Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART I

CRIMINAL COURTS

JURISDICTION AND POWERS

The High Court

1 Judges in the High Court

(1) The Lord President of the Court of Session shall be the Lord Justice General and shall perform his duties as the presiding judge of the High Court.

(2) Every person who is appointed to the office of one of the Senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.

(3) If any difference arises as to the rotation of judges in the High Court, it shall be determined by the Lord Justice General, whom failing by the Lord Justice Clerk.

(4) Any Lord Commissioner of Justiciary may preside alone at the trial of an accused before the High Court.

(5) Without prejudice to subsection (4) above, in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside for the whole or any part of the trial.

2 Fixing of High Court sittings

(1) The High Court shall sit at such times and places as the Lord Justice General, whom failing the Lord Justice Clerk, may, after consultation with the Lord Advocate, determine.

(2) Without prejudice to subsection (1) above, the High Court shall hold such additional sittings as the Lord Advocate may require.

(3) Where an accused has been cited to attend a sitting of the High Court, the prosecutor may, at any time before the commencement of his trial, apply to the Court to transfer the case to another sitting of the High Court; and a single judge of the High Court may—

(a) after giving the accused or his counsel an opportunity to be heard; or

(b) on the joint application of all parties,

make an order for the transfer of the case.

(4) Where no cases have been indicted for a sitting of the High Court or if it is no longer expedient that a sitting should take place, it shall not be necessary for the sitting to take place.

(5) If any case remains indicted for a sitting which does not take place in pursuance of subsection (4) above, subsection (3) above shall apply in relation to the transfer of any other such case to another sitting.

Solemn courts: general

3 Jurisdiction and powers of solemn courts

(1) The jurisdiction and powers of all courts of solemn jurisdiction, except so far as altered or modified by any enactment passed after the commencement of this Act, shall remain as at the commencement of this Act.

(2) Any crime or offence which is triable on indictment may be tried by the High Court sitting at any place in Scotland.

(3) The sheriff shall, without prejudice to any other or wider power conferred by statute, not be entitled, on the conviction on indictment of an accused, to pass a sentence of imprisonment for a term exceeding three years.

(4) Subject to subsection (5) below, where under any enactment passed or made before 1st January 1988 (the date of commencement of section 58 of the Criminal Justice (Scotland) Act 1987) an offence is punishable on conviction on indictment by imprisonment for a term exceeding two years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding two years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding two but not exceeding three years.

(5) Nothing in subsection (4) above shall authorise the imposition by the sheriff of a sentence in excess of the sentence specified by the enactment as the maximum sentence which may be imposed on conviction of the offence.

(6) Subject to any express exclusion contained in any enactment, it shall be lawful to indict in the sheriff court all crimes except murder, treason, rape and breach of duty by magistrates.

The sheriff

4 Territorial jurisdiction of sheriff

(1) Subject to the provisions of this section, the jurisdiction of the sheriffs, within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores and anchoring grounds in or adjoining such sheriffdoms and includes all criminal maritime causes and proceedings (including those applying to persons furth of Scotland) provided that the accused is, by virtue of any enactment or rule of law, subject to the jurisdiction of the sheriff before whom the case or proceeding is raised.

(2) Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.

(3) It shall not be competent for the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land.

(4) The sheriff shall have a concurrent jurisdiction with every other court of summary jurisdiction in relation to all offences competent for trial in such courts.

5 The sheriff: summary jurisdiction and powers

(1) The sheriff, sitting as a court of summary jurisdiction, shall continue to have all the jurisdiction and powers exercisable by him at the commencement of this Act.

(2) The sheriff shall, without prejudice to any other or wider powers conferred by statute, have power on convicting any person of a common law offence—

(a) to impose a fine not exceeding the prescribed sum;

(b) to ordain the accused to find caution for good behaviour for any period not exceeding 12 months to an amount not exceeding the prescribed sum either in lieu of or in addition to a fine or in addition to imprisonment;

(c) failing payment of such fine, or on failure to find such caution, to award imprisonment in accordance with section 219 of this Act;

(d) to impose imprisonment, for any period not exceeding three months.

(3) Where a person is convicted by the sheriff of—

(a) a second or subsequent offence inferring dishonest appropriation of property, or attempt thereat; or

(b) a second or subsequent offence inferring personal violence,

he may, without prejudice to any wider powers conferred by statute, be sentenced to imprisonment for any period not exceeding six months.

(4) It shall be competent to prosecute summarily in the sheriff court the following offences—

(a) uttering a forged document;

(b) wilful fire-raising;

(c) robbery; and

(d) assault with intent to rob.

District courts

6 District courts: area, constitution and prosecutor

(1) Each commission area shall be the district of a district court, and the places at which a district court sits and, subject to section 8 of this Act, the days and times when it sits at any given place, shall be determined by the local authority; and in determining where and when a district court should sit, the local authority shall have regard to the desirability of minimising the expense and inconvenience occasioned to those directly involved, whether as parties or witnesses, in the proceedings before the court.

(2) The jurisdiction and powers of the district court shall be exercisable by a stipendiary magistrate or by one or more justices, and no decision of the court shall be questioned on the ground that it was not constituted as required by this subsection unless objection was taken on that ground by or on behalf of a party to the proceedings not later than the time when the proceedings or the alleged irregularity began.

(3) All prosecutions in a commission area shall proceed at the instance of the procurator fiscal.

(4) The procurator fiscal for an area which includes a commission area shall have all the powers and privileges conferred on a district prosecutor by section 6 of the District Courts (Scotland) Act 1975.

(5) The prosecutions authorised by the said Act of 1975 under complaint by the procurator fiscal shall be without prejudice to complaints at the instance of any other person entitled to make the same.

(6) In this section—

"commission area" means the area of a local authority;

"justice" means a justice of the peace appointed or deemed to have been appointed under section 9 of the said Act of 1975; and

"local authority" means a council constituted under section 2 of the Local Government (Scotland) Act 1994.

7 District court: jurisdiction and powers

(1) A district court shall continue to have all the jurisdiction and powers exercisable by it at the commencement of this Act.

(2) Where several offences, which if committed in one commission area could be tried under one complaint, are alleged to have been committed in different commission areas, proceedings may be taken for all or any of those offences under one complaint before the district court of any one of such commission areas, and any such offence may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the jurisdiction of that court.

(3) Except in so far as any enactment (including this Act or an enactment passed after this Act) otherwise provides, it shall be competent for a district court to try any statutory offence which is triable summarily.

