

597.(1) An appellate court may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, does not take effect and, if varied, takes effect as varied.

(2) If the appellate court restores a conviction, it may make any compensation order which the court of trial could have made.

(3) A person in whose favour a compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(4) Rules of court may provide for the way in which a court is to deal with money paid in satisfaction of a compensation order while the entitlement of the person in whose favour it was made is suspended.

(5) If a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence–

(a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;

(b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Review of compensation orders.

598.(1) 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;

(b) in the case of an order in respect of the loss of any property - that the property has been recovered by the person in whose favour the order was made; or

(c) that the person against whom the compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

(2) The court may exercise a power conferred by subsection (1) only–

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the compensation order could be varied or set aside; and

(b) before the person against whom the compensation order was made has paid into court the whole of the compensation which the order requires him to pay.

(3) If the compensation order was made by the Supreme Court, the Magistrates' Court must not exercise any power conferred by subsection (1) in a case where it is satisfied as mentioned in paragraph (c) of that subsection unless it has first obtained the consent of the Supreme Court.

(4) If a compensation order has been made on appeal, for the purposes of subsection (2) the order is deemed–

(a) if it was made on an appeal from the Magistrates' Court - to have been made by that court;

(b) if it was made on an appeal from the Supreme Court or from the Court of Appeal - to have been made by the Supreme Court.

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

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

(2) The damages in the civil proceedings are to be assessed without regard to the order, but if the whole or part of the amount awarded by the order has been paid, the damages awarded in the civil proceedings may not exceed the amount, if any, by which, as so assessed they exceed the amount paid under the order.

(3) If 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 must direct that the judgement–

(a) if it is for an amount not exceeding the amount unpaid under the order – is not to be enforced; or

(b) if it is for an amount exceeding the amount unpaid under the order – is not to be enforced as to a corresponding amount,

without the leave of the court.

Restitution

Restitution orders.

600.(1) This section applies if goods have been stolen, and either–

(a) a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence); or

(b) a person is convicted of any other offence, but an offence as mentioned in paragraph (a) is taken into consideration in determining his sentence.

(2) If this section applies, the court by or before which the offender is convicted may on the conviction (whether or not the passing of sentence is in other respects deferred)–

(a) order anyone having possession or control of the stolen goods to restore them to any person entitled to recover them from him;

(b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the stolen goods (as being the proceeds of any disposal or realisation of the whole or part of them or of goods so representing them) - order those other goods to be delivered or transferred to the applicant; or

(c) order that a sum not exceeding the value of the stolen goods is to be paid, out of any money of the person convicted which was taken out of his possession on his arrest, to any person who, if those goods were in the possession of the person convicted, would be entitled to recover them from him.

(3) If the court has power on a person's conviction to make an order against him both under paragraph (b) and under paragraph (c) of subsection (2) with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the person in whose favour the orders are made does not as a result recover more than the value of those goods.

(4) If the court on a person's conviction makes an order under subsection (2)(a) for the restoration of any goods, and it appears to the court that the person convicted–

(a) has sold the goods to a person acting in good faith; or

(b) has borrowed money on the security of them from a person so acting,

the court may order to be paid to the purchaser or lender, out of any money of the person convicted which was taken out of his possession on his arrest, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan.

(5) The court must 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.

(6) In subsection (5) "the available documents" means–

(a) any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial; and

(b) such written statements, depositions and other documents as were tendered by or on behalf of the prosecutor at any committal proceedings.

(7) Subject to subsection (8), references in this section to stealing are to be construed in accordance with Part 16 of the Crimes Act 2011.

(8) In this section and section 601, "goods", unless the context otherwise requires, includes money and every other description of property (within the meaning of Part 16 of the Crimes Act 2011) except land, and includes things severed from the land by stealing.

(9) An order may be made under this section in respect of money owed by the Government.

(10) The powers conferred by subsections (2)(c) and (4) are exercisable on the application of any person appearing to the court to be interested in the property concerned.

Restitution orders: Appeals.

601. (1) An appellate court may by order annul or vary a restitution order made by the trial court even if the conviction is not quashed, and the order, if annulled, does not take effect, and, if varied, takes effect as so varied.

(2) If a restitution order is made against any person in respect of an offence taken into consideration in determining his sentence–

(a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;

(b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

(3) A restitution order made by any court must be suspended–

(a) in any case - until the end of the period for the time within which an appeal against conviction may be brought;

(b) if notice of appeal is given within that period - until the determination of the appeal.

(4) If the operation of a restitution order is suspended until the determination of an appeal, the order does not take effect as to the property in question if the conviction is quashed on appeal.

(5) Subsection (4) does not apply if the order is made under section 600(2)(a) or (b) and the court so directs, being of the opinion that the title to the goods to be restored or, as the case may be, delivered or transferred under the order is not in dispute.

(6) Rules of court may provide for securing the safe custody of any property during the suspension of the operation of a restitution order.

Return of property

Return of property taken from defendant.

602.(1) If–

(a) 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

(b) a person has been arrested without a warrant for an offence,

and property has been taken from the person after the issue of the summons or warrant or, as the case may be, on or after his arrest without a warrant, the police must report the taking of the property, with particulars of it, to the Magistrates' Court.

(2) If the court considers that the whole or any part of the property can be returned to the defendant consistently with the interests of justice and the safe custody of the defendant, it may direct that the property, or any part of it, is to be returned to the defendant or to some other person as the defendant designates.

Title to stolen property.

603. Notwithstanding any enactment to the contrary, if property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender.

Forfeiture

Powers of forfeiture.

604.(1) If a person is convicted of an offence and 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–

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

(b) was intended by him to be used for that purpose,

the court may (subject to subsection (6)) make an order under this section (a "forfeiture order") in respect of that property.

(2) If a person is convicted of an offence and the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which–

(a) has been lawfully seized from him; or

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

the court may (subject to subsection (6)) make a forfeiture order in respect of that property.

(3) For the purposes of this section, facilitating the commission of an offence includes the taking of any steps after it has been committed for the purposes of disposing of any property to which it relates or avoiding arrest or detection.

(4) A forfeiture order deprives the offender of his rights, if any, in the property to which it relates, and the property, if not already in police possession, must be taken into the possession of the police.

(5) Any power conferred on a court by subsection (1) or (2) may be exercised–

(a) whether or not the court also deals with the offender in any other way in respect of the offence of which he has been convicted; and

(b) without regard to any restrictions on forfeiture in any other enactment.

(6) In considering whether to make a forfeiture order in respect of any property, a court must have regard–

(a) to the value of the property; and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(7) If a person commits an offence to which this subsection applies by–

(a) driving, attempting to drive, or being in charge of a vehicle; or

(b) failing to comply with a requirement made under section 65 of the Traffic Act 2005 (Failure to provide specimen for analysis) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle; or

(c) failing, as the driver of a vehicle, to comply with sections 53 and 54 of the Traffic Act 2005 (Duty to stop and give information or report accident),

the vehicle is to be regarded for the purposes of subsection (1) as used for the purpose of committing the offence or any offence of aiding, abetting, counselling or procuring the commission of the offence.

(8) Subsection (7) applies to–

(a) an offence under the Traffic Act 2005 which is punishable with imprisonment;

(b) an offence of manslaughter; and

(c) an offence under section 174 of the Crimes Act 2011 (Causing harm by furious driving).

Application of proceeds of forfeited property.

605. (1) If–

(a) an offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or

(b) any such offence is taken into consideration by the court in determining sentence,

and the court makes a forfeiture order under section 604, the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court must be paid to that person.

(2) The court may make an order under this section only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

Disposal of non-pecuniary forfeitures.

606. 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–

(a) forfeited on a conviction by the Magistrates' Court; or

(b) the forfeiture of which may be enforced by the Magistrates' Court,

must be sold or otherwise disposed of in the manner the court directs, and the proceeds must be applied as if they were a fine imposed under the law on which the proceedings for the forfeiture are founded.

Miscellaneous

Awards for courage in arrest.

607.(1) A court before which a person is convicted of an indictable offence may order payment from funds appropriated by the Parliament under the relevant Appropriation Act to any person who appears to the court to have been active in or towards the arrest of any person convicted of that offence.

(2) Subject to section 608, the amount ordered to be paid to a person or persons under subsection (1) may be such sum, not exceeding £500 in the case of the Magistrates' Court or £1,000 in the case of the Supreme Court, as the court considers reasonable and sufficient to compensate the person or persons for their expenses, exertions, and loss of time in or towards the arrest.

Levels of compensation.

608. The Minister may, after consultation with the Chief Justice, by order vary–

(a) the maximum amounts of compensation that can be awarded by a court under section 596;

(b) the sums that can be paid as a reward under section 607(2).

Power of court to allow time for payment, or payment by instalments, of costs and compensation.

609. If a court makes an order against a person for the payment of costs or compensation, the court may–

(a) allow time for the payment of the sum due under the order;

(b) direct payment of that sum by instalments of amounts and on dates that the court specifies.

PART 25 – REHABILITATION OF OFFENDERS

Rehabilitated persons and spent convictions.

610.(1) Subject to this section, if an individual has been convicted, whether before or after the commencement of this Part, of any offence or offences, and the conditions mentioned in subsection (2) are satisfied, then, after the end of the rehabilitation period applicable to the conviction (including any extension under section 614 of the period originally applicable) or, if that rehabilitation period ended before the commencement of this Part,

after the commencement of this Part, that individual is for the purposes of this Part to be treated as a rehabilitated person in respect of the conviction and the conviction is for those purposes to be treated as spent.

(2) The conditions are that the individual–

(a) did not have imposed on him in respect of that conviction a sentence which is excluded from rehabilitation under this Part; and

(b) has not had imposed on him in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction in accordance with section 614 a sentence which is excluded from rehabilitation under this Part.

(3) Subject to subsection (4), a person does not become a rehabilitated person for the purposes of this Part in respect of a conviction unless he has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction.

(4) The following do not prevent a person from becoming a rehabilitated person for the purposes of this Part–

(a) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognizance or bond to keep the peace or be of good behaviour;

(b) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, if the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he is in fact so dealt with).

(5) In this Part "sentence" includes any order made by a court in dealing with a person in respect of his conviction of any offence or offences, other than–

(a) an order for committal or any other order made in default of payment of a fine or other sum adjudged to be paid by or imposed on a conviction, or for want of sufficient distress to satisfy any such fine or other sum;

(b) an order dealing with a person in respect of a suspended sentence of imprisonment.

(6) In this Part, references to a conviction, however expressed, include references to–

(a) a conviction by or before a court outside Gibraltar; and

(b) any finding (other than a finding linked with a finding of mental disorder) in any criminal proceedings or in care proceedings under Part VIII of the Children Act 2009 that a person has committed an offence or done the act or made the omission charged.

(7) A conviction in respect of which an order is made placing the person convicted on probation or discharging him absolutely or conditionally is to be treated as a conviction for the purposes of this Part and the person in question may become a rehabilitated person in respect of that conviction and the conviction may become a spent conviction for those purposes accordingly.

Effect of rehabilitation.

611.(1) Subject to sections 615 to 618, a person who has become a rehabilitated person for the purposes of this Part in respect of a conviction is to be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction.

(2) Despite the provisions of any other enactment or rule of law to the contrary, but subject to subsection (1)–

(a) no evidence is admissible in any proceedings before a court exercising its jurisdiction or functions in Gibraltar to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and

(b) a person must not, in any such proceedings, be asked, and, if asked, is not required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

(3) Subject to the exceptions provided for by section 616, if a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a court–

(a) the question is to be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer to it may be framed accordingly; and

(b) the person questioned is not to be subject to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.

(4) Subject to the exceptions provided for by section 616–

(a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person does not extend to requiring him to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's); and

(b) a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.

(5) For the purposes of this section and section 615 any of the following are circumstances ancillary to a conviction–

(a) the offence or offences which were the subject of that conviction;

(b) the conduct constituting that offence or those offences;

(c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done pursuant to or undergone in compliance with any such sentence.

(6) For the purposes of this section and section 615, "proceedings before a court" includes, in addition to proceedings before a court of law, proceedings before any tribunal, body or person that has power–

(a) by virtue of any enactment, law, custom or practice;

(b) under the rules governing any association, institution, profession, occupation or employment; or

(c) under any provision of an agreement providing for arbitration with respect to questions arising under it,

to decide any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

Excluded sentences.

612.(1) The sentences excluded from rehabilitation under this Part are–

(a) a sentence of imprisonment for life;

(b) a sentence of imprisonment for more than 30 months;

(c) a sentence of detention during Her Majesty's pleasure.

(2) Any other sentence is a sentence subject to rehabilitation under this Part.

Rehabilitation periods for particular sentences.

613.(1) For the purposes of this Part the rehabilitation period applicable to a sentence specified in the first column of Schedule 11 (Rehabilitation periods) is the period specified in the second column of that table in relation to that sentence.

(2) In Schedule 11–

(a) the periods specified begin to run on the date of conviction unless otherwise specified;

(b) the age of the defendant is the age at the date of conviction.

(3) For the purposes of this section–

(a) consecutive terms of imprisonment, and terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) are to be treated as a single term;

(b) no account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and

(c) a sentence imposed by a court outside Gibraltar is to be treated as a sentence of that one of the descriptions mentioned in this section that most nearly corresponds to the sentence imposed.

(4) A reference in this Part to the period during which a probation order was in force include references to any period during which any order or requirement to which this subsection applies, being an order or requirement made or imposed directly or indirectly in substitution for the first-mentioned order or requirement, is or was in force.

(5) The Minister may by order–

(a) substitute different periods or terms for any of the periods or terms mentioned in Schedule 11; and

(b) substitute a different age for the age mentioned in that Schedule.

The rehabilitation period applicable to a conviction.

614.(1) If only one sentence is imposed in respect of a conviction (not being a sentence excluded from rehabilitation under this Part) the rehabilitation period applicable to the conviction is, subject to the following provisions of this section, the period applicable to the sentence in accordance with section 613.

(2) If more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings) and none of the sentences imposed is excluded from rehabilitation under this Part, then, subject to this section, if the periods applicable to those sentences in accordance with section 613 differ, the rehabilitation period applicable to the conviction is the longer or the longest (as the case may be) of those periods.

(3) Without affecting subsection (2), if in respect of a conviction a person was conditionally discharged or a probation order was made, and after the end of the rehabilitation period applicable to the conviction in accordance with subsection (1) or (2) he is dealt with, in consequence of a breach of conditional discharge or probation order, for the offence for which the order for conditional discharge or probation order was made, then, if the rehabilitation period applicable to the conviction in accordance with subsection (2) (taking into account any sentence imposed when he is so dealt with) ends later than the rehabilitation period previously applicable to the conviction–

(a) he is to be treated for the purposes of this Part as not having become a rehabilitated person in respect of that conviction; and

(b) the conviction is for those purposes to be treated as not having become spent,

in relation to any period falling before the end of the new rehabilitation period.

(4) Subject to subsection (6), if during the rehabilitation period applicable to a conviction–

(a) the person convicted is convicted of a further offence; and

(b) no sentence excluded from rehabilitation under this Part is imposed on him in respect of the later conviction,

and if the rehabilitation period applicable in accordance with this section to either of the convictions would end earlier than the period so applicable in relation to the other, the rehabilitation period which would (apart from this subsection) end the earlier is extended so as to end at the same time as the other rehabilitation period.

(5) If a person is convicted of a further offence during a rehabilitation period in respect of an offence–

(a) if the rehabilitation period is the rehabilitation period applicable to an order imposing on the person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the later conviction is not extended by reference to that period; but

(b) if any other sentence is imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed by section 613, the rehabilitation period applicable to the later conviction is, if appropriate, extended under subsection (4) by reference to the rehabilitation period applicable in accordance with that section to that sentence, or, if more than one such sentence is imposed, by reference to the longer or longest of the periods so applicable to those sentences, as if the period in question were the rehabilitation period applicable to the first-mentioned conviction.

(6) For the purposes of subsection (4)(a) the following are to be disregarded–

(a) a conviction of an indictable offence tried summarily pursuant to Part 8;

(b) any conviction by or before a court outside Gibraltar of an offence in respect of conduct which, if it had taken place in Gibraltar, would not have constituted an offence under the law of Gibraltar.

Limitations on rehabilitation under this Part, etc.

615.(1) Nothing in section 611(1) affects–

(a) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence;

(b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;

(c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or

(d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 614 to the conviction.

(2) Subject to section 620, nothing in section 611(1) affects the determination of any issue, or prevents the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary to it–

(a) in any criminal proceedings before a court in Gibraltar, including any appeal or reference in a criminal matter;

(b) in any care proceedings under the Children Act 2009 or on appeal from any such proceedings, or in any proceedings relating to the variation or discharge of a care order or supervision order under that Act;

(c) in any proceedings in which the person is a party or a witness, if, when the issue or the admission or requirement of the evidence falls to be decided, the person consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence despite the provisions of section 611(1).

(3) If at any stage in any proceedings before a court the court is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary to them, the court may admit or, as the case may be, require the evidence in question despite the provisions of section 611(1), and may decide any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

(4) Subsection (3) does not apply to proceedings to which, by virtue of section 612(1) or of an order made under subsection (5), section 611(1) has no application, or proceedings to which section 618 applies.

(5) The Minister may by order exclude the application of section 611(1) in relation to any proceedings specified in the order (other than proceedings to which section 618 applies) to such extent and for such purposes as are so specified.

(6) No order made by a court with respect to any person otherwise than on a conviction may be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of an offence.

Exceptions to rehabilitation.

616.(1) Section 611(3) does not apply in relation to any question asked by or on behalf of any person in the course of the duties of his office or employment, in order to assess the suitability–

(a) of the person to whom the question relates for admission to any of the professions specified in Part 1 of Schedule 12;

(b) of the person to whom the question relates for any office or employment specified in Part 2 of Schedule 12;

(c) of the person to whom the question relates or of any other person to pursue any occupation specified in Part 3 of Schedule 12 or to pursue it subject to a particular condition or restriction; or

(d) of the person to whom the question relates or of any other person to hold a licence, certificate or permit of a kind specified in Part 4 of Schedule 12 or to hold it subject to a particular condition or restriction,

if the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(2) Section 611(3) does not apply in relation to any question asked in the course of duties by or on behalf of a person–

(a) employed in the service of the Government or the Crown or any statutory body; or

(b) authorised to provide air traffic services,

if–

(c) the question is asked in order to assess, for the purpose of safeguarding the security of Gibraltar, the suitability of the person to whom the question relates or of any other person; and

(d) the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed for the purpose of safeguarding the security of Gibraltar.

(3) Section 611(3) does not apply in relation to any question asked by or on behalf of any person in the course of his duties at work, in order to assess the suitability of a person to work with children, if–

(a) the question relates to the person whose suitability is being assessed;

(b) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person living in the same household as him;

(c) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person who regularly works on those premises at a time when the work with children usually takes place; or

(d) the work for which the person's suitability is being assessed is working with children which would normally take place on premises other than premises where that person lives and the question relates to a person who lives on those other premises or to a person who regularly works on them at a time when the work takes place,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(4) Section 611(3) does not apply in relation to any question asked by or on behalf of any person in the course of his duties to assess the suitability of any other person to adopt children in general or a child in particular if –

(a) the question relates to the person whose suitability is being assessed; or

(b) the question relates to a person over the age of 18 living in the same household as the person whose suitability is being assessed,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(5) Section 611(3) does not apply in relation to any question asked by or on behalf of any person, in the course of the duties of his work, in order to assess the suitability of a person to provide day care for children if–

(a) the question relates to the person whose suitability is being assessed; or

(b) the question relates to a person who lives on the premises which are or are proposed to be day care premises,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(6) Section 611(3) does not apply in relation to any question asked by or on behalf of a person listed in Part 5 of Schedule 12 to the extent that it relates to a conviction (or any circumstances ancillary to a conviction) of any individual, but only if–

(a) the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed; and

(b) the question is asked in order to assess the suitability of the individual to whom the question relates in respect of any of the services mentioned in paragraph 1 of that Part,

and if the person to whom the question relates is informed at the time that the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(7) Section 611(4) does not apply in relation to the dismissal or exclusion of any person from any profession specified in Part 1 of Schedule 12, or from any office or employment or occupation specified in Part 2 of that Schedule, or from any occupation specified in Part 3 of that Schedule.

(8) Section 611(4) does not apply in relation to any action taken for the purpose of safeguarding the security of Gibraltar.

(9) Section 611(4) does not apply in relation to any proceedings specified in Part 6 of Schedule 12 to the extent that a decision needs to be taken in those proceedings relating to a person's spent conviction or to circumstances ancillary to a conviction.

(10) Section 611(4) does not apply in relation to any decision specified in Part 7 of Schedule 12.

Exceptions: Supplementary.

617.(1) For the purpose of section 616 & Schedule 12, unless the context otherwise requires–

"day care premises" means any premises at which day care for children is provided and children are looked after;

"work" includes–

(a) work of any kind, whether paid or unpaid, and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and

(b) an office established by or by virtue of an enactment;

"work with children" means any work which is normally concerned with the provision of any form of information, advice or guidance wholly or mainly to children which relates to their physical, emotional or educational well-being and includes giving of such advice by means of telephone or other form of electronic communication including the internet and mobile telephone text messaging.

(2) If, by virtue of section 616, the operation of any provision of this Part is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description.

(3) In this Part any reference to a conviction includes a reference to a caution, and any reference to a spent conviction is to be construed accordingly.

Defamation actions.

618.(1) This section applies to any action for libel or slander begun after the commencement of this Part by a rehabilitated person and founded upon the publication of any matter imputing that the claimant has committed or been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.

(2) Nothing in section 611(1) affects an action to which this section applies if the publication complained of took place before the conviction in question became spent, and the following provisions of this section do not apply in any such case.

(3) Subject to subsections (5) and (6), nothing in section 611(1) prevents the defendant in an action to which this section applies from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him, or restricts the matters he may establish in support of any such defence.

(4) Without limiting subsection (3), if in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 611(1) restricts the matters he may establish in rebuttal of the allegation.

(5) A defendant in any such action is not by virtue of subsection (3) entitled to rely upon the defence of justification if the publication is proved to have been made with malice.

(6) Subject to subsection (7), a defendant in any such action is not, by virtue of subsection (3), entitled to rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matter published constituted a fair and accurate report of judicial proceedings, if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of section 611(1).

(7) Subsection (3) applies without the qualifications imposed by subsection (6) in relation to–

(a) a report of judicial proceedings contained in any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law;

(b) a report or account of judicial proceedings published for *bona fide* educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

Unauthorised disclosure of spent convictions.

619.(1) In this section–

"official record" means a record containing information about persons convicted of offences that is kept by any of Her Majesty's forces, or by a police force, court or Government department in Gibraltar or elsewhere, for the purposes of their functions;

"specified information" means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction.

(2) Subject to any order made under subsection (5), a person who, in the course of his official duties, has or at any time has had custody of or access to any official record or the information contained in it commits an offence if, knowing or having reasonable cause to suspect that any specified information he has obtained in the course of those duties is specified information, he discloses it, otherwise than in the course of those duties, to another person.

(3) In proceedings for an offence under subsection (2) it is a defence to show that the disclosure was made–

(a) to the rehabilitated person or to another person at the express request of the rehabilitated person; or

(b) to a person whom the defendant reasonably believed to be the rehabilitated person or to another person at the express request of a person whom the defendant reasonably believed to be the rehabilitated person.

(4) A person who obtains any specified information from any official record by means of fraud, dishonesty or a bribe commits an offence.

(5) The Minister may by order make such provision as appears to him to be appropriate for excepting the disclosure of specified information derived from an official record from the provisions of subsection (2) in the cases or classes of case specified in the order.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine at level 4 on the standard scale.

(7) A person who commits an offence under subsection (4) is liable on summary conviction to imprisonment for 6 months or to a fine at level 5 on the standard scale, or to both.

(8) Proceedings for an offence under subsection (2) or (4) may not be instituted except by, or with the consent of, the Attorney-General.

References to spent convictions in court proceedings.

620.(1) The court and every legal representative appearing in a court should not refer to a spent conviction if such reference can reasonably be avoided.

(2) After a verdict of guilty–

(a) the court must be provided with a statement of the defendant's record for the purpose of sentence;

(b) the record should contain all previous convictions, but those which are spent should, as far as possible, be marked as such.

(3) No person should refer in open court to a spent conviction without the authority of the judge or person presiding, which authority should not be given unless the interests of justice so require.

(4) A person when passing sentence should make no reference to spent convictions unless it is necessary to do so to explain the sentence being passed.

PART 26 - ANTI-SOCIAL BEHAVIOUR ORDERS

Anti-social behaviour orders (ASBOs).

621.(1) If it appears to the Attorney-General that, in respect of any person aged 10 or over that–

(a) the person has acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) an order under this section is necessary to protect any member of the public from further anti-social acts by the person,

the Attorney-General may apply by complaint to the Magistrates' Court for an order under this section.

(2) If, on such an application, the Magistrates' Court is satisfied of the matters mentioned in subsection (1), the court may make an anti-social behaviour order which prohibits the defendant from doing anything described in the order.

(3) An order under this section has effect for a period (not less than 6 months) specified in the order, or until further order.

(4) Subject to subsection (5), the Attorney-General or the defendant may apply in writing to the court which made an order under this section for it to be varied or discharged by a further order.

(5) Except with the consent of both parties, no order under this section may be discharged earlier than 6 months after it was made.

Orders on conviction in criminal proceedings (CRASBOs).

622.(1) If a person is convicted of an offence and the court is satisfied that–

(a) the person has acted in an anti-social manner, that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) an order under this section is necessary to protect any member of the public from further anti-social acts by the person,

the court may make an anti-social behaviour order which prohibits the person from doing anything described in the order.

(2) The court may make an order under this section on its own initiative or on the application of the Attorney-General.

(3) An order under this section must not be made in respect of a person except–

(a) in addition to a sentence imposed on the person for an offence; or

(b) in addition to an order discharging the person conditionally.

(4) An order under this section has effect for a period (not less than 6 months) specified in the order, or until further order.

(5) An order under this section takes effect on the day on which it is made, except that if the person in respect of whom it is made is at the same time sentenced to imprisonment, the order takes effect upon his release from prison.

(6) Subject to subsection (7), a person subject to an order under this section, or the Attorney-General, may in writing apply to the court which made the order for it to be varied or discharged.

(7) Except with the consent of both parties, no order under this section may be discharged earlier than 6 months after it takes effect.

Supplementary provisions.

623.(1) For the purpose of deciding whether it is satisfied of the matter mentioned in section 621(1)(a) or 622(1)(a), the court must disregard any act of the defendant which he shows was reasonable in the circumstances.

(2) The prohibitions that may be imposed by an anti-social behaviour order are only those reasonably necessary for the purpose of protecting persons from further anti-social acts by the defendant.

(3) If without reasonable excuse a person does anything which he is prohibited from doing by an anti-social behaviour order, the person commits an offence and is liable–

(a) on summary conviction, to imprisonment for 6 months or to a fine at level 5 on the standard scale, or both; or

(b) on conviction on indictment, to imprisonment for 5 years or a fine, or both.

(4) If a person is convicted of an offence under subsection (3), it is not open to the court to impose a conditional discharge for the offence.

(5) In proceedings for an offence under subsection (3), a copy of the original anti-social behaviour order, certified as such by the clerk of the Magistrates' Court, is admissible in evidence of its having been made and of its contents, to the same extent that oral evidence of those things is admissible in those proceedings.

Appeals against orders.

624.(1) An appeal lies to the Supreme Court against the making by the Magistrates' Court of an anti-social behaviour order.

(2) On such an appeal the Supreme Court may make–

(a) any order necessary to give effect to its determination of the appeal; and

(b) any incidental or consequential orders that appear to it to be just.

(3) An order of the Supreme Court made on an appeal under this section (other than one directing that an application be re-heard by the Magistrates' Court) is, for the purposes of section 621(4) or 622(6), to be treated as if it were an order of the Magistrates' Court.

PART 27 – YOUNG OFFENDERS AND JUVENILES GENERALLY

Juvenile Courts

Constitution and procedure of Juvenile Courts.

625.(1) Subject to section 626, the Magistrates' Court when sitting for the purpose of hearing any charge against a juvenile or when exercising any other jurisdiction conferred on a Juvenile Court by this or any other Act is to be known as the Juvenile Court.

(2) The Juvenile Court must not sit in any room in which sittings of a court other than the 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.

(3) No person may 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 legal representatives, and witnesses and other persons directly concerned in that case;

(c) *bona fide* representatives of newspapers or news agencies; and

(d) any other persons that the court authorises to be present.

(4) Rules of court may provide for regulating the procedure of the Juvenile Court.

Charges to be heard in the Juvenile Court.

626.(1) Subject to subsections (2) and (3), every charge against a juvenile of an offence punishable summarily is to be heard by the Magistrates' Court sitting as the Juvenile Court, except that–

(a) a charge made jointly against a juvenile and an adult must be heard by the Magistrates' Court; and

(b) if a juvenile is charged with an offence and an adult is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence, the case must be tried in the Magistrates' Court.

(2) If, in the course of any proceedings before the Magistrates' Court not sitting as the Juvenile Court, it appears that the person to whom the proceedings relate is a juvenile, the court may, if it thinks fit to do so, proceed with the hearing and determination of those proceedings.

(3) If a notification that the defendant wishes to plead guilty without appearing before the court is received by the clerk of the court and the court has no reason to believe that the defendant is a juvenile, then, if he is a juvenile he is deemed to have attained the age of 18 for the purposes of subsection (1) in its application to the proceedings in question.

(4) No rule, whether contained in this Act or any other law, that a charge is to be brought before the Juvenile Court restricts the powers of any magistrate to entertain an application for bail or for a remand, and to hear any evidence necessary for that purpose.

Extension of jurisdiction.

627.(1) The Juvenile Court when sitting for the purpose of hearing a charge against a person who is believed to be a juvenile may, if it thinks fit to do so, proceed with the hearing and determination of the charge even if it is discovered that the person in question is not a juvenile.

(2) The attainment of the age of 18 years by a juvenile who is subject to a youth rehabilitation order, or a person in whose case an order for conditional discharge has been made, does not deprive the Juvenile Court of jurisdiction to enforce his attendance and deal with him in respect of any failure to comply with the requirements of the order or the commission of a further offence or to amend or discharge the youth rehabilitation order.

Restrictions on reports of proceedings in which juveniles are concerned.

628.(1) The following prohibitions apply (subject to subsection (5)) in relation to any proceedings to which this section applies–

(a) no report may be published which reveals the name, address or school of any juvenile concerned in the proceedings or includes any particulars likely to lead to the identification of any juvenile concerned in the proceedings; and

(b) no picture may be published or included in a relevant programme as being or including a picture of any juvenile concerned in the proceedings.

(2) The proceedings to which this section applies are–

(a) proceedings in the Juvenile Court;

(b) proceedings on appeal from the Juvenile Court (including proceedings by way of case stated);

(c) proceedings for varying or revoking a youth rehabilitation order; and

(d) proceedings on appeal from the Magistrates' Court arising out of proceedings under section 522 (Youth rehabilitation orders), including proceedings by way of case stated.

(3) The reports to which this section applies are–

(a) reports in a newspaper;

(b) reports included in a relevant programme; and

(c) any pictures in a newspaper or relevant programme.

(4) For the purposes of this section a juvenile is "concerned" in any proceedings whether as being the person against or in respect of whom the proceedings are taken or as being a witness in the proceedings.

(5) If a court is satisfied that it is in the public interest to do so, it may, in relation to a juvenile who has been convicted of an offence, by order dispense to any specified extent with the requirements of this section in relation to any proceedings before it to which this section applies by virtue of subsection (2)(a) or (b), if they relate to–

(a) the prosecution or conviction of the offender for the offence;

(b) the manner in which he, or his parent or guardian, should be dealt with in respect of the offence; or

(c) the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence.

(6) A court must not exercise its power under subsection (5) without–

(a) giving the parties to the proceedings an opportunity to make representations; and

(b) taking into account any representations which are so made.

(7) Subject to subsections (8) and (9) a court may, in relation to proceedings before it to which this section applies, by order dispense to any specified extent with the requirements of this section in relation to a juvenile who is concerned in the proceedings if it is satisfied–

(a) that it is appropriate to do so for the purpose of avoiding injustice to the juvenile; or

(b) that, as respects a juvenile to whom this paragraph applies who is unlawfully at large, it is necessary to dispense with those requirements for the purpose of apprehending him and bringing him before a court or returning him to the place in which he was in custody.

(8) Subsection (7)(b) applies to any juvenile who is charged with or has been convicted of–

(a) a violent offence;

(b) a sexual offence; or

(c) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more.