(4) It shall be competent, whether or not the accused has been previously convicted of an offence inferring dishonest appropriation of property, for any of the following offences to be tried in the district court—

(a) theft or reset of theft;
(b) falsehood, fraud or wilful imposition;
(c) breach of trust or embezzlement,

where (in any such case) the amount concerned does not exceed level 4 on the standard scale.

(5) A district court when constituted by a stipendiary magistrate shall, in addition to the jurisdiction and powers mentioned in subsection (1) above, have the summary criminal jurisdiction and powers of a sheriff.

(6) The district court shall, without prejudice to any other or wider powers conferred by statute, be entitled on convicting of a common law offence—
(a) to impose imprisonment for any period not exceeding 60 days;
(b) to impose a fine not exceeding level 4 on the standard scale;
(c) to ordain the accused (in lieu of or in addition to such imprisonment or fine) to find caution for good behaviour for any period not exceeding six months and to an amount not exceeding level 4 on the standard scale;
(d) failing payment of such fine or on failure to find such caution, to award imprisonment in accordance with section 219 of this Act,

but in no case shall the total period of imprisonment imposed in pursuance of this subsection exceed 60 days.

(7) Without prejudice to any other or wider power conferred by any enactment, it shall not be competent for a district court, as respects any statutory offence—
(a) to impose a sentence of imprisonment for a period exceeding 60 days;
(b) to impose a fine of an amount exceeding level 4 on the standard scale; or
(c) to ordain an accused person to find caution for any period exceeding six months or to an amount exceeding level 4 on the standard scale.

(8) The district court shall not have jurisdiction to try or to pronounce sentence in the case of any person—
(a) found within its jurisdiction, and brought before it accused or suspected of having committed any offence at any place beyond its jurisdiction; or
(b) brought before it accused or suspected of having committed within its jurisdiction any of the following offences—
(i) murder, culpable homicide, robbery, rape, wilful fire-raising, or attempted wilful fire-raising;
(ii) theft by housebreaking, or housebreaking with intent to steal;
(iii) theft or reset, falsehood fraud or wilful imposition, breach of trust or embezzlement, where the value of the property is an amount exceeding level 4 on the standard scale;
(iv) assault causing the fracture of a limb, assault with intent to ravish, assault to the danger of life, or assault by stabbing;
(v) uttering forged documents or uttering forged bank or banker's notes, or offences under the Acts relating to coinage.

(9) Without prejudice to subsection (8) above, where either in the preliminary investigation or in the course of the trial of any offence it appears that the offence is one which—
(a) cannot competently be tried in the court before which an accused is brought; or

(b) in the opinion of the court in view of the circumstances of the case, should be dealt with by a higher court,

the court may take cognizance of the offence and commit the accused to prison for examination for any period not exceeding four days.

(10) Where an accused is committed as mentioned in subsection (9) above, the prosecutor in the court which commits the accused shall forthwith give notice of the committal to the procurator fiscal of the district within which the offence was committed or to such other official as is entitled to take cognizance of the offence in order that the accused may be dealt with according to law.

Sittings of sheriff and district courts

8 Sittings of sheriff and district courts

(1) Notwithstanding any enactment or rule of law, a sheriff court or a district court—

(a) shall not be required to sit on any Saturday or Sunday or on a day which by virtue of subsection (2) or (3) below is a court holiday; but

(b) may sit on any day for the disposal of criminal business.

(2) A sheriff principal may in an order made under section 17(1)(b) of the Sheriff Courts (Scotland) Act 1971 prescribe in respect of criminal business not more than 10 days, other than Saturdays and Sundays, in a calendar year as court holidays in the sheriff courts within his jurisdiction; and may in the like manner prescribe as an additional court holiday any day which has been proclaimed, under section 1(3) of the Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.

(3) Notwithstanding section 6(1) of this Act, a sheriff principal may, after consultation with the appropriate local authority, prescribe not more than 10 days, other than Saturdays and Sundays, in a calendar year as court holidays in the district courts within his jurisdiction; and he may, after such consultation, prescribe as an additional holiday any day which has been proclaimed, under section 1(3) of the said Banking and Financial Dealings Act 1971, to be a bank holiday either throughout the United Kingdom or in a place or locality in the United Kingdom within his jurisdiction.

(4) A sheriff principal may in pursuance of subsection (2) or (3) above prescribe different days as court holidays in relation to different sheriff or district courts.

Territorial jurisdiction: general

9 Boundaries of jurisdiction

(1) Where an offence is committed in any harbour, river, arm of the sea or other water (tidal or otherwise) which runs between or forms the boundary of the jurisdiction of two or more courts, the offence may be tried by any one of such courts.

(2) Where an offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of 500 metres of any such boundary, or partly within the jurisdiction of one court and partly within the jurisdiction of another court or courts, the offence may be tried by any one of such courts.

(3) Where an offence is committed against any person or in respect of any property in or on any carriage, cart or vehicle employed in a journey by road or railway, or on board any vessel employed in a river, loch, canal or inland navigation, the offence may be tried by any court through whose jurisdiction the carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed.

(4) Where several offences, which if committed in one sheriff court district could be tried under one indictment or complaint, are alleged to have been committed by any person in different sheriff court districts, the accused may be tried for all or any of those offences under one indictment or complaint before the sheriff of any one of such sheriff court districts.

(5) Where an offence is authorised by this section to be tried by any court, it may be dealt with, heard, tried, determined, adjudged and punished as if the offence had been committed wholly within the jurisdiction of such court.

10 Crimes committed in different districts

(1) Where a person is alleged to have committed in more than one sheriff court district a crime or crimes to which subsection (2) below applies, he may be indicted to the sheriff court of such one of those districts as the Lord Advocate determines.

(2) This subsection applies to—

(a) a crime committed partly in one sheriff court district and partly in another;

(b) crimes connected with each other but committed in different sheriff court districts;

(c) crimes committed in different sheriff court districts in succession which, if they had been committed in one such district, could have been tried under one indictment.

(3) Where, in pursuance of subsection (1) above, a case is tried in the sheriff court of any sheriff court district, the procurator fiscal of that district shall have power to prosecute in that case even if the crime was in whole or in part committed in a different district, and the procurator fiscal shall have the like powers in relation to such case, whether before, during or after the trial, as he has in relation to a case arising out of a crime or crimes committed wholly within his own district.

11 Certain offences committed outside Scotland

(1) Any British citizen or British subject who in a country outside the United Kingdom does any act or makes any omission which if done or made in Scotland would constitute the crime of murder or of culpable homicide shall be guilty of the same crime and subject to the same punishment as if the act or omission had been done or made in Scotland.

(2) Any British citizen or British subject employed in the service of the Crown who, in a foreign country, when acting or purporting to act in the course of his employment, does any act or makes any omission which if done or made in Scotland would constitute an offence punishable on indictment shall be guilty of the same offence and subject to the same punishment, as if the act or omission had been done or made in Scotland.

(3) A person may be proceeded against, indicted, tried and punished for an offence to which this section applies—

(a) in any sheriff court district in Scotland in which he is apprehended or is in custody; or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that district.

(4) Any person who—

(a) has in his possession in Scotland property which he has stolen in any other part of the United Kingdom; or

(b) in Scotland receives property stolen in any other part of the United Kingdom,

may be dealt with, indicted, tried and punished in Scotland in like manner as if he had stolen it in Scotland.

PART II

POLICE FUNCTIONS

Lord Advocate's instructions

12 Instructions by Lord Advocate as to reporting of offences

The Lord Advocate may, from time to time, issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

Detention and questioning

13 Powers relating to suspects and potential witnesses

(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence at any place, he may require—

(a) that person, if the constable finds him at that place or at any place where the constable is entitled to be, to give his name and address and may ask him for an explanation of the circumstances which have given rise to the constable's suspicion;

(b) any other person whom the constable finds at that place or at any place where the constable is entitled to be and who the constable believes has information relating to the offence, to give his name and address.

(2) The constable may require the person mentioned in paragraph (a) of subsection (1) above to remain with him while he (either or both)—

(a) subject to subsection (3) below, verifies any name and address given by the person;

(b) notes any explanation proffered by the person.

(3) The constable shall exercise his power under paragraph (a) of subsection (2) above only where it appears to him that such verification can be obtained quickly.

(4) A constable may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with him.

(5) A constable shall inform a person, when making a requirement of that person under—

(a) paragraph (a) of subsection (1) above, of his suspicion and of the general nature of the offence which he suspects that the person has committed or is committing;

(b) paragraph (b) of subsection (1) above, of his suspicion, of the general nature of the offence which he suspects has been or is being committed and that the reason for the requirement is that he believes the person has information relating to the offence;

(c) subsection (2) above, why the person is being required to remain with him;

(d) either of the said subsections, that failure to comply with the requirement may constitute an offence.

(6) A person mentioned in—

(a) paragraph (a) of subsection (1) above who having been required—

(i) under that subsection to give his name and address; or

(ii) under subsection (2) above to remain with a constable,

fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale;

(b) paragraph (b) of the said subsection (1) who having been required under that subsection to give his name and address fails, without reasonable excuse, to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) A constable may arrest without warrant any person who he has reasonable grounds for suspecting has committed an offence under subsection (6) above.

14 Detention and questioning at police station

(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable may, for the purpose of facilitating the carrying out of investigations—

(a) into the offence; and

(b) as to whether criminal proceedings should be instigated against the person,

detain that person and take him as quickly as is reasonably practicable to a police station or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the police station or, as the case may be, the other premises or place.

(2) Detention under subsection (1) above shall be terminated not more than six hours after it begins or (if earlier)—

(a) when the person is arrested;

(b) when he is detained in pursuance of any other enactment; or

(c) where there are no longer such grounds as are mentioned in the said subsection (1),

and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.

(3) Where a person has been released at the termination of a period of detention under subsection (1) above he shall not thereafter be detained, under that subsection, on the same grounds or on any grounds arising out of the same circumstances.

(4) Subject to subsection (5) below, where a person has previously been detained in pursuance of any other enactment, and is detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.

(5) Subsection (4) above shall not apply in relation to detention under section 41(3) of the Prisons (Scotland) Act 1989 (detention in relation to introduction etc. into prison of prohibited article), but where a person was detained under section 41(3) immediately prior to his detention under subsection (1) above the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.

(6) At the time when a constable detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—

(a) the place where detention begins and the police station or other premises to which the person is taken;

(b) any other place to which the person is, during the detention, thereafter taken;

(c) the general nature of the suspected offence;

(d) the time when detention under subsection (1) above begins and the time of the person's arrival at the police station or other premises;

(e) the time when the person is informed of his rights in terms of subsection (9) below and of subsection (1)(b) of section 15 of this Act and the identity of the constable so informing him;

(f) where the person requests such intimation to be sent as is specified in section 15(1)(b) of this Act, the time when such request is—

(i) made;

(ii) complied with; and

(g) the time of the person's release from detention or, where instead of being released he is arrested in respect of the alleged offence, the time of such arrest.

(7) Where a person is detained under subsection (1) above, a constable may—

(a) without prejudice to any relevant rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;

(b) exercise the same powers of search as are available following an arrest.

(8) A constable may use reasonable force in exercising any power conferred by subsection (1), or by paragraph (b) of subsection (7), above.

(9) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and a constable shall so inform him both on so detaining him and on arrival at the police station or other premises.

15 Rights of person arrested or detained

(1) Without prejudice to section 17 of this Act, a person who, not being a person in respect of whose custody or detention subsection (4) below applies—

(a) has been arrested and is in custody in a police station or other premises, shall be entitled to have intimation of his custody and of the place where he is being held sent to a person reasonably named by him;

(b) is being detained under section 14 of this Act and has been taken to a police station or other premises or place, shall be entitled to have intimation of his detention and of the police station or other premises or place sent to a solicitor and to one other person reasonably named by him,

without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary.

(2) A person shall be informed of his entitlement under subsection (1) above—

(a) on arrival at the police station or other premises; or

(b) where he is not arrested, or as the case may be detained, until after such arrival, on such arrest or detention.

(3) Where the person mentioned in paragraph (a) of subsection (1) above requests such intimation to be sent as is specified in that paragraph there shall be recorded the time when such request is—

(a) made;

(b) complied with.

(4) Without prejudice to the said section 17, a constable shall, where a person who has been arrested and is in such custody as is mentioned in paragraph (a) of subsection (1) above or who is being detained as is mentioned in paragraph (b) of that subsection appears to him to be a child, send without delay such intimation as is mentioned in the said paragraph (a), or as the case may be paragraph (b), to that person's parent if known; and the parent—

(a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in resect of which the person has been arrested or detained, may; and

(b) in any other case shall,

be permitted access to the person.

(5) The nature and extent of any access permitted under subsection (4) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.

(6) In subsection (4) above —

(a) "child" means a person under 16 years of age; and

(b) "parent" includes guardian and any person who has the actual custody of a child.

16 Drunken persons: power to take to designated place

(1) Where a constable has power to arrest a person without a warrant for any offence and the constable has reasonable grounds for suspecting that that person is drunk, the

constable may, if he thinks fit, take him to any place designated by the Secretary of State for the purposes of this section as a place suitable for the care of drunken persons.