(9) The court must not exercise its power under subsection (7)(b)–

(a) except pursuant to an application by or on behalf of the Attorney-General; and

(b) unless notice of the application has been given by the Attorney-General to any legal representative of the juvenile.

(10) If a report or picture is published or included in a relevant programme in contravention of subsection (1), the following persons commit an offence and are liable on summary conviction to a fine not exceeding level 5 on the standard scale–

(a) in the case of publication of a written report or a picture as part of a newspaper - any proprietor, editor or publisher of the newspaper;

(b) in the case of the inclusion of a report or picture in a relevant programme–any corporate body which provides the programme and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Imprisonment or detention of young offenders

Juveniles who commit murder, etc. to be detained at Her Majesty's pleasure.

629.(1) If a person convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment appears to the court to have been aged under 18 at the time the offence was committed, the court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.

(2) The place of detention pursuant to this section and section 630 is the prison, unless the Minister by order directs that a person should be detained in some other place for the purposes of this section or section 630.

Juveniles who commit certain serious offences to be detained for specified period.

630.(1) Subsection (2) applies if a juvenile is convicted on indictment of–

(a) an offence punishable in the case of a person aged 18 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law;

(b) an offence under section 215 of the Crimes Act 2011 (Sexual assault); or

an offence under section 45 of the Traffic Act 2005 (Causing death by reckless or dangerous driving of motor vehicles).

(2) If the court is of the opinion that none of the other methods in which the case may be dealt with is suitable, the court may sentence the offender to be detained for a specified period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.

(3) Subsection (2) is subject to sections 499 and 500 (restrictions on imposition of custodial sentences).

Duty to impose imprisonment for life in certain cases where offender under 21.

631.(1) If a person aged under 21 is convicted of murder or any other offence the sentence for which is fixed by law as imprisonment for life, the court must sentence him to imprisonment for life unless he is liable to be detained under section 629.

(2) If a person aged at least 18 but under 21 is convicted of an offence–

(a) for which the sentence is not fixed by law; but

(b) for which a person aged 21 or over would be liable to imprisonment for life,

the court must, if it considers that a sentence for life would be appropriate, sentence him to imprisonment for life.

(3) Subsection (2) is subject to sections 499 and 500 (restrictions on imposition of custodial sentences).

Duty to remit young offenders to the Juvenile Court for sentence.

632.(1) Subsection (2) applies if a juvenile is convicted by or before any court, other than the Juvenile Court, of an offence other than homicide.

(2) The court must, unless satisfied that it would be undesirable to do so, remit the case to the Juvenile Court, subject to subsection (6).

(3) If a case is remitted under subsection (2), the offender must be brought before the Juvenile Court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and convicted by that court.

(4) A court by which an order remitting a case to the Juvenile Court is made under subsection (2)–

(a) may, subject to sections 129 (Bail in cases of treason, etc.) and 130 (Bail in cases of murder), give any directions necessary with respect to the custody of the offender or for his release on bail until he can be brought before the Juvenile Court; and

(b) must send to the clerk of the Juvenile Court a certificate setting out the nature of the offence and stating–

(i) that the offender has been convicted of the offence; and

(ii) that the case has been remitted for the purpose of being dealt with under this section.

(5) If a case is remitted under subsection (2), the offender does not have a right of appeal against the order of remission, but has the same right of appeal against any order of the Juvenile Court as if he had been convicted by that court.

(6) If the Magistrates' Court convicts a juvenile of an offence it must exercise the power conferred by subsection (2) unless the court is of the opinion that the case is one which can properly be dealt with by means of–

(a) an order discharging the offender absolutely or conditionally;

(b) an order for the payment of a fine; or

(c) an order under section 641 requiring the offender's parent or guardian to enter into a recognizance to take proper care of him and exercise proper control over him,

with or without any other order that the court has power to make when absolutely or conditionally discharging an offender.

(7) For the purposes of subsection (6), taking care of a person includes giving him protection and guidance and control includes discipline.

(8) The provisions of this Part are in addition to and do not derogate from the provisions of Part 22 regarding the making of youth rehabilitation orders on young offenders.

Remitting an offender who attains the age of 18 to the Magistrates' Court for sentence.

633.(1) If a person who appears or is brought before the Juvenile Court charged with an offence subsequently attains the age of 18, the Juvenile Court may, at any time after conviction and before sentence, remit him for sentence to the Magistrates' Court.

(2) If an offender is remitted under subsection (1), the Juvenile Court must adjourn proceedings in relation to the offence, and–

(a) any enactment relating to remand or the granting of bail in criminal proceedings has effect, in relation to the Juvenile Court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the Magistrates' Court; and

(b) subject to subsection (3), the Magistrates' Court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the offence which took place before the Juvenile Court had taken place before the Magistrates' Court.

(3) If an offender is remitted under subsection (1), section 632(6) does not apply to the Magistrates' Court.

(4) An offender who is remitted under subsection (1) has no right of appeal against the order of remission (without affecting any right of appeal against an order made in respect of the offence by the Magistrates' Court to which he is remitted).

Reparation orders on young offenders

Making of reparation orders.

634.(1) If a juvenile is convicted of an offence other than one for which the sentence is fixed by law, the court by or before which he is convicted may, subject to section 635, make an order (a "reparation order") requiring him to make reparation specified in the order–

(a) to a person or persons identified by the court as a victim of the offence or a person otherwise affected by it; or

(b) to the community at large.

(2) The court must not make a reparation order in respect of the offender if it proposes–

(a) to pass on him a custodial sentence; or

(b) to make in respect of him a youth rehabilitation order.

(3) Before making a reparation order, a court must obtain and consider a written report by a probation officer indicating–

(a) the type of work that is suitable for the offender; and

(b) the attitude of the victim or victims to the requirements proposed to be included in the order.

(4) Before making a reparation order, the court must explain to the offender in ordinary language–

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow under section 636 if he fails to comply with any of those requirements; and

(c) that the court has power under section 637 to review the order on the application either of the offender or of a probation officer.

(5) The court must give reasons if it does not make a reparation order in a case where it has power to do so.

(6) In this section and section 635, "make reparation", in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation.

Requirements and provisions of reparation orders.

635.(1) A reparation order must not require the offender–

(a) to work for more than 24 hours in aggregate; or

(b) to make reparation to any person without the consent of that person.

(2) Subject to subsection (1), requirements specified in a reparation order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) Requirements so specified must, as far as practicable, be such as to avoid–

(a) any conflict with the offender's religious beliefs or with the requirements of any community order to which he is subject; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(4) Any reparation required by a reparation order–

(a) must be made under the supervision of a probation officer; and

(b) must be made within 3 months from the making of the order.

Breach of requirement of reparation order.

636.(1) This section applies if while a reparation order is in force in respect of an offender it is proved to the satisfaction of the court that made the order, on the application of a probation officer, that the offender has failed to comply with any requirement included in the order.

(2) If this section applies, the court, whether or not it also makes an order under section 637 may–

(a) order the offender to pay a fine of up to £1,000;

(b) if the reparation order was made by the Magistrates' Court or the Juvenile Court - revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or

(c) if the reparation order was made by the Supreme Court - commit him in custody or release him on bail until he can be brought or appear before the Supreme Court.

(3) If a court deals with an offender under subsection (2)(c), it must send to the Supreme Court a certificate signed by a magistrate giving–

(a) particulars of the offender's failure to comply with the requirement in question; and

(b) any other particulars of the case that are appropriate.

(4) If–

(a) by virtue of subsection (2)(c) the offender is brought or appears before the Supreme Court; and

(b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question,

that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.

(5) If the Supreme Court deals with an offender under subsection (4), it must revoke the reparation order if it is still in force.

(6) A fine imposed under this section is deemed, for the purposes of any enactment, to be a sum adjudged to be paid upon a conviction.

(7) In dealing with an offender under this section, a court must take into account the extent to which he has complied with the requirements of the reparation order.

(8) If a reparation order has been made on appeal, for the purposes of this section it is deemed–

(a) if it was made on an appeal brought from the Magistrates' Court or the Juvenile Court - to have been made by that court;

(b) if it was made on an appeal brought from the Supreme Court or from the Court of Appeal - to have been made by the Supreme Court;

and, in relation to a reparation order made on appeal, subsection (2)(b) has effect as if the words "if the order had not been made" were omitted and subsection (4) has effect as if the words "if it had not made the order" were omitted.

Revocation and amendment of reparation order.

637.(1) If while a reparation order is in force in respect of an offender it appears to the court, on the application of a probation officer or the offender, that it is appropriate to make an order under this subsection, the court may make an order–

(a) revoking the reparation order; or

(b) amending it–

(i) by cancelling any provision included in it; or

(ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.

(2) If an application under subsection (1) for the revocation of a reparation order is dismissed, no further application for its revocation may be made under that subsection by any person except with the consent of the court.

Presence of offender in court, remands, etc.

638.(1) If a probation officer makes an application under section 636 or 637 he may bring the offender before the court; and, subject to subsection (7), the court must not make an order under either of those sections unless the offender is present before the court.

(2) Without affecting any other power to issue a summons or warrant, the court to which an application under section 636 or 637 is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it.

(3) If the offender is arrested pursuant to a warrant issued by virtue of subsection (2) and cannot be brought immediately before the court, the person in whose custody he is–

(a) may make arrangements for his detention in a place of safety for a period of not more than 72 hours from the time of the arrest (and he may be detained pursuant to the arrangements); and

(b) must within that period bring him before the Juvenile Court.

(4) If an offender is under subsection (3)(b) brought before the Juvenile Court the court may–

(a) direct that he be released forthwith; or

(b) subject to subsection (6), remand him to segregated accommodation in the prison or other place of safety.

(5) Subject to subsection (6), if an application is made to a court under section 637, the court may remand (or further remand) the offender to segregated accommodation in the prison or other place of safety, if–

(a) a warrant has been issued under subsection (2) for the purpose of securing the attendance of the offender before the court; or

(b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under section 637.

(6) If the offender is aged 18 or over at the time when he is brought before the Juvenile Court under subsection (3)(b), or is aged 18 or over at a time when (apart from this subsection) the court could exercise its powers under subsection (5) in respect of him, he must be remanded to segregated accommodation in the prison.

(7) A court may make an order under section 637 in the absence of the offender if the effect of the order is confined to–

(a) revoking the reparation order; or

(b) cancelling a requirement included in the reparation order.

(8) In this section, and in sections 642(2) and 648(1), "place of safety" means any police station or any hospital or other suitable place which is able and willing to receive a juvenile temporarily.

Reparation orders: Appeals.

639. An offender may appeal to the Supreme Court against–

(a) any order made under section 636 or 637 except an order made or which could have been made in his absence under section 638(7);

(b) the dismissal of an application under section 637(1) to revoke a reparation order.

Fines on young offenders

Application of Part 23.

640. The provisions of sections 575 to 578 as to juvenile offenders apply to the imposing of fines on young offenders as if they were set out in full in this Part.

Binding over of parent or guardian

Binding over of parent or guardian.

641.(1) If a juvenile is convicted of an offence, the powers conferred by this section are exercisable by the court by which he is sentenced for that offence, and if the offender is aged under 16 when sentenced the court must–

(a) exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise is appropriate in the interests of preventing the commission by him of further offences; and

(b) if it does not exercise them, state in open court that it is not satisfied as mentioned in paragraph (a) and why it is not so satisfied.

(2) The powers conferred by this section in relation to the parent or guardian of an offender are–

(a) if the parent or guardian consents - to order the parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over him;

(b) if the parent or guardian refuses consent and the court considers the refusal unreasonable - to order the parent or guardian to pay a fine of up to £1,000.

(3) If the court has passed a community sentence on the offender, it may include in the recognizance a provision that the offender's parent or guardian must ensure that the offender complies with the requirements of that sentence.

(4) An order under this section must not require the parent or guardian to enter into a recognizance–

(a) for more than £1,000; or

(b) for a period exceeding 3 years; or

(c) if the offender will attain the age of 18 in a period shorter than 3 years–for a period exceeding that shorter period.

(5) The power to forfeit a recognizance applies in relation to a recognizance entered into pursuant to an order under this section as it applies in relation to a recognizance to keep the peace.

(6) A fine imposed under subsection (2)(b) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid upon a conviction.

(7) In fixing the amount of a recognizance under this section, the court must take into account among other things the means of the parent or guardian so far as they appear or are known to the court, whether taking into account the means of the parent or guardian has the effect of increasing or reducing the amount of the recognizance.

(8) A parent or guardian may appeal to the Supreme Court against an order under this section made by the Magistrates' Court or the Juvenile Court.

(9) A parent or guardian may appeal to the Court of Appeal against an order under this section made by the Supreme Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction.

(10) A court may vary or revoke an order made by it under this section if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

(11) For the purposes of this section, taking care of a person includes giving him protection and guidance and control includes discipline.

Attendance at court of parent or guardian.

642.(1) If a juvenile is charged with an offence or is for any other reason brought before a court, the court–

(a) may in any case; and

(b) must in the case of a juvenile who is under the age of 16 years,

require a person who is a parent or guardian of the juvenile to attend at the court during all the stages of the proceedings, unless and to the extent that the court is satisfied that it would be unreasonable to require such attendance, having regard to the circumstances of the case.

(2) If a juvenile is arrested or taken to a place of safety, the police officer by whom he is arrested or the officer 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, must cause the parent or guardian of the juvenile, if he can be found, to be warned to attend at the court before which the juvenile will appear.

(3) The attendance of the parent or guardian of a juvenile is not required under this section in any case where the juvenile was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

(4) In relation to a juvenile for whom the Care Agency has parental responsibility and who–

(a) is in their care; or

(b) is provided with accommodation by them in the exercise of functions under the Children Act 2009,

the reference in subsections (1) to (3) to a person who is a parent or guardian of the juvenile is to be construed as a reference to the Agency.

(5) Rules of court may make provision–

(a) for enforcing the attendance of the parent or guardian of a juvenile brought before a court;

(b) enabling such parent or guardian to take part in the proceedings;

(c) enabling orders to be made against a parent or guardian; and

(d) prescribing forms of summons to a juvenile and to his parent or guardian.

(6) This section is in addition to and does not derogate from section 83 (Right to have someone informed when arrested) and section 84 (Additional rights of children and young persons who are arrested) in relation to a juvenile in police detention.

Schedule 13 offences

Presumption and determination of age.

643.(1) If in any charge or indictment for any of the offences set out in Schedule 13, except as provided in that Schedule–

(a) it is alleged that the person by or in respect of whom the offence was committed was a juvenile or was under or had attained any specified age; and

(b) he appears to the court to have been at the date of the commission of the alleged offence a juvenile, or to have been under or to have attained the specified age, as the case may be,

he is for the purposes of this Act presumed at that date to have been a juvenile or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

(2) If in any charge or indictment for any of the offences set out in Schedule 13, it is alleged that the person in respect of whom the offence was committed was a juvenile, it is not a defence to prove that a person alleged to have been a child was a young person or that a person alleged to have been a young person was a child if the acts constituting the alleged offence would equally have been an offence if committed in respect of any juvenile.

Power to proceed with case in absence of juvenile.

644. If in any proceedings with relation to any of the offences mentioned in Schedule 13, the court is satisfied that the attendance before the court of any juvenile 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 decided in the absence of the juvenile.

Extension of power to take deposition of juvenile.

645.(1) If a magistrate is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any juvenile in respect of whom any of the offences mentioned in Schedule 13 is alleged to have been committed would involve serious danger to his life or health, the magistrate–

(a) may take in writing the deposition of the juvenile on oath; and

(b) must sign the deposition and add to it 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 of it.

(2) The magistrate taking a deposition pursuant to subsection (1) must send it with his statement–

(a) if the deposition relates to an offence for which an accused person is already committed for trial - to the Registrar of the Supreme Court; and

(b) in any other case - to the clerk to the Magistrates' Court.

Admission of deposition of juvenile in evidence.

646.(1) If, in any proceedings in respect of any of the offences mentioned in Schedule 13, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any juvenile in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, a deposition of the juvenile taken under this Act is admissible in evidence either for or against the defendant without further proof of it if it purports to be signed by the magistrate by or before whom it purports to be taken.

(2) The deposition is not admissible in evidence against the defendant unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his legal representative had, or might have had if present, an opportunity of cross-examining the juvenile making the deposition.

Mode of charging offences and limitation of time.

647.(1) If a person is charged with committing any of the offences mentioned in Schedule 13 in respect of 2 or more juveniles, the same information or summons may charge the offence in respect of all or any of them, but the person charged is not, if he is summarily convicted, liable to a separate penalty in respect of each juvenile except upon separate informations.