(2) A person shall not by virtue of this section be liable to be detained in any such place as is mentioned in subsection (1) above, but the exercise in his case of the power conferred by this section shall not preclude his being charged with any offence.

Arrest: access to solicitor

17 Right of accused to have access to solicitor

(1) Where an accused has been arrested on any criminal charge, he shall be entitled immediately upon such arrest —

(a) to have intimation sent to a solicitor that his professional assistance is required by the accused, and informing the solicitor—

(i) of the place where the person is being detained;

(ii) whether the person is to be liberated; and

(iii) if the person is not to be liberated, the court to which he is to be taken and the date when he is to be so taken; and

(b) to be told what rights there are under—

(i) paragraph (a) above;

(ii) subsection (2) below; and

(iii) section 35(1) and (2) of this Act.

(2) The accused and the solicitor shall be entitled to have a private interview before the examination or, as the case may be, first appearance.

Prints and samples

18 Prints, samples etc. in criminal investigations

(1) This section applies where a person has been arrested and is in custody or is detained under section 14(1) of this Act.

(2) A constable may take from the person fingerprints, palm prints and such other prints and impressions of an external part of the body as the constable may, having regard to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take.

(3) Subject to subsection (4) below, all record of any prints or impressions taken under subsection (2) above, all samples taken under subsection (6) below and all information derived from such samples shall be destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 246(3) of this Act.

(4) The duty under subsection (3) above to destroy samples taken under subsection (6) below and information derived from such samples shall not apply—

(a) where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken; or

(b) where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.

(5) No sample, or information derived from a sample, retained by virtue of subsection (4) above shall be used—

(a) in evidence against the person from whom the sample was taken; or

(b) for the purposes of the investigation of any offence.

(6) A constable may, with the authority of an officer of a rank no lower than inspector, take from the person—

(a) from the hair of an external part of the body other than pubic hair, by means of cutting, combing or plucking, a sample of hair or other material;

(b) from a fingernail or toenail or from under any such nail, a sample of nail or other material;

(c) from an external part of the body, by means of swabbing or rubbing, a sample of blood or other body fluid, of body tissue or of other material;

(d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material.

(7) A constable may use reasonable force in exercising any power conferred by subsection (2) or (6) above.

(8) Nothing in this section shall prejudice—

(a) any power of search;

(b) any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or

(c) any power to take prints, impressions or samples under the authority of a warrant.

19 Prints, samples etc. in criminal investigations: supplementary provisions

(1) This section applies where a person convicted of an offence—

(a) has not, since the conviction, had a sample, print or impression taken from him; or

(b) has (whether before or after the conviction) had a sample, print or impression taken from him but it was not suitable for the means of analysis for which it was taken or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.

(2) Where this section applies, a constable may, within the permitted period—

(a) take from the convicted person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable reasonably considers it appropriate to take; and

(b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample.

(3) A constable—

(a) may require the convicted person to attend a police station for the purposes of subsection (2) above;

(b) may, where the convicted person is in legal custody by virtue of section 295 of this Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.

(4) In subsection (2) above, "the permitted period" means—

(a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;

(b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that the sample, print or impression was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.

(5) A requirement under subsection (3)(a) above—

(a) shall give the person at least seven days' notice of the date on which he is required to attend;

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

(6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.

20 Use of prints, samples etc

Without prejudice to any power to do so apart from this section, prints, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such prints, impressions, samples and information.

Schedule 1 offences

21 Schedule 1 offences: power of constable to take offender into custody

(1) Without prejudice to any other powers of arrest, a constable may take into custody without warrant—

(a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;

(b) any person who has committed, or whom he had reason to believe to have committed, any of the offences mentioned in that Schedule, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.

(2) Where a person has been arrested under this section, the officer in charge of a police station may—

(a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or

(b) liberate him without any such undertaking; or

(c) refuse to liberate him, and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) in any other case, not exceeding 3 months.

(4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.

Police liberation

22 Liberation by police

(1) Where a person has been arrested and charged with an offence which may be tried summarily, the officer in charge of a police station may—

(a) liberate him upon a written undertaking, signed by him and certified by the officer, in terms of which the person undertakes to appear at a specified court at a specified time; or

(b) liberate him without any such undertaking; or

(c) refuse to liberate him.

(2) A person in breach of an undertaking given by him under subsection (1) above without reasonable excuse shall be guilty of an offence and liable on summary conviction to the following penalties—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) where conviction is in the sheriff court, not exceeding 3 months.

(3) The refusal of the officer in charge to liberate a person under subsection (1)(c) above and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.

(4) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.

PART III

BAIL

23 Bail applications

(1) Any person accused on petition of a crime which is by law bailable shall be entitled immediately, on any occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply to the sheriff for bail, and the prosecutor shall be entitled to be heard against any such application.

(2) The sheriff shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

(3) Where an accused is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

(4) Where bail is refused before committal until liberation in due course of law on an application under subsection (1) above, the application for bail may be renewed after such committal.

(5) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, except murder or treason, and having given the prosecutor an opportunity to be heard, admit or refuse to admit the person to bail.

(6) Where a person is charged on complaint with an offence, any judge having jurisdiction to try the offence may, at his discretion, on the application of the accused and after giving the prosecutor an opportunity to be heard, admit or refuse to admit the accused to bail.

(7) An application under subsection (5) or (6) above shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

(8) This section applies whether or not the accused is in custody at the time he appears for disposal of his application.

24 Bail and bail conditions

(1) All crimes and offences except, subject to subsection (2) below, murder and treason are bailable.

(2) Nothing in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

(3) It shall not be lawful to grant bail or release for a pledge or deposit of money, and—

(a) release on bail may be granted only on conditions which subject to subsection (6) below, shall not include a pledge or deposit of money;

(b) liberation may be granted by the police under section 21, 22 or 43 of this Act.

(4) In granting bail the court or, as the case may be, the Lord Advocate shall impose on the accused—

(a) the standard conditions; and

(b) such further conditions as the court or, as the case may be, the Lord Advocate considers necessary to secure—

(i) that the standard conditions are observed; and

(ii) that the accused makes himself available for the purpose of participating in an identification parade or of enabling any print, impression or sample to be taken from him.

(5) The standard conditions referred to in subsection (4) above are conditions that the accused—

(a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice;

(b) does not commit an offence while on bail;

(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; and

(d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.

(6) The court or, as the case may be, the Lord Advocate may impose as one of the conditions of release on bail a requirement that the accused or a cautioner on his behalf deposits a sum of money in court, but only where the court or, as the case may be, the Lord Advocate is satisfied that the imposition of such condition is appropriate to the special circumstances of the case.

(7) In any enactment, including this Act and any enactment passed after this Act—

(a) any reference to bail shall be construed as a reference to release on conditions in accordance with this Act or to conditions imposed on bail, as the context requires;

(b) any reference to an amount of bail fixed shall be construed as a reference to conditions, including a sum required to be deposited under subsection (6) above;

(c) any reference to finding bail or finding sufficient bail shall be construed as a reference to acceptance of conditions imposed or the finding of a sum required to be deposited under subsection (6) above.

(8) In this section and sections 25 and 27 to 29 of this Act, references to an accused and to appearance at a diet shall include references respectively to an appellant and to appearance at the court on the day fixed for the hearing of an appeal.

25 Bail conditions: supplementary

(1) The court shall specify in the order granting bail, a copy of which shall be given to the accused—

(a) the conditions imposed; and

(b) an address, within the United Kingdom (being the accused's normal place of residence or such other place as the court may, on cause shown, direct) which, subject to subsection (2) below, shall be his proper domicile of citation.

(2) The court may on application in writing by the accused while he is on bail alter the address specified in the order granting bail, and this new address shall, as from such

date as the court may direct, become his proper domicile of citation; and the court shall notify the accused of its decision on any application under this subsection.

(3) In this section "proper domicile of citation" means the address at which the accused may be cited to appear at any diet relating to the offence with which he is charged or an offence charged in the same proceedings as that offence or to which any other intimation or document may be sent; and any citation at or the sending of an intimation or document to the proper domicile of citation shall be presumed to have been duly carried out.

26 Bail: circumstances where not available

(1) Notwithstanding sections 23, 24 (except subsection (2)), 30, 32, 33 and 112 of this Act, a person who in any proceedings has been charged with or convicted of—

(a) attempted murder;

(b) culpable homicide;

(c) rape; or

(d) attempted rape,

in circumstances where this section applies shall not be granted bail in those proceedings.

(2) This section applies where—

(a) the person has previously been convicted by or before a court in any part of the United Kingdom of any offence specified in subsection (1) above or of murder or manslaughter; and

(b) in the case of a previous conviction of culpable homicide or of manslaughter—

(i) he was sentenced to imprisonment or, if he was then a child or young person, to detention under any of the relevant enactments;

(ii) a hospital order was imposed in respect of him;

(iii) an order having the same effect as a hospital order was made in respect of him under section 57(2)(a) of this Act; or

(iv) an order having equivalent effect to an order referred to in sub-paragraph (ii) or (iii) above has been made in respect of him by a court in England and Wales.

(3) This section applies whether or not an appeal is pending against conviction or sentence or both.

(4) In this section—

"conviction" includes—

(a) a finding that a person is not guilty by reason of insanity;

(b) a finding under section 55(2) of this Act;

(c) a finding under section 4A(3) of the Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and

(d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;

and "convicted" shall be construed accordingly; and

"the relevant enactments" means—

(a) as respects Scotland, sections 205(1) to (3) and 208 of this Act;

(b) as respects England and Wales, section 53(2) of the Children and Young Persons Act 1933; and

(c) as respects Northern Ireland, section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968.

27 Breach of bail conditions: offences

(1) Subject to subsection (7) below, an accused who having been granted bail fails without reasonable excuse—

(a) to appear at the time and place appointed for any diet of which he has been given due notice; or

(b) to comply with any other condition imposed on bail,

shall, subject to subsection (3) below, be guilty of an offence and liable on conviction to the penalties specified in subsection (2) below.

(2) The penalties mentioned in subsection (1) above are—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) in any other case, not exceeding 3 months.

(3) Where, and to the extent that, the failure referred to in subsection (1)(b) above consists in the accused having committed an offence while on bail (in this section referred to as "the subsequent offence"), he shall not be guilty of an offence under that subsection but, subject to subsection (4) below, the court which sentences him for the subsequent offence shall, in determining the appropriate sentence or disposal for that offence, have regard to—

(a) the fact that the offence was committed by him while on bail and the number of bail orders to which he was subject when the offence was committed;

(b) any previous conviction of the accused of an offence under subsection (1)(b) above; and

(c) the extent to which the sentence or disposal in respect of any previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

(4) The court shall not, under subsection (3) above, have regard to the fact that the subsequent offence was committed while the accused was on bail unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

(5) Where the maximum penalty in respect of the subsequent offence is specified by or by virtue of any enactment, that maximum penalty shall, for the purposes of the court's determination, by virtue of subsection (3) above, of the appropriate sentence or disposal in respect of that offence, be increased—

(a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and

(b) where it is a period of imprisonment—

(i) as respects a conviction in the High Court or the sheriff court, by 6 months; and

(ii) as respects a conviction in the district court, by 60 days,

notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

(6) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (3) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.

(7) An accused who having been granted bail in relation to solemn proceedings fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice (where such diet is in respect of solemn proceedings) shall be guilty of an offence and liable on conviction on indictment to the following penalties—

(a) a fine; and

(b) imprisonment for a period not exceeding 2 years.

(8) At any time before the trial of an accused under solemn procedure for the original offence, it shall be competent—

(a) to amend the indictment to include an additional charge of an offence under this section;

(b) to include in the list of witnesses or productions relating to the original offence, witnesses or productions relating to the offence under this section.

(9) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(10) A court which finds an accused guilty of an offence under this section may remit the accused for sentence in respect of that offence to any court which is considering the original offence.

(11) In this section "the original offence" means the offence with which the accused was charged when he was granted bail or an offence charged in the same proceedings as that offence.

28 Breach of bail conditions: arrest of offender, etc

(1) A constable may arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed on his bail.

(2) An accused who is arrested under this section shall wherever practicable be brought before the court to which his application for bail was first made not later than in the course of the first day after his arrest, such day not being, subject to subsection (3) below, a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act.

(3) Nothing in subsection (2) above shall prevent an accused being brought before a court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.

(4) Where an accused is brought before a court under subsection (2) or (3) above, the court, after hearing the parties, may—

(a) recall the order granting bail;

(b) release the accused under the original order granting bail; or

(c) vary the order granting bail so as to contain such conditions as the court thinks it necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.

(5) The same rights of appeal shall be available against any decision of the court under subsection (4) above as were available against the original order of the court relating to bail.

(6) For the purposes of this section and section 27 of this Act, an extract from the minute of proceedings, containing the order granting bail and bearing to be signed by the clerk of court, shall be sufficient evidence of the making of that order and of its terms and of the acceptance by the accused of the conditions imposed under section 24 of this Act.