(2) The same information or summons may charge a person 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 if those offences are charged together the person charged is not, if he is summarily convicted, liable to a separate penalty for each.

(3) If an offence mentioned in Schedule 13 charged against any person is a continuous offence, it is not necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

(4) A person must not be summarily convicted of an offence set out in Schedule 13 unless the offence was wholly or partly committed within 6 months before the information was laid, but, subject to this section, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

Warrant to search for juvenile suspected of being ill-treated, etc.

648.(1) If it appears to a magistrate on information on oath laid by any person who, in the opinion of the magistrate, is acting in the interests of a juvenile, that there is reasonable cause to suspect–

(a) that the juvenile has been or is being assaulted, ill-treated, or neglected in a manner likely to cause him unnecessary suffering, or injury to health; or

(b) that any offence set out in Schedule 13 has been or is being committed in respect of the juvenile,

the magistrate may issue a warrant authorizing any police officer–

(i) to search for the juvenile and, if it is found that he has been or is being assaulted, ill-treated or neglected in the manner aforesaid, or that any such offence has been or is being committed in respect of him, to take him to and detain him in a place of safety, until he can be brought before the Juvenile Court; or

(ii) to remove the juvenile with or without search to a place of safety and detain him there until he can be brought before the Juvenile Court.

(2) Any police officer authorised by warrant under this section to search for any juvenile, or to remove any juvenile with or without search, may enter, if need be by force, any house, building, or other place specified in the warrant, and may remove him from it.

(3) A warrant issued under this section must be executed by a police officer, who–

(a) must be accompanied by the person laying the information, if that person so desires, unless the magistrate by whom the warrant is issued otherwise directs; and

(b) may also, if the magistrate so directs, be accompanied by a medical practitioner.

(4) It is not necessary in an information or warrant under this section to name the juvenile.

Miscellaneous provisions

General considerations when dealing with juveniles.

649.(1) Every court in dealing with a juvenile who is brought before it, either as an offender or otherwise, must–

(a) have regard to the welfare of the juvenile; and

(b) 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.

(2) The words "conviction" and "sentence" must not be used in relation to juveniles dealt with summarily and any reference in any enactment to a person convicted, a conviction or a sentence is, in the case of a juvenile, to be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

(3) A conviction or finding of guilt of or against a juvenile is to be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons or authorises or requires the imposition of any such disqualification or disability.

Segregation of juveniles in detention.

650. Arrangements must be made–

(a) for preventing as far as possible a juvenile 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 juvenile is jointly charged; and

(b) for ensuring as far as possible that a girl who is a juvenile is while so detained, conveyed, or waiting, under the care of a woman.

Prohibition of unnecessary presence of children in court.

651.(1) No child, other than an infant in arms, may be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary to such a trial, except during any time that his presence is required as a witness or otherwise for the purposes of justice, or if the court consents to his presence.

(2) If a child is present in court when under this section he is not to be permitted to be so the court must order him to be removed.

Power to clear court while juvenile is giving evidence.

652.(1) If, 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 juvenile 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 legal representatives, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness

(2) Nothing in this section authorises the exclusion of *bona fide* representatives of a newspaper or news agency.

(3) The powers conferred on a court by this section are in addition to and do not affect any other powers of the court to hear proceedings *in camera.*

Evidence of child of tender years.

653.(1) Section 342 (Reception of unsworn evidence) applies for the purpose of determining whether a child should give sworn or unsworn evidence.

(2) If a child whose evidence is received unsworn in any proceedings for an offence by virtue of section 342 wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he is liable to be dealt with for an offence under section 459 of the Crimes Act 2011 (Penalty for giving false unsworn evidence).

Summary trial of information against juvenile.

654. Not used.

Power to prohibit publication of certain matter in newspapers.

655.(1) In relation to any proceedings in any court, the court may direct that–

(a) no published report of the proceedings is to reveal the name, address or school, or include any particulars likely to lead to the identification, of any juvenile concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in them;

(b) no picture is to be published or included in a relevant programme as being or including a picture of any juvenile so concerned in the proceedings,

unless to the extent (if at all) permitted by the direction of the court.

(2) If a report or picture is published or included in a relevant programme in contravention of subsection (1), the following persons commit an offence and are liable on summary conviction to a fine not exceeding level 5 on the standard scale–

(a) in the case of publication of a written report or a picture as part of a newspaper - any proprietor, editor or publisher of the newspaper;

(b) in the case of the inclusion of a report or picture in a relevant programme – any corporate body which provides the programme and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(3) This section is in addition to and does not derogate from the provisions of section 628 as regards the proceedings mentioned in subsection (2) of that section.

Dealing with persons who attain the age of 18.

656.(1) If a person, whether charged with an offence or not, is brought before a court, except for the purpose of giving evidence, and it appears to the court that he is a juvenile, the court must make due inquiry as to the age of the person, and for that purpose must take any evidence that is forthcoming at the hearing of the case.

(2) An order or judgment of the court is not invalidated by any subsequent proof that the age of the person has not been correctly stated to the court, and–

(a) the age, presumed or declared by the court to be the age of the person so brought before it is, for the purposes of this Act, deemed to be the true age of that person;

(b) if it appears to the court that the person so brought before it has attained the age of 18 years, that person is for the purposes of this Act deemed not to be a juvenile.

(3) If proceedings in respect of a young person are begun for an offence and he attains the age of 18 before the conclusion of the proceedings, the court may deal with the case and make any order which it could have made if he had not attained that age.

PART 28 – MENTALLY DISORDERED OFFENDERS

Interpretation of Part.

657.(1) In this Part–

"hospital" has the same meaning as in the Mental Health Act 2016;

"hospital order" means an order made under section 662(2), 668 or 674(5);

"interim hospital order" means an order made under section 669;

"medical practitioner" means a person registered as a medical practitioner under the Medical and Health Act 1997;

"mental disorder" has the same meaning as in the Mental Health Act 2016;

"place of safety", in relation to an adult, means any police station or prison and any hospital which is able and willing temporarily to receive him, and in relation to a juvenile has the same meaning as in section 638(8);

"responsible medical officer", in relation to a person liable to be detained in a hospital pursuant to an order or direction under this Part, means the medical practitioner in charge of the treatment of the person;

"supervision order" means an order made under section 677(1);

"transfer direction" means a direction given under section 671(1);

"under a disability", in relation to a defendant, means suffering from mental disorder and consequently incapable of making his defence.

(2) Any reference in this Part to an offence punishable on summary conviction with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.

(3) If a person who is detained in a hospital pursuant to an order or direction under this Part is further detained by virtue of a subsequent order or direction under this Part or a subsequent application for admission for treatment under the Mental Health Act, he must be treated as if the subsequent order, direction or application described him as suffering from the form or forms of mental disorder specified in the earlier order or direction.

Fitness to be tried

Finding of unfitness to be tried.

658.(1) This section applies if on the trial of a person the question arises, at the instance of the defence or otherwise, whether the defendant is under such a disability as would constitute a bar to his being tried.

(2) If the court has reason to believe that the defendant is suffering from mental disorder and consequently incapable of making his defence, it must–

(a) cause the person to be medically examined; and

(b) thereafter take medical and any other available evidence regarding the state of the defendant's mind.

(3) If, having regard to the nature of the supposed disability, the court is of opinion that it is expedient to do so and in the interests of the defendant, it may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence.

(4) If, before the question of fitness to be tried falls to be decided, 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 must not be decided.

(5) Subject to subsections (3) and (4), the question of fitness to be tried must be decided as soon as it arises.

(6) The question of fitness to be tried must be decided by the court without a jury.

(7) The court must not make a decision under subsection (6) except on the written or oral evidence of 2 or more medical practitioners.

(8) If a court finds that the defendant is unfit to be tried, it must make a decision under section 662(2) and for that purpose may adjourn the case for further medical evidence to be adduced in accordance with this Part.

Appeals against finding of unfitness.

659.(1) For the purpose of providing an appeal against a finding of the Magistrates' Court that the defendant is unfit to be tried, sections 268 and 278 apply as if references to a special finding included references to such a decision.

(2) For the purpose of providing an appeal against a finding of the Supreme Court that the defendant is unfit to be tried, section 9 of the Court of Appeal Act applies as if references to a conviction included references to such a finding.

(3) Section 278 applies with necessary modifications to appeals to the Court of Appeal pursuant to subsection (2) as it applies to appeals to the Supreme Court on the question of fitness to be tried.

Finding that the defendant did the act or made the omission charged against him.

660.(1) This section applies if under section 658(6) a court finds that the defendant is unfit to be tried.

(2) The trial must not proceed or further proceed but, in the case of a trial on indictment, the jury must decide–

(a) on the evidence (if any) already given in the trial; and

(b) on any evidence that is adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,

whether they are satisfied, as respects the count or each of the counts on which the defendant was to be or was being tried, that he did the act or made the omission charged against him as the offence.

(3) If as respects that count or any of those counts the jury are not so satisfied, they must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

(4) If the question of disability was decided after arraignment of the defendant, the decision under subsection (2) must be made by the jury by whom he was being tried.

(5) In the case of a summary trial, the trial must not proceed or further proceed, but the court must decide on the evidence as mentioned in subsection (2) whether it is satisfied as respects the information or each of the informations on which the defendant was being tried, that he did the act or made the omission charged against him as an offence.

(6) If as respects that information or any of those informations the court is not so satisfied, it must return a verdict of acquittal as if on the information in question the trial had proceeded to a conclusion.

Acquittal on ground of mental disorder.

661.(1) If–

(a) an act or omission is charged against any person as an offence; and

(b) it is given in evidence on the trial of the person for that offence that he was suffering from mental disorder so as not to be responsible in law for his actions at the time when the act was done or omission made,

then, if it appears to the court before which the 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 must return a special verdict to the effect that the defendant was not guilty by reason of mental disorder.

(2) A court must not return a special verdict under this section except on the written or oral evidence of 2 or more medical practitioners.

Powers to deal with persons not guilty by reason of mental disorder or unfit to be tried.

662.(1) This section applies if–

(a) a verdict is returned under section 661 that the defendant is not guilty by reason of mental disorder; or

(b) findings are recorded–

(i) under section 658, that the defendant is unfit to be tried; and

(ii) under section 660, that he did the act or made the omission charged against him.

(2) The court must make in respect of the defendant–

(a) a hospital order or an interim hospital order;

(b) a supervision order; or

(c) an order for his absolute discharge.

(3) Subsection (2) does not apply if the offence to which the special findings or verdict relate is an offence the sentence for which is fixed by law.

(4) If a person confined in hospital by a hospital order or an interim hospital order is found by the responsible medical officer to be fit to be tried, the officer must forthwith send a certificate to that effect to the court which recorded the finding under section 658 in respect of the person.

(5) A certificate issued under subsection (4) is admissible in evidence and the court must upon receipt of it–

(a) order the removal of the person from the place where he is detained; and

(b) cause him to be brought in custody before it and proceed as provided by section 663.

Resumption of trial if defendant fit to be tried.

663.(1) If, during any criminal proceedings in a court, the defendant appears to be fit to be tried, although it is alleged that, at the time when the act was committed in respect of which he 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, the court must–

(a) proceed with the case; and

(b) if it is a preliminary inquiry whether the defendant ought, in the opinion of the court, to be committed for trial – so commit him.

(2) If a trial is adjourned pursuant to section 658(8), the court may at any time resume the trial and require the defendant to appear or be brought before it.

(3) If, when a person is brought before a court pursuant to subsection (2), the court considers the person fit to be tried, the trial must proceed, but if the court considers the defendant to be still unfit to be tried, it must take action as if the defendant were brought before it for the first time.

Remands to hospital

Remand to hospital for report on defendant's mental condition.

664.(1) The court may at any time remand a person to whom this section applies to a hospital specified by the court for a report on his mental condition.

(2) This section applies to any person who–

(a) is awaiting trial before the Supreme Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law);

(b) has been arraigned before the Supreme Court (whether convicted or not) and has not been sentenced;

(c) is before the Magistrates' Court for an offence punishable on summary conviction with imprisonment, if–

(i) the court is satisfied that he did the act or made the omission charged; or

(ii) he has consented to the exercise by the court of the powers conferred by this section.

(3) Subject to subsection (4), the powers conferred by this section may only be exercised if–

(a) the court is satisfied, on the written or oral evidence of a medical practitioner, that there is reason to suspect that the defendant suffers from mental disorder; and

(b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail.

(4) The court must not remand a defendant to a hospital under this section unless satisfied, on the written or oral evidence of the medical practitioner who would be responsible for making the report, or of some other

person representing the person in charge of the hospital, that arrangements have been made for his admission to that hospital within 7 days from the date of the remand.

(5) If satisfied as mentioned in subsection (4), the court may, pending his admission, direct that the person be conveyed to and detained in a place of safety.

Remand for report.

665.(1) If, in the case of a person to whom section 664 applies, the court does not consider an immediate order under that section to be appropriate, it may–

(a) adjourn the case to enable a medical examination and report to be made; and

(b) remand the person on bail for a period or periods not exceeding 3 weeks at a time, and not more than 12 weeks in all,

in order that an inquiry can be made into his physical or mental condition before the method of dealing with him is decided.

(2) If, on the trial by the Magistrates' Court of an offence punishable with imprisonment, the court–

(a) is satisfied that the defendant did the act or made the omission charged; but

(b) is of the opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is decided,

the court must adjourn the case to enable a medical examination and report to be made, and must remand him.

(3) An adjournment under subsection (1) or (2) must not be for more than 3 weeks at a time if the court remands the defendant in custody, nor for more than 4 weeks at a time if it remands him on bail.

(4) If a person is remanded on bail under subsection (1) or (2)–

(a) it must be a condition of the recognizance that he undergo medical examination by a specified medical practitioner in or at an institution or place specified in the recognizance or by the medical practitioner; and

(b) if arrangements have been made for the reception of the defendant, it may be a condition of the recognizance that, for the purpose of the examination, he reside, for a specified period in or at a specified institution or place.

(5) If the Magistrates' Court on committing or sending any person for trial on bail is of the opinion that an inquiry ought to be made as mentioned in subsection (1) or (2), the court 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 undergo medical examination or reside as mentioned in subsection (4).

(6) Notwithstanding anything in the Mental Health Act 2016, a person released on a recognizance conditioned as provided by this section may be received, for the purpose of medical examination, in a hospital.

Remand for report: Supplementary.

666.(1) If a court has remanded a defendant under section 664 or 665 it may further remand him if it appears to the court, on the written or oral evidence of the medical practitioner responsible for making the report, that a further remand is necessary for completing the assessment of the defendant's mental condition.

(2) The power of further remanding a defendant under either of those sections may be exercised by the court without his being brought before the court if he is legally represented and his representative is given an opportunity of being heard.

(3) A defendant must not be remanded or further remanded under either of those sections for more than 28 days at a time or for more than 12 weeks in all.

(4) A defendant remanded to hospital under either of those sections is entitled–

(a) to obtain at his own expense an independent report on his mental condition from a medical practitioner chosen by him; and

(b) to apply to the court on the basis of it for his remand to be terminated under subsection (5).

(5) The court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

Effect of remand to hospital.

667.(1) If a defendant is remanded under section 664–

(a) a police officer or any other person directed to do so by the court must convey the defendant to the hospital specified by the court within the period specified in the order; and

(b) the person in charge of the hospital must admit him within that period and thereafter detain him in accordance with the provisions of this Part.

(2) If a defendant absconds from a hospital to which he has been remanded under section 664, or while being conveyed to or from that hospital–

(a) he may be arrested without warrant by any police officer;

(b) he must, after being arrested, be brought as soon as practicable before the court that remanded him; and

(c) the court may terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under section 664.

Hospital orders

Making of a hospital order.

668.(1) If a person is convicted before the Supreme Court of an offence punishable with imprisonment, other than an offence the sentence for which is fixed by law, or is convicted by the Magistrates' Court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) are satisfied, the court may by order authorize the person's admission to and detention in a hospital specified in the order.

(2) The conditions referred to in subsection (1) are that–

(a) the court is satisfied, on the written or oral evidence of 2 registered medical practitioners, that the offender is suffering from mental disorder of a nature or degree that makes it appropriate for him to be detained in a hospital for medical treatment; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of

dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(3) If a person is charged before the Magistrates' Court with any act or omission as an offence and the court would have power, on convicting the person of that offence, to make an order under subsection (1) in his case as being a person suffering from mental disorder, then, if the court is satisfied that the person did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting the person.

(4) A hospital order made in respect of a person under this Part–

(a) must specify the hospital to which the person is to be admitted;

(b) must not be made unless the court is satisfied on the written or oral evidence of the registered medical practitioner who would be in charge of the person's treatment, or of someone representing the person in charge of the hospital, that arrangements have been made for the admission of the person to that hospital within 28 days after the making of the order.

(5) The court may, pending the admission of the person within that period, give such directions as it thinks fit for the person's conveyance to and detention in a place of safety.

(6) A hospital order made under section 662(2) must specify the form or forms of mental disorder from which, upon the evidence taken into account under section 658, 660 or 661, the offender is found by the court to be suffering.

(7) No hospital order may be made under section 662(2) unless the offender is described by each of the practitioners whose evidence is taken into account under section 658, 660, or 661 as suffering from the same one of the forms of mental disorder, whether or not he is also described by either of them as suffering from another form.

(8) If a hospital order is made under section 662(2), the court must not–

(a) pass sentence of imprisonment or impose a fine or impose a community sentence in respect of the offence; or

(b) make an order for binding over of a parent or guardian,

but the court may make any other order which it has power to make apart from this section.

(9) A hospital order made in respect of a person under this Part is an order of the court for the purposes of section 38 of the Mental Health Act and the person must be detained in the hospital under Part III of that Act as a criminal person of unsound mind.

Interim hospital orders.

669.(1) If a person is convicted before the Supreme Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by the Magistrates' Court of an offence punishable with imprisonment, and the court before or by which he is convicted is satisfied, on the written or oral evidence of 2 medical practitioners–

(a) that the offender is suffering from mental disorder; and

(b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an interim order authorising his admission to a hospital specified in the order and his detention there in accordance with this section.

(2) In the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is legally represented and his representative is given an opportunity of being heard.

(3) An interim hospital order must not be made for the admission of an offender to a hospital unless the court is satisfied, on the written or oral evidence of the medical practitioner who would be in charge of his treatment, or of some other person representing the person in charge of the hospital, that arrangements have been made for his admission to that hospital within 28 days of the date of the order.

(4) If the court is satisfied as required by subsection (3), the court may, pending the person's admission, give directions for his conveyance to and detention in a place of safety.

(5) An interim hospital order–

(a) remains in force for a period, not exceeding 12 weeks, specified in the order;

(b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted.

(6) No interim hospital order may continue in force for more than 12 months in all and the court must terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the responsible medical officer to deal with the offender in some other way.

(7) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is legally represented and his representative is given an opportunity of being heard.

(8) An interim hospital order made in respect of a person under this Part is an order of the court for the purposes of section 38 of the Mental Health Act and the person must be detained in the hospital under Part III of that Act as a criminal person of unsound mind for the duration of the interim order.

Effect of hospital orders and interim hospital orders.

670.(1) If a hospital order or an interim hospital order is made in respect of an offender–

(a) a police officer or any other person directed to do so by the court must convey the offender to the hospital specified in the order within 28 days; and

(b) the person in charge of the hospital must admit him within that period and thereafter detain him in accordance with the provisions of the Mental Health Act.

(2) If an offender absconds from a hospital in which he is detained pursuant to a hospital order or an interim hospital order, or while being conveyed to or from that hospital–

(a) he may be arrested without warrant by a police officer;

(b) he must, after being arrested, be brought as soon as practicable before the court that made the order; and

(c) the court may terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

(3) A person who is admitted to a hospital pursuant to a hospital order or an interim hospital order is to be treated for the purposes of the Mental Health Act as if he had been so admitted or placed on the date of the order pursuant to an application for admission for treatment duly made under Part II of that Act.

(4) If a person is admitted to a hospital pursuant to a hospital order, any previous application or order by virtue of which he was liable to be detained in a hospital ceases to have effect.

(5) If the order, or the conviction on which it was made, is quashed on appeal, subsection (4) does not apply.

(6) A person admitted to a hospital pursuant to a hospital order is entitled–

(a) to obtain at his own expense an independent report on his mental condition from a medical practitioner chosen by him; and

(b) to apply to the court on the basis of it for the hospital order to be terminated under subsection (7).

(7) The court may at any time terminate a hospital order if it appears to the court that it is appropriate to do so.

Transfer to hospital of prisoners, etc.

Removal to hospital of persons serving sentences of imprisonment, etc.

671.(1) If in the case of a person serving a sentence of imprisonment the Minister is satisfied, by reports from at least 2 medical practitioners, that–

(a) the person is suffering from mental disorder; and

(b) the mental disorder from which the person is suffering is of a nature or degree that makes it appropriate for him to be detained in a hospital for medical treatment,

the Minister may, if he is of the opinion having regard to the public interest and all the circumstances that it is expedient so to do, by warrant direct that the person be removed to and detained in a hospital specified in the direction.

(2) A transfer direction ceases to have effect at the end of 14 days after it is given unless within that period the person with respect to whom it was given has been received into the hospital specified in the direction.

(3) A transfer direction with respect to any person has the same effect as a hospital order made in his case and section 668(7) applies to such a person.

(4) A transfer direction must specify the form or forms of mental disorder referred to in subsection (1)(a) from which, upon the reports taken into account under that subsection, the Minister finds the patient to be suffering.

(5) No transfer direction may be given unless the patient is described in each of the reports mentioned in subsection (4) as suffering from the same form of disorder, whether or not he is also described in either report as suffering from another form.

Removal to hospital of other prisoners.

672.(1) If in the case of a person to whom this section applies the Minister is satisfied by the same reports as are required for the purposes of section 671 that that person–

(a) is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and

(b) is in urgent need of such treatment,

the Minister has the same power of giving a transfer direction in respect of the person under that section as if he were serving a sentence of imprisonment.

(2) This section applies to–

(a) persons detained in a prison who are not serving a sentence of imprisonment;

(b) persons remanded in custody by the Magistrates' Court;

(c) persons detained under the Immigration, Asylum and Refugees Act.

(3) Subsections (3) to (5) of section 671 apply for the purposes of this section and of any transfer direction given by virtue of this section as they apply for the purposes of that section and of any transfer direction under that section.

Prisoners under sentence.

673.(1) If a transfer direction has been given in respect of a person serving a sentence of imprisonment and before his release date the Minister is notified by the responsible medical officer or any other medical practitioner that the person no longer requires treatment in hospital for mental disorder, or that no effective treatment for his disorder can be given in the hospital to which he has been removed, the Minister may–

(a) by warrant direct that he be remitted to the prison, there to be dealt with as if he had not been so removed; or

(b) exercise any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted to the prison,

and on his arrival in the prison or, as the case may be, his release or discharge, the transfer direction ceases to have effect.

(2) In this section, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from the prison.

(3) For the purposes of calculating time spent in prison, a person who, having been transferred pursuant to a transfer direction from the prison, is at large in circumstances in which he is liable to be taken into custody under any provision of this Part, is to be treated as unlawfully at large and absent from the prison.

Detained persons.

674.(1) This section has effect if a transfer direction has been given in respect of a person as described in section 672(2)(a), in this section referred to as "the detainee".

(2) The transfer direction ceases to have effect when the detainee's case is disposed of by the court that has jurisdiction to try or otherwise deal with him, but without affecting any power of that court to make a hospital order or other order under this Part in his case.

(3) If the Minister is notified by the responsible medical officer or any other medical practitioner at any time before the detainee's case is disposed of by that court–

(a) that the detainee no longer requires treatment in hospital for mental disorder; or

(b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the Minister may by warrant direct that he be remitted to the prison, there to be dealt with as if he had not been so removed, and on his arrival at the prison the transfer direction ceases to have effect.

(4) If no direction has been given under subsection (3) and the court with jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer that–

(a) the detainee no longer requires treatment in hospital for mental disorder; or

(b) no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to the prison or released on bail and on his arrival at the prison or, as the case may be, his release on bail the transfer direction ceases to have effect.

(5) If no direction or order has been given or made under subsection (3) or (4) and it appears to the court that has jurisdiction to try or otherwise deal with the detainee that–

(a) it is impracticable or inappropriate to bring the detainee before the court; and

(b) the conditions set out in subsection (6) are satisfied,

the court may make a hospital order in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under subsection (5) if the court–

(a) is satisfied, on the written or oral evidence of at least 2 medical practitioners, that the detainee is suffering from mental disorder of a nature or degree which makes it appropriate for the person to be detained in a hospital for medical treatment medical treatment; and

(b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

Persons remanded by the Magistrates' Court.

675.(1) This section has effect if a transfer direction has been given in respect of a person as described in section 672(2)(b), in this section referred to as "the defendant".

(2) Subject to subsection (5), the transfer direction ceases to have effect on the expiration of the period of remand unless the defendant is sent in custody to the Supreme Court for trial or to be otherwise dealt with.

(3) Subject to subsection (4), the power of further remanding the defendant under section 171 may be exercised by the court without his being brought before the court; and if the court further remands the defendant in custody (whether or not he is brought before the court) the period of remand, for the purposes of this section, is deemed not to have expired.

(4) The court must not under subsection (3) further remand the defendant in his absence unless he has appeared before the court within the previous 6 months.

(5) If the Magistrates' Court is satisfied, on the written or oral evidence of the responsible medical officer –

(a) that the defendant no longer requires treatment in hospital for mental disorder; or

(b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction ceases to have effect even if the period of remand has not expired or the defendant is sent to the Supreme Court as mentioned in subsection (2).

(6) If the defendant is sent to the Supreme Court as mentioned in subsection (2) and the transfer direction has not ceased to have effect under subsection (5), section 674 applies as if the transfer direction given in his case were a direction given in respect of a person falling within that section.

Persons detained under the Immigration, Asylum and Refugee Act.

676.(1) Subject to subsection (2), a transfer direction given in respect of a person detained under the Immigration, Asylum and Refugee Act ceases to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the prison.

(2) If a transfer direction has been given in respect of any such person as is mentioned in subsection (1), then, if the Minister is notified by the responsible medical officer or any other medical practitioner at any time before the expiration of the period there mentioned–

(a) that that person no longer requires treatment in hospital for mental disorder; or

(b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Minister may by warrant direct that he be remitted to the prison, and on his arrival at the prison the transfer direction ceases to have effect.

Supervision orders

Power to make supervision orders.

677.(1) If–

(a) a verdict is returned under section 661 that the defendant is not guilty by reason of mental disorder; or

(b) findings are recorded–

(i) under section 658, that the defendant is unfit to be tried; and

(ii) under section 660, that he did the act or made the omission charged against him,

and the conditions mentioned in subsection (3) are satisfied, the court may make an order requiring the person in respect of whom it is made ("the supervised person") to be under the supervision of a supervising officer for a period specified in the order of not more than 2 years.

(2) A supervision order may require the supervised person to submit, during the whole of the period or a part specified in the order, to treatment by or under the direction of a medical practitioner.

(3) The court must not make a supervision order unless it is satisfied–

(a) that, having regard to all the circumstances of the case, the making of the order is the most suitable means of dealing with the defendant; and

(b) that arrangements have been made for the treatment intended to be specified in the order.

(4) Before making an order under this section, the court must explain to the defendant in ordinary language–

(a) the effect of the order (including any requirements proposed to be included in the order in accordance with section 678 or 680; and

(b) that the Magistrates' Court has power under section 681 to review the order on the application either of the defendant or of the supervising officer.

(5) Immediately after making such an order, the court must give copies of it–

(a) to the supervised person;

(b) to the supervising officer; and

(c) to the person in charge of any institution in which the supervised person is required by the order to reside.

(6) If such an order is made, the supervised person must keep in touch with the supervising officer in accordance with any instructions that the officer gives him from time to time and must notify the officer of any change of address.

Requirements as to medical treatment.

678.(1) A supervision order may, if the court is satisfied as mentioned in subsection (2), include a requirement that the supervised person must submit, during the whole of the period specified in the order or during a specified part of that period, to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.

(2) The court may impose a requirement as mentioned in subsection (1) only if satisfied on the written or oral evidence of 2 or more medical practitioners, that the mental condition of the supervised person–

(a) is such as requires and may be susceptible to treatment; but

(b) is not such as to warrant the making of a hospital order under this Part.

(3) If the court is satisfied on the written or oral evidence of 2 or more medical practitioners that–

(a) because of his medical condition, other than his mental condition, the supervised person is likely to pose a risk to himself or others; and

(b) the condition may be susceptible to treatment,

the supervision order may (whether or not it includes a requirement under subsection (1)) include a requirement that the supervised person must submit, during the whole of the period specified in the order or during a specified part of that period, to treatment by or under the direction of a medical practitioner with a view to the improvement of the condition.

(4) The treatment required by a supervision order must be either–

(a) treatment as a non-resident patient in or at an institution or place specified in the order; or

(b) treatment by or under the direction of a medical practitioner so specified,

but the nature of the treatment must not be specified in the order.

(5) While the supervised person is under treatment as a resident patient pursuant to a requirement of a supervision order, the supervising officer must carry out the supervision only to the extent necessary for the purpose of the revocation or amendment of the order.

Change of place of treatment.

679.(1) If the medical practitioner by whom or under whose direction the supervised person is being treated pursuant to a supervision order is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which–

(a) is not specified in the order; and

(b) is one in or at which the treatment of the supervised person will be given by or under the direction of a medical practitioner,

he may, with the consent of the supervised person, make arrangements for him to be treated accordingly.

(2) If any arrangements as mentioned in subsection (1) are made for the treatment of a supervised person–

(a) the medical practitioner by whom the arrangements are made must give notice in writing to the supervising officer, 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 is deemed to be treatment to which the person is required to submit pursuant to the supervision order.

(3) Arrangements as mentioned in subsection (1) may provide for the supervised person to receive part of his treatment as a resident patient in or at an institution or place of any description, even if it is not one which could have been specified for that purpose in the supervision and treatment order.

Requirement as to residence.

680.(1) A supervision order may include requirements as to the residence of the supervised person.

(2) Before making an order containing any such requirement, the court must consider the home surroundings of the supervised person.

(3) If an order requires the supervised person to reside in a specified place, the period for which he is so required to reside must be specified in the order.

Revocation or amendment of a supervision order.

681.(1) If a supervision order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to the Magistrates' Court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.

(2) The court by which a supervision order was made may on its own initiative revoke the order if, having regard to circumstances which have arisen since the order was made, it considers that it would be inappropriate for the order to continue.

(3) Subject to subsection (4), the Magistrates' Court may, on the application of the supervised person or the supervising officer, by order amend a supervision order–

(a) by cancelling any of the requirements of the order; or

(b) by inserting in the order (either in addition to or instead of any such requirement) any requirement which the court could have included when making it.

(4) The power of the Magistrates' Court under subsection (3) does not include power to amend an order by extending the period specified in it beyond the end of 2 years from the date of the original order.

(5) If the medical practitioner by whom or under whose direction the supervised person is being treated pursuant to any requirement of a supervision order–

(a) is of the opinion mentioned in subsection (6); or

(b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,

he must make a report in writing to that effect to the supervising officer who must apply under subsection (2) to the Magistrates' Court for the variation or cancellation of the requirement.

(6) The opinion referred to in subsection (5) is that–

(a) the treatment of the supervised person should be continued beyond the period specified in the supervision order;

(b) the supervised person needs different treatment, of a kind to which he could be required to submit pursuant to such an order;

(c) the supervised person is not susceptible to treatment; or

(d) the supervised person does not require further treatment.

(7) On the making of an order revoking or amending a supervision order, the clerk of the Magistrates' Court must give a copy of the order to–

(a) the supervised person;

(b) the supervising officer; and

(c) the person in charge of any institution in which the supervised person was required by the original order to reside.

Miscellaneous

Periodical reports.

682.(1) The person in charge of any place in which a person suffering from mental disorder is detained must report in writing to the Minister once a year and at any other time the Minister requires.

(2) A report under subsection (1) must contain such particulars as the Minister requires of the condition and circumstances of every person suffering from mental disorder in the place to which it relates.

(3) The Minister must, at least once in every 2 years during which a person suffering from mental disorder is detained–

(a) review the condition, history and circumstances of the person; and

(b) in the light of reports provided pursuant to this Part, decide whether he ought to be discharged or otherwise dealt with.

(4) If the Minister decides as mentioned in subsection (3)(b), he must initiate, or cause to be initiated, proceedings for a review or revocation of any order made under this Part in accordance with the provisions of this Part.

(5) The requirements of this section are in addition to any other requirement about reporting on persons detained in a hospital contained in the Mental Health Act 2016 or any other enactment.

Appeals against orders.