29 Bail: monetary conditions

(1) Without prejudice to section 27 of this Act, where the accused or a cautioner on his behalf has deposited a sum of money in court under section 24(6) of this Act, then—

(a) if the accused fails to appear at the time and place appointed for any diet of which he has been given due notice, the court may, on the motion of the prosecutor, immediately order forfeiture of the sum deposited;

(b) if the accused fails to comply with any other condition imposed on bail, the court may, on conviction of an offence under section 27(1)(b) of this Act and on the motion of the prosecutor, order forfeiture of the sum deposited.

(2) If the court is satisfied that it is reasonable in all the circumstances to do so, it may recall an order made under subsection (1)(a) above and direct that the money forfeited shall be refunded, and any decision of the court under this subsection shall be final and not subject to review.

(3) A cautioner, who has deposited a sum of money in court under section 24(6) of this Act, shall be entitled, subject to subsection (4) below, to recover the sum deposited at any diet of the court at which the accused appears personally.

(4) Where the accused has been charged with an offence under section 27(1)(b) of this Act, nothing in subsection (3) above shall entitle a cautioner to recover the sum deposited unless and until—

(a) the charge is not proceeded with; or

(b) the accused is acquitted of the charge; or

(c) on the accused's conviction of the offence, the court has determined not to order forfeiture of the sum deposited.

(5) The references in subsections (1)(b) and (4)(c) above to conviction of an offence shall include references to the making of an order in respect of the offence under section 246(3) of this Act.

30 Bail review

(1) This section applies where a court has refused to admit a person to bail or, where a court has so admitted a person, the person has failed to accept the conditions imposed or that a sum required to be deposited under section 24(6) of this Act has not been so deposited.

(2) A court shall, on the application of any person mentioned in subsection (1) above, have power to review its decision to admit to bail or its decision as to the conditions

imposed and may, on cause shown, admit the person to bail or, as the case may be, fix bail on different conditions.

(3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.

(4) Nothing in this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the conditions imposed.

31 Bail review on prosecutor's application

(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—

(a) intimate the application to the person granted bail;

(b) fix a diet for hearing the application and cite that person to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

(3) On hearing an application under subsection (1) above the court may—

(a) withdraw the grant of bail and remand the person in question in custody; or

(b) grant bail, or continue the grant of bail, either on the same or on different conditions.

(4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.

32 Bail appeal

(1) Where an application for bail—

(a) after committal until liberation in due course of law; or

(b) by a person charged on complaint with an offence,

is refused or where the applicant is dissatisfied with the amount of bail fixed, he may appeal to the High Court which may, in its discretion order intimation to the Lord Advocate or, as the case may be, the prosecutor.

(2) Where, in any case, an application for bail is granted, or, in summary proceedings an accused is ordained to appear, the public prosecutor, if dissatisfied—

(a) with the decision allowing bail;

(b) with the amount of bail fixed; or

(c) in summary proceedings, that the accused has been ordained to appear,

may appeal to the High Court, and the applicant shall not be liberated, subject to subsection (7) below, until the appeal by the prosecutor is disposed of.

(3) Written notice of appeal shall be immediately given to the opposite party by a party appealing under this section.

(4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.

(5) Where an applicant in an appeal under this section is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant's age for trial or sentence.

(6) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

(7) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the applicant to whom bail has been granted shall, if the bail fixed has been found by him, be liberated after 72 hours from the granting of the application, whether the appeal has been disposed of or not, unless the High Court grants an order for his further detention in custody.

(8) In computing the period mentioned in subsection (7) above, Sundays and public holidays, whether general or court holidays, shall be excluded.

(9) When an appeal is taken under this section by the prosecutor in summary proceedings against the fact that the accused has been ordained to appear, subsections (7) and (8) above shall apply as they apply in the case of an appeal against the granting of bail or the amount fixed.

(10) Notice to the governor of the prison of the issue of an order such as is mentioned in subsection (7) above within the time mentioned in that subsection bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the applicant pending arrival of the order in due course of post.

33 Bail: no fees exigible

No clerks fees, court fees or other fees or expenses shall be exigible from or awarded against an accused in respect of his application for bail or of the appeal of such application to the High Court.

PART IV

PETITION PROCEDURE

Warrants

34 Petition for warrant

(1) A petition for warrant to arrest and commit a person suspected of or charged with crime may be in the forms—

(a) set out in Schedule 2 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form; and Schedule 3 to this Act shall apply to any such petition as it applies to the indictment.

(2) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of

witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

Judicial examination

35 Judicial examination

(1) The accused's solicitor shall be entitled to be present at the examination.

(2) The sheriff may delay the examination for a period not exceeding 48 hours from and after the time of the accused's arrest, in order to allow time for the attendance of the solicitor.

(3) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such a charge, it shall be unnecessary to take a declaration, and, subject to section 36 of this Act, the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.

(4) Nothing in subsection (3) above shall prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so; and that declaration shall be taken in further examination.

(5) Where, subsequent to examination or further examination on any charge, the prosecutor desires to question the accused as regards an extrajudicial confession, whether or not a full admission, allegedly made by him to or in the hearing of a constable, which is relevant to the charge and as regards which he has not previously been examined, the accused may be brought before the sheriff for further examination.

(6) Where the accused is brought before the sheriff for further examination the sheriff may delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused's solicitor.

(7) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.

(8) This section applies to procedure on petition, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

36 Judicial examination: questioning by prosecutor

(1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether the first or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any admission, denial, explanation, justification or comment which the accused may have as regards anything to which subsections (2) to (4) below apply.

(2) This subsection applies to matters averred in the charge, and the particular aims of a line of questions under this subsection shall be to determine—

(a) whether any account which the accused can give ostensibly discloses a defence; and

(b) the nature and particulars of that defence.

(3) This subsection applies to the alleged making by the accused, to or in the hearing of a constable, of an extrajudicial confession (whether or not a full admission) relevant to the charge, and questions under this subsection may only be put if the accused has, before the examination, received from the prosecutor or from a constable a written record of the confession allegedly made.

(4) This subsection applies to what is said in any declaration emitted in regard to the charge by the accused at examination.

(5) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—

(a) the question should not be designed to challenge the truth of anything said by the accused;

(b) there should be no reiteration of a question which the accused has refused to answer at the examination; and

(c) there should be no leading questions,

and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.

(6) The accused shall be told by the sheriff—

(a) where he is represented by a solicitor at the judicial examination, that he may consult that solicitor before answering any question; and

(b) that if he answers any question put to him at the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (10) below.

(7) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.

(8) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.

(9) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal.

(10) Without prejudice to any rule of law, on the conclusion of an examination under this section the prosector shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.