683.(1) For the purpose of providing an appeal against a hospital order, interim hospital order or supervision order made by the Magistrates' Court, Part 13 applies as if references to a sentence included references to such an order.

(2) For the purpose of providing an appeal against a hospital order, interim hospital order or supervision order made by the Supreme Court, the Court of Appeal Act applies as if references to a sentence included references to such an order.

Evidence by prosecution of mental disorder or diminished responsibility.

684. If 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 actions; or

(b) that at that time he was suffering from such abnormality of mental functioning as is specified in section 151 of the Crimes Act 2011 (Diminished responsibility),

the court must 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.

PART 29 – CODES OF PRACTICE

Codes of practice

Codes of practice on search, arrest, seizure, etc.

685.(1) The Minister must issue one or more codes of practice in connection with–

(a) the exercise by police officers of statutory powers to–

(i) search a person without first arresting him;

(ii) search a vehicle without making an arrest; or

(iii) arrest a person;

(b) the detention, treatment, questioning and identification of persons by police officers;

(c) searches of premises, vehicles and vessels by police officers;

(d) the seizure and treatment of property found by police officers on persons, premises, vehicles or vessels; and

(e) the exercise by police officers of any other statutory or common law powers.

(2) Without limiting subsection (1), the Minister must issue a code of practice in connection with the exercise by police officers of powers under section 91 (Testing for presence of Class A or Class B drugs).

Code on recording of interviews.

686.(1) The Minister must–

(a) issue a code of practice for tape-recording of interviews conducted by police officers at police stations of persons suspected of committing offences; and

(b) make an order requiring that the tape-recording of interviews so conducted of persons suspected of committing offences of any type, or of a type specified in the order; be held in accordance with the code of practice.

(2) The Minister may–

(a) issue a code of practice for the visual recording of interviews conducted by police officers at police stations of persons suspected of committing offences; and

(b) make an order requiring–

(i) the visual recording of interviews so conducted; and

(ii) that such interviews be held in accordance with the code of practice.

(3) A requirement imposed by an order under this section may be imposed in relation to specified cases or specified police stations, or both.

(4) In this section, references to a visual recording include a visual recording which includes an audio recording.

Codes of practice on criminal investigations.

687.(1) The Minister must issue one or more codes of practice containing provisions designed to ensure that–

(a) when a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued;

(b) information which is obtained in the course of a criminal investigation and may be relevant to the investigation is recorded;

(c) any record of such information is retained;

(d) any other material which is obtained in the course of a criminal investigation and may be relevant to the investigation is retained;

(e) information falling within paragraph (b) and material falling within paragraph (d) is revealed to a person who is involved in the prosecution of criminal proceedings arising out of or relating to the investigation and who is identified in accordance with prescribed provisions;

(f) when such a person inspects information or other material pursuant to a requirement that it be revealed to him, and he requests that it be disclosed to the defendant, the defendant is allowed to inspect it or is given a copy of it;

(g) when such a person is given a document indicating the nature of information or other material pursuant to a requirement that it be revealed to him, and he requests that it be disclosed to the defendant, the defendant is allowed to inspect it or is given a copy of it;

(h) the person who is to allow the defendant to inspect information or other material or to give him a copy of it must decide which of those (inspecting or giving a copy) is appropriate;

(i) if the defendant is allowed to inspect material as mentioned in paragraph (f) or (g) and he requests a copy, he is given one unless the person allowing the inspection is of opinion that it is not practicable or not desirable to give him one;

(j) a person mentioned in paragraph (e) is given a written statement that prescribed activities which the code requires have been carried out.

(2) The code or codes may include provision that–

(a) a police officer identified in accordance with prescribed provisions must carry out a prescribed activity which the code requires;

(b) a police officer so identified must take steps to ensure the carrying out by a person (whether or not a police officer) of a prescribed activity which the code requires;

(c) a duty must be discharged by different people in succession in prescribed circumstances (as where a person dies or retires).

(3) The code or codes may include provision about the form in which information is to be recorded.

(4) The code or codes may include provision about the manner in which and the period for which–

(a) a record of information is to be retained; and

(b) any other material is to be retained,

and if a person is charged with an offence the period may extend beyond a conviction or an acquittal.

(5) The code or codes may include provision about the time when, the form in which, the way in which, and the extent to which, information or any other material is to be revealed to the person mentioned in subsection (1)(e).

(6) A person other than a police officer who is charged with the duty of conducting a criminal investigation must in discharging that duty have regard to any relevant provision of a code of practice that would apply if the investigation were conducted by police officers.

Examples of disclosure provisions in a code of practice.

688.(1) This section gives examples of the kinds of provision that may be included in a code of practice on criminal investigations issued under section 687.

(2) The code may provide that if the person required to reveal material has possession of material which he believes is sensitive he must give a document which–

(a) indicates the nature of that material; and

(b) states that he so believes.

(3) The code may provide that if the person required to reveal material has possession of material which is of a description prescribed under this subsection and which he does not believe is sensitive he must give a document which–

(a) indicates the nature of that material; and

(b) states that he does not so believe.

(4) The code may provide that if–

(a) a document is given pursuant to provision contained in the code by virtue of subsection (2); and

(b) a person identified in accordance with prescribed provisions asks for any of the material,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow him to inspect it.

(5) The code may provide that if–

(a) a document is given pursuant to provision contained in the code by virtue of subsection (3);

(b) all or any of the material is of a description prescribed under this subsection; and

(c) a person is identified in accordance with prescribed provisions as entitled to material of that description,

the person giving the document must give a copy of the material of that description to the person so identified or (depending on the circumstances) must allow him to inspect it.

(6) The code may provide that if–

(a) a document is given pursuant to provision contained in the code by virtue of subsection (3);

(b) all or any of the material is not of a description prescribed under subsection (5); and

(c) a person identified in accordance with prescribed provisions asks for material not of that description,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow him to inspect it.

(7) The code may provide that if the person required to reveal material has possession of material which he believes is sensitive and of such a nature that provision contained in the code by virtue of subsection (2) should not apply with regard to it–

(a) that provision is not to apply with regard to the material;

(b) the person must notify a person identified in accordance with prescribed provisions of the existence of the material; and

(c) he must allow the person so notified to inspect the material.

(8) For the purposes of this section material is sensitive to the extent that its disclosure under this Part would be contrary to the public interest.

Code on police interviews of witnesses notified by defendant.

689.(1) The Minister must issue a code of practice which gives guidance to police officers, and other persons charged with the duty of investigating offences, in relation to arranging and conducting interviews of persons–

(a) particulars of whom are given in a defence statement in accordance with section 243(2); or

(b) who are included as proposed witnesses in a notice given under section 245.

(2) The code must include (in particular) guidance in relation to–

(a) information that should be provided to the interviewee and the defendant in relation to such an interview;

(b) the notification of the defendant's legal representative of such an interview;

(c) the attendance of the interviewee's legal representative at such an interview;

(d) the attendance of the defendant's legal representative at such an interview;

(e) the attendance of any other appropriate person at such an interview, taking into account the interviewee's age or any disability of the interviewee.

(3) Any police officer or other person charged with the duty of investigating offences who arranges or conducts such an interview must have regard to the code.

Publication of codes of practice.

690.(1) Before issuing a code of practice, the Minister–

(a) must publish a draft of the code;

(b) must consider any representations made to him about the draft; and

(c) may modify the draft accordingly.

(2) Before issuing a code of practice the Minister must lay it in the Parliament and if the Parliament has not passed a motion disapproving the code within 30 days of the commencement of the next sitting, it will be deemed to be approved by the Parliament and may be issued by the Minister.

(3) Upon being issued by the Minister, a code–

(a) must be published in the Gazette;

(b) does not come into operation until the Minister by order so provides.

(4) An order bringing a code into operation may include transitional or saving provisions.

(5) *Deleted*

(6) A code may be made so as to–

(a) apply only in relation to one or more specified localities in Gibraltar;

(b) have effect only for a specified period;

(c) apply only in relation to specified offences or descriptions of offender.

Amendment or revision of codes of practice.

690A.(1) The Minister may at any time by order amend or revise the whole or any part of a code of practice.

(2) Where the Minister has made an order under subsection (1) the order containing the amendment or revision–

(a) must be published in the Gazette;

(b) must be laid before the Parliament at the next sitting following the date of the publication in the Gazette; and

(c) shall come into operation on such date as the Minister appoints therein.

(3) An order containing an amendment or revision under this section may include transitional or saving provisions.

(4) If the Parliament within 30 days of the commencement of the next sitting, resolves to pass a motion disapproving of the amendment or revision–

(a) any action undertaken in pursuance of the amendment or revision shall be deemed valid if undertaken prior to the resolution of the Parliament;

(b) the Minister shall as soon as practicable thereafter–

(i) revoke the amended or revised code of practice; and

(ii) (notwithstanding the provisions of subsections (1) and (2) of section 690) issue a code of practice in such terms as contained in the relevant code of practice prior to the relevant amendment or revision; and

(c) a code of practice issued under subsection (4)(b)(ii) shall be deemed to have come into operation on the date of the resolution of the Parliament.

(5) Notwithstanding the generality of subsection (1), a code may be amended or revised so as to–

(a) apply only in relation to one or more specified localities in Gibraltar;

(b) have effect only for a specified period;

(c) apply only in relation to specified offences or descriptions of offender

Effect and status of codes of practice.

691.(1) In all criminal and civil proceedings–

(a) a code of practice issued under this Part is admissible in evidence; and

(b) if any provision of a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it is to be taken into account in deciding that question.

(2) Persons other than police officers who have a duty to investigate offences or charge offenders must in the discharge of that duty have regard to any relevant provision of a code of practice.

(3) A failure–

(a) by a police officer to comply with any provision of a code of practice; or

(b) by any person to comply with section 688(6); or

(c) by any person to whom a code or practice applies to have regard to any provision of the code,

does not invalidate any action taken by the police officer or other person or in itself render the officer or other person liable to any criminal or civil proceedings.

(4) A police officer is liable to disciplinary proceedings under Part VIII of the Police Act 2006 for a failure to comply with any provision of a code of practice which imposes a duty on the officer.

(5) If it appears to a court or tribunal conducting criminal or civil proceedings that–

(a) any provision of a code issued under this Part; or

(b) any failure mentioned in subsection (3),

is relevant to any question arising in the proceedings, the provision or failure may be taken into account in deciding the question.

Common law rules as to criminal investigations.

692.(1) A code of practice issued under this Part applies in relation to suspected or alleged offences into which no criminal investigation has begun before it comes into operation.

(2) If a code of practice applies in relation to a suspected or alleged offence, the rules of common law which–

(a) were effective immediately before the appointed day; and

(b) relate to the matter mentioned in subsection (3),

do not apply in relation to the suspected or alleged offence.

(3) The matter is the revealing of material–

(a) by a police officer or other person charged with the duty of conducting an investigation with a view to it being ascertained whether a person should be charged with an offence or whether a person charged with an offence is guilty of it;

(b) to a person involved in the prosecution of criminal proceedings.

(4) In subsection (2) "the appointed day" means the day appointed under section 690(3)(b) for the code of practice to come into operation.

PART 30 – MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Police officers performing duties of higher rank.

693.(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 Chief Inspector, an officer of the rank of Inspector is to be treated as holding the rank of Chief Inspector if–

(a) he has been authorised by an officer holding a rank above the rank of Chief Inspector 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 Chief Inspector 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 a power mentioned in subsection (1) 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 is to 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.

Power of a police officer to use reasonable force.

694. If any provision of this Act–

(a) confers a power on a police officer; 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.

Application of Act to other persons.

695.(1) Subject to subsection (2), and to the extent practicable, the provisions of this Act relating to the investigation of offences, the searching, questioning and detention of suspects, the seizure of property and the retention of evidence apply to customs officers investigating offences or charging offenders as they apply in relation to police officers.

(2) The Minister may by order, after consultation with the Minister for Finance, declare modifications to the manner in which provisions of this Act and the Codes of Practice apply to customs officers including in relation to the harmonisation of the provisions with the Imports and Exports Act, 1986.

(3) Subject to subsection (6) the provisions relating to the investigation of offences, the searching, questioning and detention of suspects, the seizure of property and the retention of evidence apply to persons to whom section 78 of the Police Act 2006 apply when carrying out duties–

(a) in such areas of Gibraltar as are in the possession and under the control of the Ministry of Defences;

(b) in the immediate vicinity of the areas of Gibraltar described in (i) above in relation to the security of such areas.

(4) The Minister with responsibility for justice may by order, to the extent practicable, extend to public officers other than police officers and customs officers the provisions of this Act relating to the investigation of offences, the searching, questioning and detention of suspects, the seizure of property and the retention of evidence.

(5) An order under subsection (3) may make such modifications to the manner in which provisions of this Act apply to persons to whom they are extended by the order as the Minister considers appropriate.

(6) The Minister with responsibility for justice may by order make such modifications to the manner in which provisions of this Act apply to persons by virtue of subsection (3).

Rules of court.

696.(1) Rules of court may provide for 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) In the absence of rules made by the Chief Justice on any matter, a provision of the Criminal Procedure Rules on that matter applies to the extent appropriate.

(3) The power in this section is in addition to the power to make rules under section 4(2).

Regulations.

697.(1) The Minister may make regulations generally for carrying out any of the purposes or provisions of this Act or any matters incidental or consequential to those purposes as appear to the Government to be necessary or proper for giving full effect to this Act or to the obligations of the Government under European Union law.

(2) This power in subsection (1) is in addition to and does not derogate from any other power to make regulations conferred by this Act.

Amendment of Schedules.

698.(1) The Minister may by order published in the *Gazette* amend any Schedule.

(2) The power in subsection (1) is subject to section 587 as to the amendment of Schedule 9 and 10.

(3) An order under this Act amending a Schedule may make such transitional and consequential provisions as appear to the Minister to be necessary or expedient.

Repeals and savings.

699.(1) The Criminal Procedure Act and the Crimes (Vulnerable Witnesses) Act 2009 ("the repealed Acts") are repealed.

(2) Subject to subsection (3), all items of subsidiary legislation made under either of the repealed Acts continue in force as if made under the corresponding provision of this Act until amended or replaced under this Act.

(3) If there is no corresponding provision of this Act under which an item of subsidiary legislation referred to in subsection (2) could be made, the item is repealed, except that it continues to have effect in relation to proceedings that had commenced before the repeal as provided in section 700.

(4) Any direction, exemption, notice or other non-legislative instrument made or issued by the Government or any person or body under either of the repealed Acts which could be made or issued by the Government or an equivalent person or body under this Act continues to have effect as if made or issued by the Government or that person or body under this Act until varied or revoked under this Act.

(5) Any delegation made, direction given or other action taken by a person under either of the repealed Acts which could be taken by an equivalent person under this Act continues to have effect as if taken by that person under this Act.

Transitional provisions.

700.(1) Proceedings for an offence under any enactment or at common law that had commenced before the commencement of this Act must continue in accordance with the provisions of the Criminal Procedure Act as if it had not been repealed.

(2) A provision of this Act applies–

(a) in relation to proceedings on indictment for an offence - only if the person charged with the offence is arraigned on or after the commencement of the relevant provision;

(b) in relation to proceedings in the Magistrates' Court - only if the time when the court begins to receive evidence in the proceedings falls after the commencement of the relevant provision.

(3) If an offence committed before the commencement of this Act is by any enactment in force that was passed before the commencement of this Act made punishable only on summary conviction, it remains only so punishable.

(4) An appeal against conviction or sentence in respect of an offence committed before the commencement of this Act must be conducted as if this Act had not been enacted.

(5) Any investigation of an offence conducted by a police officer or a customs officer or immigration officer which was in progress at the commencement of this Act but had not resulted in the commencement of proceedings must continue under this Act.

(6) All sentences of imprisonment (including suspended sentences), fines, conditional discharges, disqualifications and forfeitures imposed in accordance with the Criminal Procedure Act continue to have effect and can be varied or appealed from as if that Act had not been repealed.

(7) Probation orders made under section 205 of the Criminal Procedure Act continue in force in accordance with that Act until they expire or are revoked under that Act.

(8) All witness summonses, orders for production of documents, recognizances and other orders made under the Criminal Procedure Act continue to have effect as if that Act had not been repealed and may be varied or revoked under that Act.

(9) For purposes of this section, proceedings for an offence commence on–

(a) arrest without warrant;

(b) the issue of a warrant for arrest;

(c) the issue of a summons to appear;

(d) the service of an indictment or other document specifying the charge;

(e) an oral charge,

in respect of the offence.

Consequential amendments.

701.(1) A reference in any other enactment to either of the repealed Acts is, to the extent possible, to be read as a reference to the corresponding provision of this Act.

(2) The Government may by order make such modifications or adaptations of any enactment as appear to it necessary or expedient in consequence of the repeal of the Criminal Procedure Act.

(3) An order under subsection (2) may make such transitional and consequential provisions as appear to the Minister to be necessary or expedient.

Service of documents.

702.(1) Any notice or other document required or authorised by or under this Act to be served on any person may be served on him either by delivering it to him, by leaving it at his proper address or by sending it by post.

(2) Any notice or other document so required or authorised to be served on a corporate body is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of this section, and of section 8 of the Interpretation and General Clauses Act in its application to this section, the proper address of any person is, in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body, and in any other case is the last address of the person to be served which is known to the Government.

Amendment of the Criminal Procedure Act (Police Detention).

703.(1) In section 42 of the Criminal Procedure Act after subsection (2) insert–

"(2A) Any time during which a person is on bail pursuant to subsection shall not be included in the twentyfour hour period referred to in subsection (1).

(2) The amendment made by subsection (1) is deemed always to have had effect.

SCHEDULE 1

(Sections 13(1), 26(2) and 38(7))

SPECIAL PROCEDURE FOR ACCESS TO EXCLUDED MATERIAL

Making of orders by a judge or magistrate

1. If on an application made by a police officer a judge or magistrate is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4.

2. The first set of access conditions is fulfilled if–

(a) there are reasonable grounds for believing that–

(i) an indictable offence has been committed;

(ii) there is material which consists of special procedure material or also includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;

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

(iv) the material is likely to be relevant evidence;

(b) other methods of obtaining the material have–

(i) been tried without success; or

(ii) not been tried because it appeared that they were bound to fail; and

(c) it is in the public interest, having regard to–

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

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

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

3. The second set of access conditions is fulfilled if–

(a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;

(b) but for section 13(2) a search of such premises for that material could have been authorised by the issue of a warrant to a police officer under an enactment other than this Schedule; and

(c) the issue of such a warrant would have been appropriate.

4. An order under this paragraph is an order that the person who appears to the judge or magistrate to be in possession of the material to which the application relates must–

(a) produce it to a police officer for him to take away; or

(b) give a police officer access to it,

not later than 7 days after the date of the order or the end of any longer period the order specifies.

5. If the material consists of information stored in any electronic form–

(a) an order under paragraph 4(a) has effect as an order to produce the material in a form–

(i) in which it can be taken away and in which it is visible and legible; or

(ii) from which it can readily be produced in a visible and legible form;

(b) an order under paragraph 4(b) has effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6. For the purposes of sections 27 and 29 material produced in pursuance of an order under paragraph 4(a) is to be treated as if it were material seized by a police officer.

Notice of application for an order

7. An application for an order under paragraph 4 must be made *inter partes.*

8. Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

9. Such a notice may be served on–

(a) a corporate body - by serving it on the body's secretary or clerk or other similar officer; and

(b) a partnership - by serving it on one of the partners.

10. For the purposes of this Schedule the proper address of a person is–

(a) in the case of secretary or clerk or other similar officer of a corporate body – that of the registered or principal office of that body;

(b) in the case of a partner of a firm - that of the principal office of the firm;

(c) in any other case - the last known address of the person to be served.

11. If notice of an application for an order under paragraph 4 has been served on a person, he must not conceal, destroy, alter or dispose of the material to which the application relates except with–

(a) the leave of a judge or magistrate; or

(b) the written permission of a police officer,

until–

(i) the application is dismissed or abandoned; or

(ii) he has complied with an order under paragraph 4 made on the application.

Issue of warrant by a judge or magistrate

12. If on an application made by a police officer a judge or magistrate is satisfied–

(a) that–

(i) either set of access conditions is fulfilled; and

(ii) any of the further conditions set out in paragraph 14 is also fulfilled; or

(b) that–

(i) the second set of access conditions is fulfilled; and

(ii) an order under paragraph 4 relating to the material has not been complied with,

he may issue a warrant authorising a police officer to enter and search the premises.

13. A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

14. The further conditions mentioned in paragraph 12(a)(ii) are that–

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

(b) it is practicable to communicate with a person entitled to grant entry to the premises, but not practicable to communicate with any person entitled to grant access to the material;

(c) the material contains information which–

(i) is subject to a restriction or obligation such as is mentioned in section 15(2)(b); and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

15.(1) If a person fails to comply with an order under paragraph 4 or contravenes paragraph 11, a judge may deal with him as if he had committed a contempt of the Supreme Court.

(2) Any enactment relating to contempt of the Supreme Court has effect in relation to such a failure as if it were such a contempt.

SCHEDULE 2

(Section 44(2))

PRESERVED POWERS OF ARREST

Sections 71(1) and 74(1) of this Act

Rule 28 of the Elections Rules

Sections 5 and 59 of the Immigration, Asylum and Refugee Act

Sections 75, 76, 79 and 80 of the Mental Health Act 2016

Section 29 of the Prison Act

Section 17A of the Tobacco Act 1997

Sections 53, 62 and 64 of the Traffic Act 2005

Section 9 of the Imports and Exports Act 1986

SCHEDULE 3

(Sections 2(1) and 56)

DESIGNATED POLICE STATIONS

The following are the police stations to be used for the purpose of detaining arrested persons–

1. New Mole House Police Station

SCHEDULE 4

(Section 90(11))

FINGERPRINTING AND SAMPLES: ATTENDANCE AT POLICE STATION

In this Schedule, "appropriate officer" in relation to a person whose fingerprints are to be taken means the officer investigating the offence for which the person was arrested or charged or informed that he would be reported, as the case may be.

Part 1 - Fingerprinting

Persons arrested and released

1.(1) A police officer may require a person to attend a police station for the purpose of taking his fingerprints under section 86(8).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within section 86(8)(b) (fingerprints taken on previous occasion insufficient, etc.) later than 6 months after the day on which the appropriate officer was informed that section 86(4)(a) or (b) applied.

Persons charged, etc.

2.(1) A police officer may require a person to attend a police station for the purpose of taking his fingerprints under section 86(9).

(2) The power under sub-paragraph (1) may not be exercised later than 6 months after–

(a) in a case falling within section 86(9)(a) (fingerprints not taken previously) - the day on which the person was charged or informed that he would be reported; or

(b) in a case falling within section 86(9))b) (fingerprints taken on previous occasion insufficient, etc.) - the day on which the appropriate officer was informed that section 86(4)(a) or (b) applied.

Persons convicted, etc. of an offence in Gibraltar

3.(1) A police officer may require a person to attend a police station for the purpose of taking his fingerprints under section 86(10).

(2) If the condition in section 86(10)(c) is satisfied (fingerprints not taken previously), the power under sub-paragraph (1) may not be exercised later than 2 years after the day on which the person was convicted or cautioned.

(3) If the condition in section 86(10)(d) is satisfied (fingerprints taken on previous occasion insufficient, etc.) the power under subparagraph (1) may not be exercised later than 2 years after the day on which an appropriate officer was informed that section 86(4)(a) or (b) applied.

(4) Sub-paragraphs (2) and (3) do not apply if the offence is a qualifying offence.

Persons convicted, etc. of an offence outside Gibraltar

4. A police officer may require a person to attend a police station for the purpose of taking his fingerprints under section 86(14).

Multiple attendance

5.(1) If a person's fingerprints have been taken under section 86 on 2 occasions in relation to any offence, he may not under this Schedule be required to attend a police station to have his fingerprints taken under that

section in relation to that offence on a subsequent occasion without the authorisation of an officer of at least the rank of Inspector.

(2) If an authorisation is given under sub-paragraph (1)–

(a) the fact of the authorisation; and

(b) the reasons for giving it,

must be recorded as soon as practicable after it has been given.

Part 2 - Intimate samples

Persons suspected to be involved in an offence
6. A police officer may require a person to attend a police station for the purpose of taking an intimate sample from him under section 88(2) if, in the course of the investigation of an offence, 2 or more non-intimate samples suitable for the same means of analysis have been taken from him but have proved insufficient.

Persons convicted, etc. of an offence outside Gibraltar
7. A police officer may require a person to attend a police station for the purpose of taking a sample from him under section 88(4) if 2 or more non-intimate samples suitable for the same means of analysis have been taken from him under section 89(7) but have proved insufficient.

Part 3 - Non-intimate samples

Persons arrested and released
8.(1) A police officer may require a person to attend a police station for the purpose of taking a non-intimate sample from him under section 89(4).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within section 89(4))b) (sample taken on a previous occasion not suitable, etc.) later than 6 months after the day on which the appropriate officer was informed of the matters specified in section 89(4)(b)(i) or (ii).

Persons charged. etc.
9.(1) A police officer may require a person to attend a police station for the purpose of taking a non-intimate sample from him under section 89(4).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within section 89(4)(a) (sample not taken previously) later than 6 months after the day on which he was charged or informed that he would be reported.

(3) The power under sub-paragraph (1) may not be exercised in a case falling within section 89(4))b) (sample taken on a previous occasion not suitable, etc.) later than 6 months after the appropriate officer was informed of the matters specified in section 89(4)(b)(i) or (ii).

Persons convicted etc of an offence in Gibraltar
10.(1) A police officer may require a person to attend a police station for the purpose of taking a non-intimate sample from him under section 89(8)(a).

(2) If the condition in section 89(8)(c) is satisfied (sample not taken previously), the power under sub-paragraph (1) above may not be exercised later than 2 years after the day on which the person was convicted or cautioned.

(3) If the condition in section 89(8)(d) is satisfied (sample taken on a previous occasion not suitable, etc.), the power under subparagraph (1) may not be exercised later than 2 years after the day on which an appropriate officer was informed of the matters specified in section 89(8)(d)(i) or(ii).

(4) Sub-paragraphs (2) and (3) do not apply if the offence is a qualifying offence.

Persons convicted etc of an offence outside Gibraltar

11. A police officer may require a person to attend a police station for the purpose of taking a non-intimate sample from him under section 89(10).

Multiple exercise of power

12.(1) If a non-intimate sample has been taken from a person under section 89 on 2 occasions in relation to any offence, he may not under this Schedule be required to attend a police station to have another such sample taken from him under that section in relation to that offence on a subsequent occasion without the authorisation of an officer of at least the rank of Inspector.

(2) If an authorisation is given under sub-paragraph (1)–

(a) the fact of the authorisation; and

(b) the reasons for giving it,

must be recorded as soon as practicable after it has been given.

Part 4 - General and supplementary

Requirement to have power to take fingerprints or sample

13. A power conferred by this Schedule to require a person to attend a police station for the purposes of taking fingerprints or a sample under any provision of this Act may be exercised only in a case where the fingerprints or sample may be taken from the person under that provision (and, in particular, if any necessary authorisation for taking the fingerprints or sample under that provision has been obtained).

Date and time of attendance

14.(1) A requirement under this Schedule–

(a) must give the person a period of at least 7 days within which he is to attend the police station; and

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

(2) In specifying a period or time or times of day for the purposes of subparagraph (1), the police officer must consider whether the fingerprints or sample could reasonably be taken at a time when the person is for any other reason required to attend the police station.

(3) A requirement under this Schedule may specify a period shorter than 7 days if–

(a) there is an urgent need for the fingerprints or sample for the purposes of the investigation of an offence; and

(b) the shorter period is authorised by an officer of at least the rank of Inspector.

(4) If an authorisation is given under sub-paragraph (3)(b)–

(a) the fact of the authorisation; and

(b) the reasons for giving it,

must be recorded as soon as practicable after it has been given.

(5) If the police officer giving a requirement under this Schedule and the person to whom it is given so agree, it may be varied so as to specify any period within which, or date or time at which, the person must attend; but a variation does not have effect unless confirmed by the police officer in writing.

SCHEDULE 5

(Sections 2(1) and 91)

TRIGGER OFFENCES FOR TESTING FOR DRUGS

1. An offence under any of the following provisions of the Crimes Act 2011 is a trigger offence–

Section 397 (Theft)

Section 398 (Robbery)

Section 399 (Burglary)

Section 400 (Aggravated burglary)

Section 401 (Going equipped for stealing, etc)

Section 404 (Handling stolen goods)

Section 408 (Taking a conveyance without authority)

Section 415 (Fraud)

Section 416 (Fraud by false representation)

Section 417 (Fraud by failing to disclose information)

Section 418 (Fraud by abuse of position)

Section 425 (False accounting)

Section 427 (Suppression, etc., of documents)

Section 564 (Begging)

2. An attempt to commit an offence under any of the following provisions of the Crimes Act 2011 is a trigger offence–

Section 397 (Theft)

Section 398 (Robbery)

Section 399 (Burglary)

Section 404 (Handling stolen goods)

Section 415 (Fraud)

Section 416 (Fraud by false representation)

Section 417 (Fraud by failing to disclose information)

Section 418 (Fraud by abuse of position)

Section 425 (False accounting)

Section 427 (Suppression, etc. of documents)

3. Any offence under section 504 or 506 of the Crimes Act 2011 (production, supply or possession of controlled drugs) is a trigger offence.

SCHEDULE 6

(Sections 145(3), 148(1) and (9) and 163(1))

OFFENCES THAT ARE ONLY TRIABLE SUMMARILY

Offence	Value
1. Offences under section 354 of the Crimes Act 2011 (Destroying or damaging property), excluding any offence committed by destroying or damaging property by fire.	As regards property alleged to have been destroyed - what the property would probably have cost to buy in the open market at the material time. If immediately after the material time the damage was capable of repair– (i) what would probably then have been the market price for the repair of the damage; or (ii) what the property alleged to have been damaged would probably have cost to buy in the open market at the material time, whichever is the less. If immediately after the material time the damage was beyond repair - what the property would probably have cost to buy in the open market at the material time.
2.(a) Aiding, abetting, counselling or procuring the commission of any offence mentioned in paragraph 1; (b) attempting to commit any offence so mentioned; and (c) inciting another to commit any offence so mentioned.	The value indicated in paragraph 1 above for the offence alleged to have been aided, abetted, counselled or procured, or attempted or incited, calculated as for the corresponding entry in paragraph 1 above.
3. Offences under section 409 of the Crimes Act 2011 (Aggravated vehicle-taking) if no allegation is made under subsection (1)(b) other than of damage	The total value of the damage alleged to have been caused. In the case of damage to any property other than the vehicle involved in the offence, as for the corresponding entry in paragraph 1 above, substituting a reference to the time of the accident concerned for any reference to the material time. In the case of damage to the vehicle involved in the offence – (a) if immediately after the vehicle was recovered the damage was capable of repair–

(i) what would probably then have been the market price for the repair of the damage, or

(ii) what the vehicle would probably have cost to buy in the open market immediately before it was unlawfully taken,

whichever is the less; or

(b) if immediately after the vehicle was recovered the damage was beyond repair, what the vehicle would probably have cost to buy in the open market immediately before it was unlawfully taken.

SCHEDULE 7

(Section 312)

QUALIFYING OFFENCES FOR RETRIAL

Offences against the person

Murder

Attempted murder

Soliciting murder

Manslaughter

Kidnapping

Corporate manslaughter

Sexual offences

Rape

Attempted rape

Assault by penetration

Sexual assault

Causing a person to engage in sexual activity without consent

Rape of a child under 16

Assault of a child under 16 by penetration

Sexual assault of a child under 16

Causing or inciting a child under 16 to engage in sexual activity

Sexual activity with a child family member

Sex with an adult relative (Incest) – Penetration or consenting to penetration

Sexual activity with a person with a mental disorder impeding choice

Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity

Drugs offences

Unlawful importation of Class A drug

Unlawful exportation of Class A drug

Fraudulent evasion in respect of Class A drug

Producing or being concerned in production of Class A drug

Criminal damage

Arson endangering life

Causing explosion likely to endanger life or property

Intent or conspiracy to cause explosion likely to endanger life or property

Crimes against humanity

Grave breaches of the Geneva Conventions

Directing terrorist organisation

Hostage-taking

Inchoate offences

An offence of conspiracy to commit an offence listed in this Schedule

Aiding, abetting, counselling or procuring the commission of an offence listed in this Schedule

SCHEDULE 8

(Section 371(4))

CATEGORIES OF OFFENCES THAT ESTABLISH A PROPENSITY

PART A

Theft category

1. An offence under section 397 of the Crimes Act 2011 (Theft).

2. An offence under section 398 of that Act (Robbery).

3. An offence under section 399 of that Act (Burglary) if it was committed with intent to commit an offence of stealing anything in the building or part of a building in question.