(11) The duty imposed by subsection (10) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.

37 Judicial examination: record of proceedings

(1) The prosecutor shall provide for a verbatim record to be made by means of shorthand notes or by mechanical means of all questions to and answers and declarations by the accused in examination, or further examination, under sections 35 and 36 of this Act.

(2) A shorthand writer shall—

(a) sign the shorthand notes taken by him of the questions, answers and declarations mentioned in subsection (1) above and certify the notes as being complete and correct; and

(b) retain the notes.

(3) A person recording the questions, answers and declarations mentioned in subsection (1) above by mechanical means shall—

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings to which the record relates; and

(c) retain the record.

(4) The prosecutor shall require the person who made the record mentioned in subsection (1) above, or such other competent person as he may specify, to make a transcript of the record in legible form; and that person shall—

(a) comply with the requirement;

(b) certify the transcript as being a complete and correct transcript of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record; and

(c) send the transcript to the prosecutor.

(5) A transcript certified under subsection (4)(b) above shall, subject to section 38(1) of this Act, be deemed for all purposes to be a complete and correct record of the questions, answers and declarations mentioned in subsection (1) above.

(6) Subject to subsections (7) to (9) below, within 14 days of the date of examination or further examination, the prosecutor shall—

(a) serve a copy of the transcript on the accused examined; and

(b) serve a further such copy on the solicitor (if any) for that accused.

(7) Where at the time of further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsection (6) above and subsection (1) of section 38 of this Act, the sheriff shall (either or both)—

(a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;

(b) subject to subsection (8) below, postpone the trial diet.

(8) Postponement under paragraph (b) of subsection (7) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a) of that subsection alone, or paragraphs (a) and (b) together, would not be practicable.

(9) Any time limit mentioned in subsection (6) above and subsection (1) of section 38 of this Act (including any such time limit as modified by a direction under subsection (7) above) may be extended, in respect of the case, by the High Court.

(10) A copy of—

(a) a transcript required by paragraph (a) of subsection (6) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor; or

(b) a notice required by paragraph (a) of section 38(1) of this Act to be served on an accused or on the prosecutor,

shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

38 Judicial examination: rectification of record of proceedings

(1) Subject to subsections (7) to (9) of section 37 of this Act, where notwithstanding the certification mentioned in subsection (5) of that section the accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (6) of that section contains an error or is incomplete he may—

(a) within 10 days of service under the said paragraph (a), serve notice of such opinion on the prosecutor or as the case may be the accused; and

(b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to be rectified,

and the sheriff shall within 7 days of the application hear the prosecutor and the accused in chambers and may authorise rectification.

(2) Where—

(a) the person on whom notice is served under paragraph (a) of subsection (1) above agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;

(b) the accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (a) above, nevertheless proceed.

(3) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (1) above shall be the sheriff before whom the examination or further examination to which the application relates was conducted.

(4) Any decision of the sheriff, as regards rectification under subsection (1) above, shall be final.

39 Judicial examination: charges arising in different districts

(1) An accused against whom there are charges in more than one sheriff court district may be brought before the sheriff of any one such district at the instance of the procurator fiscal of such district for examination on all or any of the charges.

(2) Where an accused is brought for examination as mentioned in subsection (1) above, he may be dealt with in every respect as if all of the charges had arisen in the district where he is examined.

(3) This section is without prejudice to the power of the Lord Advocate under section 10 of this Act to determine the court before which the accused shall be tried on such charges.

Committal

40 Committal until liberated in due course of law

(1) Every petition shall be signed and no accused shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.

(2) Any such warrant for imprisonment which either proceeds on an unsigned petition or does not express the particular charge shall be null and void.

(3) The accused shall immediately be given a true copy of the warrant for imprisonment signed by the constable or person executing the warrant before imprisonment or by the prison officer receiving the warrant.

PART V

CHILDREN AND YOUNG PERSONS

41 Age of criminal responsibility

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

42 Prosecution of children

(1) No child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his instance; and no court other than the High Court and the sheriff court shall have jurisdiction over a child under the age of 16 years for an offence.

(2) Where a child is charged with any offence, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(3) Where the child is arrested, the constable by whom he is arrested or the police officer in charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found, to be warned to attend at the court before which the child will appear.

(4) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section 305 of this Act, for applying, with the necessary adaptations and modifications, such of the provisions of this Act relating to summary proceedings as appear appropriate for the purpose.

(5) The parent or guardian whose attendance is required under this section is—

(a) the parent who has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to the child; or

(b) the guardian having actual possession and control of him.

(6) The attendance of the parent of a child shall not be required under this section in any case where the child was before the institution of the proceedings removed from the care or charge of his parent by an order of a court.

(7) Where a child is to be brought before a court, notification of the day and time when, and the nature of the charge on which, the child is to be so brought shall be sent by

the chief constable of the area in which the offence is alleged to have been committed to the local authority for the area in which the court will sit.

(8) Where a local authority receive notification under subsection (7) above they shall make such investigations and submit to the court a report which shall contain such information as to the home surroundings of the child as appear to them will assist the court in the disposal of his case, and the report shall contain information, which the appropriate education authority shall have a duty to supply, as to the school record, health and character of the child.

(9) Any child detained in a police station, or being conveyed to or from any criminal court, or waiting before or after attendance in such court, shall be prevented from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged.

(10) Any female child shall, while detained, being conveyed or waiting as mentioned in subsection (9) above, be kept under the care of a woman.

43 Arrangements where children arrested

(1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff, a police officer of the rank of inspector or above or the officer in charge of the police station to which he is brought, shall inquire into the case, and, subject to subsection (3) below, shall liberate him on a written undertaking being entered into by him or his parent or guardian that he will attend at the hearing of the charge.

(2) An undertaking mentioned in subsection (1) above shall be signed by the child or, as the case may be, the parent or guardian and shall be certified by the officer mentioned in that subsection.

(3) A person shall not be liberated under subsection (1) where—

(a) the charge is one of homicide or other grave crime;

(b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or

(c) the officer has reason to believe that his liberation would defeat the ends of justice.

(4) Where a person who is apparently a child having been apprehended is not liberated as mentioned in subsection (1) above, the police officer referred to in that subsection shall cause him to be kept in a place of safety other than a police station until he can be brought before a sheriff unless the officer certifies—

(a) that it is impracticable to do so;

(b) that he is of so unruly a character that he cannot safely be so detained; or

(c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him,

and the certificate shall be produced to the court before which he is brought.

(5) Where a person who is apparently a child has not been liberated as mentioned in subsection (1) above but has been kept under subsection (4) above, and it is decided not to proceed with the charge against him, a constable shall so inform the Principal Reporter.