4. An offence under section 399 of that Act (Burglary) if the offender stole or attempted to steal anything in the building or that part of it.

5. An offence under section 400 of that Act (aggravated burglary) if the offender committed a burglary described in paragraph 3 or 4 of this Part of the Schedule.

6. An offence under section 401 of that Act (Going equipped for stealing).

7. An offence under section 404 of that Act (Handling stolen goods).

8. An offence under section 408 of that Act (Taking a conveyance without authority).

9. An offence under section 409 of that Act (Aggravated vehicle-taking).

10. An offence under section 412 of that Act (Making off without payment).

11. An offence of–

(a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or

(b) attempting to commit an offence so specified.

PART B

Sexual offences (persons under the age of 16) category

1. An offence under section 103 of the Criminal Offences Act (Rape) if it was committed in relation to a person under the age of 16.

2. An offence under section 107 of that Act (Intercourse with a girl under 13).

3. An offence under section 108 of that Act (Intercourse with a girl under 16).

4. An offence under section 110 of that Act (Intercourse with a defective) if it was committed in relation to a person under the age of 16.

5. An offence under section 112 of that Act (Incest by a man) if it was committed in relation to a person under the age of 16.

6. An offence under section 113 of that Act (Incest by a woman) if it was committed in relation to a person under the age of 16.

7. An offence under section 115 of that Act (Buggery) if it was committed in relation to a person under the age of 16.

8. An offence under section 116 of that Act (Indecency between men) if it was committed in relation to a person under the age of 16.

9. An offence under section 117 of that Act (Indecent assault on a woman) if it was committed in relation to a person under the age of 16.

10. An offence under section 118 of that Act (Indecent assault on a man) if it was committed in relation to a person under the age of 16.

11. An offence under any of sections 213 to 216 of the Crimes Act 2011 (Rape etc.) if it was committed in relation to a person under the age of 16.

12. An offence under any of sections 217 to 220 of the Crimes Act 2011 (Rape etc. against children under 13).

13. An offence under section 221 of that Act (Sexual activity with a child).

14. An offence under section 222 of that Act (Causing, encouraging or assisting a child to engage in sexual activity).

15. An offence under section 226 of that Act if doing it will involve the commission of an offence under section 221 or 222 of that Act (Arranging or facilitating the commission of a child sex offence).

16. An offence under section 228 of that Act (Abuse of position of trust: Sexual activity with a child) if the child is under 16.

17. An offence under section 229 of that Act (Abuse of position of trust: Causing or inciting a child to engage in sexual activity) if the child is under 16.

20. An offence under section 236 of that Act (Sexual activity with a child family member) if the child is under 16.

21. An offence under section 237 of that Act (Inciting a family member to engage in sexual activity) if the family member is under 16.

22. An offence under section 241 of that Act (Sexual activity with a person with a mental disorder impeding choice) if the person is under 16.

23. An offence under section 242 of that Act (Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity) if the person is under 16.

24. An offence under section 245 of that Act (Inducement, threat, or deception to procure activity with a person with a mental disorder) if the person is under 16.

25. An offence under section 246 of that Act (Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) if the person is under 16.

26. An offence under section 249 of that Act (Care workers: Sexual activity with a person with a mental disorder) if the person is under 16.

27. An offence under section 250 of that Act (Care workers: Causing or inciting sexual activity) if it was committed in relation to a person under the age of 16.

28. An offence of–

(a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or

(b) attempting or conspiring to commit an offence so specified.

SCHEDULE 9

(Sections 550(1), 570, 575 and 587)

PART A

STANDARD SCALE OF FINES FOR OFFENCES

Level on the scale	Amount of fine £
1	200
2	400
3	1,000
4	4,000
5	10,000

PART B

MAXIMUM FINE PAYABLE BY A CHILD

The maximum fine payable by a child is £500.

PART C

MAXIMUM FINE PAYABLE BY A YOUNG PERSON

The maximum fine payable by a young person is £2,000.

SCHEDULE 10

(Sections 579(3) and 587)

MAXIMUM PERIODS OF IMPRISONMENT OR DETENTION IN DEFAULT OF PAYMENT

An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years

1. If the amount due at the time imprisonment is imposed is the balance of a sum after part payment, the maximum period applicable to the amount is the period applicable to the whole sum reduced by such number of days as bears to the total number of days in the period the same proportion as the part paid bears to the whole sum.

2. In calculating the reduction required under paragraph 1–

(a) any fraction of a day is to be left out of account; and

(b) the maximum period must not be reduced to less than 5 days.

SCHEDULE 11

(Section 613)

TABLE OF REHABILITATION PERIODS

A sentence of imprisonment of more than 6 months but not more than 30 months	10 years for an adult, 5 years for a juvenile
A sentence of imprisonment of 6 months or less	7 years for an adult, 3½ years for a juvenile
A fine	5 years
A community sentence	5 years for an adult; 2½ years of a juvenile
A conditional discharge or binding over	The date on which the order or binding over ceases or 1 year, whichever is longer
A hospital order under the Mental Health Act	5 years from the date of conviction or 2 years after the order expires, whichever is longer
Disqualification and other orders imposing a disability, prohibition or other penalty	The date on which the order ceases to have effect
An absolute discharge or a caution	6 months
A probation order under the Criminal Procedure Act	5 years for an adult, 2½ years for a juvenile, or the date on which the order ceases, whichever is longer

SCHEDULE 12

(Sections 616 and 617(1))

EXCEPTIONS TO REHABILITATION

In this Schedule–

"care services" means–

(a) accommodation and nursing or personal care in a care home;

(b) personal care or nursing or support for a person to live independently in his own home;

(c) social care services; or

(d) any services provided in an establishment catering for a person with learning difficulties;

"Financial Services Commission" means the body established by the Financial Services Commission Act 2007;

"financial services legislation" means any of the Acts listed in Part 5 of this Schedule and any item of subsidiary legislation made under any of them;

"firearms dealer" has the meaning given by section 2 of the Firearms Act;

"funds in court" has the meaning given by the Supreme Court Fund Rules;

"judicial appointment" means an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

"key worker", in relation to a body, means any individual who is likely, in the course of the duties of his office or employment to play a significant role in the decision making process of the body in relation to the exercise of the body's statutory functions, or to support directly such a person;

"member of the judiciary" means persons appointed to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

"personal information" means any information which is of a personal or confidential nature and is not in the public domain and it includes information in any form but excludes anything disclosed for the purposes of proceedings in a particular cause or matter;

"road service licence" means a road service licence granted under the Transport Act 1998;

"tribunal security officers" means persons who, in the course of their work, guard tribunal buildings, offices and other accommodation used in relation to tribunals against unauthorised access or occupation, against outbreaks of disorder or against damage;

"tribunal" means a person other than a court exercising the judicial power of the Crown;

"vulnerable adult" means a person aged 18 or over who has a condition of the following type–

(a) a substantial learning or physical disability;

(b) physical or mental illness or mental disorder, chronic or otherwise, including an addiction to alcohol or drugs; or

(c) a significant reduction in physical or mental capacity.

PART 1

EXCEPTED PROFESSIONS

1. Barrister or solicitor.

2. Chartered accountant or certified accountant.

3. Medical practitioner, dentist or pharmacist.

4. Nurse, midwife or health visitor.

5. Veterinary surgeon.

6. Psychologist.

7. Legal executive.

8. Actuary.

PART 2

EXCEPTED OFFICES AND EMPLOYMENTS

1. Judicial appointments.

2. The Attorney-General and any officer appointed by him to conduct prosecutions.

3. The clerk to the Magistrates' Court and any assistant clerk.

4. Police officers and police cadets training to becoming police officers.

5. Any employment concerned with the administration of, or otherwise normally carried out wholly or partly within the precincts of the prison, and members of the board of visitors appointed under section 8 of the Prison Act.

6. Traffic wardens appointed under section 84 of the Traffic Act 2005.

7. Probation officers and community service officers.

8. Immigration officers.

9. Any office or employment concerned with the provision of care services to vulnerable adults, and of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services.

10. Any employment or other work concerned with the provision of health services and of such a kind as to enable the holder of the employment or the person engaged in the work to have access to persons in receipt of such services in the course of his normal duties.

11. Any work in an educational institution if the normal duties of the work involve regular contact with juveniles.

12. Any employment with the Gibraltar Society for the Prevention of Cruelty to Animals which involves the humane killing of animals.

13. Any office or employment under the Income Tax Act or the Imports and Exports Act.

14. Any employment concerned with monitoring, for the purpose of protecting juveniles, communications by means of the internet.

15. Any employment or other work which is normally carried out in a hospital used primarily for the provision of psychiatric services.

16. Judges' clerks, secretaries and legal secretaries.

17. Court officers who, in the course of their work, have direct contact with judges of the Supreme Court or the Court of Appeal.

18. Persons who in the course of their work have regular access to personal information relating to an identifiable member of the judiciary.

19. Court officers who, in the course of their work, attend the Magistrates' Court, the Supreme Court or the Court of Appeal.

20. Court security officers, and tribunal security officers.

21. Persons who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts or any tribunal established by law.

22. Persons who execute court judgments and persons who act under their authority.

23. The Official Receiver and his deputy.

24. Persons appointed to the office of Public Trustee under the Public Trustee Act and deputies to or agents of the Public Trustee.

25. Receivers appointed under section 16 of the Supreme Court Act.

26. Home inspectors.

27. Court officers and other persons who exercise functions in connection with the administration and management of funds in court.

28. Persons whose work in any Government department gives them access to sensitive or personal information about children or vulnerable adults.

29. Any office, employment or other work concerned with the establishment or operation of a database under Part XII of the Children Act 2009, if the person has access to information included in the database.

30. Any office, employment or other work of a kind that requires or permits a person to be given access to a database under Part XII of the Children Act 2009.

31. Any employment with the Care Agency.

32. Any work with children, as defined in section 617.

33. Office as or employment with the Licensing Authority or the Gambling Commissioner under the Gambling Act 2005.

34. Any office or employment with the Financial Services Commission.

35. Any employment or other work in which the normal duties involve caring for, training, supervising, or being solely in charge of, juveniles serving in the naval, military or air forces of the Crown.

PART 3

EXCEPTED OCCUPATIONS

1. Firearms dealer.

2. Any occupation in respect of which a licence is required under the Gambling Act 2005.

3. Any occupation which is concerned with carrying on a nursing home in respect of which registration is required by the Medical and Health Act.

4. Any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required pursuant to Part III of the Explosives Regulations to obtain from the Commissioner of Police an explosives certificate certifying him to be a fit person to acquire or acquire and keep explosives.

PART 4

EXCEPTED LICENCES, CERTIFICATES AND PERMITS

1. Firearm certificates, shot gun certificates and permits issued under the Firearms Act.

2. Explosives certificates issued by the Commissioner of Police pursuant to the Explosives Regulations as to the fitness of a person to acquire or acquire and keep explosives.

3. Road service licences issued to owners and drivers of public service vehicles under the Transport Act 1998.

4. Licences issued under the Gambling Act 2005.

PART 5

EXCEPTED QUESTIONERS

1. The Financial Services Commission when asking questions of any person in connection with–

(a) the issue of a certificate, licence, permit or declaration;

(b) the approval of any activity; or

(c) the making of an order or the giving of a direction,

under the financial services legislation.

2. Any person who is required by law or who is duly authorised by the Financial Services Commissioner to ask questions as mentioned in paragraph 1, when asking such questions.

For purposes of this Schedule, the financial services legislation means any of the following Acts and any item of subsidiary legislation made under any of them–

Financial Collateral Arrangements Act 2004.

Financial Institutions (Prudential Supervision) Act, 1997.

Financial Services (Auditors) Act 2009.

Financial Services (Banking) Act.

Financial Services (Collective Investment Schemes) Act 2005.

Financial Services (Distance Marketing) Act 2006.

Financial Services (Insurance Companies) Act.

Financial Services (Investment and Fiduciary Services) Act.

Financial Services (Investor Compensation Scheme) Act 2002.

Financial Services (Listing of Securities) Act 2006.

Financial Services (Markets in Financial Instruments) Act 2006.

Financial Services (Moneylending) Act.

Financial Services (Occupational Pensions Institutions) Act 2006.

Financial Services (Takeover Bids) Act 2006.

Financial Services (Temporary Business Continuity) Act 2007.

Financial Services (Training and Competence) Act 2006.

Financial Services Act, 1998.

Financial Services Commission Act 2007.

PART 6

EXCEPTED PROCEEDINGS

1. Proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any profession specified in Part 1 of this Schedule.

2. Disciplinary proceedings against a police officer.

3. Proceedings under or arising out of the Gambling Act 2005.

4. Proceedings at any hearing conducted pursuant to, or before any tribunal established under, the financial services legislation.

5. Proceedings under the Mental Health Act 2016 before any tribunal.

6. Proceedings under the Firearms Act in respect of–

(a) the registration of a person as a firearms dealer;

(b) the grant, renewal, variation or revocation of a certificate or permit.

7. Proceedings in respect of an application for, or cancellation of registration in respect of a nursing home under the Medical and Health Act.

8. Proceedings on an application to the Commissioner of Police for an explosives certificate pursuant to the Explosives Regulations as to the fitness of the applicant to acquire or acquire and keep explosives.

9. Proceedings relating to a road service licence.

10. Proceedings before the Parole Board.

11. Proceedings under Part IV of the Drug Trafficking Offences Act.

12. Proceedings by way of appeal against, or review of, any decision taken, by virtue of any of the provisions of this Schedule, on consideration of a spent conviction.

13. Proceedings held for the receipt of evidence affecting the determination of any question arising in any proceedings specified in this Schedule.

PART 7

EXCEPTED DECISIONS

1. Any decision by the Financial Services Commission, or any other person or body relating to–

(a) the issue of a certificate, licence, permit or declaration;

(b) the approval of any activity; or

(c) the making of an order or the giving of a direction,

under the financial services legislation, made by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction, or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

2. Any decision of the Financial Services Commission to dismiss, fail to promote or exclude a person from being a key worker of the Commission, made by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction, or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

3. Any decision by the Financial Services Commission, or any other person or body, to dismiss an individual from, to fail to promote to or to exclude an individual from a status under the financial services legislation by reason of, or partly by reason of, a spent conviction of that individual or of his associate, or of any circumstances ancillary to such a conviction, or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

4. Any decision of an investment exchange or clearing house to refuse to admit any person as, or to exclude, a member by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

5. Any decision of the Licensing Authority under the Gambling Act 2005.

SCHEDULE 13

(Sections 643 to 648)

OFFENCES AGAINST JUVENILES WITH RESPECT TO WHICH SPECIAL PROVISIONS APPLY

1. Any offence listed in Schedule 3 to the Crimes Act 2011 (Sexual offences) and committed against or in respect of a juvenile.

2. Any offence listed in Schedule 4 to the Crimes Act 2011 (Offences of violence) and committed against or in respect of a juvenile

3. Aiding, abetting, counselling or procuring the suicide of a juvenile.

4. Common assault or battery.

5. Any other offence involving bodily injury to a juvenile.

6. An offence of–

(a) aiding, abetting, counselling, procuring or inciting the commission of any offence listed in Schedule 3 or 4 to the Crimes Act 2011; or

(b) attempting or conspiring to commit any such offence.

SCHEDULE 14

(Section 12)

SUMMARY OFFENCES IN RESPECT OF WHICH AN APPLICATION UNDER SECTION 12 MAY BE MADE

1. An offence under section 49(3) of the Crimes Act 2011 (Wasteful employment of the Police)

2. An offence under section 58 of the Crimes Act 2011 (Fear or provocation of violence)

3. An offence under section 88 of the Crimes Act 2011 (Intentional harassment, alarm or distress)

4. An offence under section 89 of the Crimes Act 2011 (Harassment, alarm or distress)

5. An offence under section 92 of the Crimes Act 2011 (Harassing conduct)

6. An offence under section 96 of the Crimes Act 2011 (Offence of sending letters etc. with intent to cause distress or anxiety)

7. An offence under section 97 of the Crimes Act 2011 (Offence of improper use of public electronic communications network)

8. An offence under section 97A of the Crimes Act 2011 (Offence of harassment etc. of a person in his home)

9. An offence under section 132 of the Crimes Act 2011 (Dealing in offensive weapons)

10. An offence under section 62 of the Traffic Act 2005 (Driving, or being in charge, when under influence of drink or drugs)

11. An offence under section 63 of the Traffic Act 2005 (Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.