(6) Any person, who without reasonable excuse is in breach of an undertaking entered into by him under subsection (1) above after having been given due notice of the time and place of the diet, shall be guilty of an offence, and liable on summary conviction in addition to any other penalty which it is competent for the court to impose on him, to a fine not exceeding level 3 on the standard scale.

(7) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1) above and bearing to be signed and certified, shall be sufficient evidence of the undertaking given by the accused.

44 Detention of children

(1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential accommodation provided under Part II of the Children (Scotland) Act 1995 by the appropriate local authority for such period not exceeding one year as may be specified in the order in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.

(2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.

(3) Where a child in respect of whom an order is made under this section is detained by the appropriate local authority, that authority shall have the same powers and duties in respect of the child as they would have if he were subject to a supervision requirement.

(4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.

(5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation of children in respect of whom orders have been made under this section.

(6) Where a child is detained in residential accommodation in pursuance of an order under—

(a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (7) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;

(b) subsection (1) above or (8) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—

(i) for such period and on such conditions as the local authority consider appropriate; or

(ii) unconditionally.

(7) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement, the effect of that requirement shall commence or, as the case may be, resume upon such release.

(8) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following the commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential accommodation provided by the authority which released him and that his detention in that accommodation or any other such accommodation provided by that authority shall continue for the whole or any part of the period which—

(a) begins with the date of the order for his return; and

(b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.

(9) An order under subsection (8) above for return to residential accommodation provided by the appropriate local authority—

(a) shall be taken to be an order for detention in residential accommodation for the purpose of this Act and any appeal; and

(b) shall, as the court making that order may direct, either be for a period of detention in residential accommodation before and to be followed by, or to be concurrent with, any period of such detention to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).

(10) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) or (8) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order.

(11) In this section—

"the appropriate local authority" means—

(a) where the child usually resides in Scotland, the local authority for the area in which he usually resides;

(b) in any other case, the local authority for the area in which the offence was committed; and

"secure accommodation" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995.

45 Security for child's good behaviour

(1) Where a child has been charged with an offence the court may order his parent or guardian to give security for his co-operation in securing the child's good behaviour.

(2) Subject to subsection (3) below, an order under this section shall not be made unless the parent or guardian has been given the opportunity of being heard.

(3) Where a parent or guardian has been required to attend and fails to do so, the court may make an order under this section.

(4) Any sum ordered to be paid by a parent or guardian on the forfeiture of any security given under this section may be recovered from him by civil diligence or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

(5) In this section "parent" means either of the child's parents, if that parent has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to him.

46 Presumption and determination of age of child

(1) Where a person charged with an offence is brought before a court other than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, and the age presumed or declared by the court to be the age of that person shall, for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937, be deemed to be the true age of that person.

(2) The court in making any inquiry in pursuance of subsection (1) above shall have regard to the definition of child for the purposes of this Act.

(3) Where in an indictment or complaint for—

(a) an offence under the Children and Young Persons (Scotland) 1937;

(b) any of the offences mentioned in paragraphs 3 and 4 of Schedule 1 to this Act; or

(c) an offence under section 1, 10(1) to (3) or 12 of the Criminal Law (Consolidation) (Scotland) Act 1995,

it is alleged that the person by or in respect of whom the offence was committed was a child or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 or Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 be presumed at that date to have been a child or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

(4) Where, in an indictment or complaint for an offence under the Children and Young Persons (Scotland) Act 1937 or any of the offences mentioned in Schedule 1 to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

(5) An order or judgement of the court shall not be invalidated by any subsequent proof that—

(a) the age of a person mentioned in subsection (1) above has not been correctly stated to the court; or

(b) the court was not informed that at the material time the person was subject to a supervision requirement or that his case had been referred to a children's hearing by virtue of regulations made under the Children (Scotland) Act 1995

for the purpose of giving effect to orders made in different parts of the United Kingdom.

(6) Where it appears to the court that a person mentioned in subsection (1) above has attained the age of 17 years, he shall for the purposes of this Act or the Children and Young Persons (Scotland) Act 1937 be deemed not to be a child.

(7) In subsection (3) above, references to a child (other than a child charged with an offence) shall be construed as references to a child under the age of 17 years; but except as aforesaid references in this section to a child shall be construed as references to a child within the meaning of section 307 of this Act.

47 Restriction on report of proceedings involving children

(1) Subject to subsection (3) below, no newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—

(a) as being a person against or in respect of whom the proceedings are taken; or

(b) as being a witness in the proceedings.

(2) Subject to subsection (3) below, no picture which is, or includes, a picture of a person under the age of 16 years concerned in proceedings as mentioned in subsection (1) above shall be published in any newspaper in a context relevant to the proceedings.

(3) The requirements of subsections (1) and (2) above shall be applied in any case mentioned in any of the following paragraphs to the extent specified in that paragraph—

(a) where a person under the age of 16 years is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the requirements shall not apply unless the court so directs;

(b) where, at any stage of the proceedings, the court, if it is satisfied that it is in the public interest so to do, directs that the requirements (including the requirements as applied by a direction under paragraph (a) above) shall be dispensed with to such extent as the court may specify; and

(c) where the Secretary of State, after completion of the proceedings, if satisfied as mentioned in paragraph (b) above, by order dispenses with the requirements to such extent as may be specified in the order.

(4) This section shall, with the necessary modifications, apply in relation to sound and television programmes included in a programme service (within the meaning of the Broadcasting Act 1990) as it applies in relation to newspapers.

(5) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 of the standard scale.

(6) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.

48 Power to refer certain children to reporter

(1) A court by or before which a person is convicted of having committed an offence to which this section applies may refer—

(a) a child in respect of whom an offence mentioned in paragraph (a) or (b) of subsection (2) below has been committed; or

(b) any child who is, or who is likely to become, a member of the same household as the person who has committed an offence mentioned in paragraph (b) or (c) of that subsection or the person in respect of whom the offence so mentioned was committed,

to the Principal Reporter, and certify that the offence shall be a ground established for the purposes of Chapter 3 of Part II of the Children (Scotland) Act 1995.

(2) This section applies to an offence—

(a) under section 21 of the Children and Young Persons (Scotland) Act 1937;

(b) mentioned in Schedule 1 to this Act; or

(c) in respect of a person aged 17 years or over which constitutes the crime of incest.

49 Reference or remit to children's hearing

(1) Where a child who is not subject to a supervision requirement pleads guilty to, or is found guilty of, an offence the court—

(a) instead of making an order on that plea or finding, may remit the case to the Principal Reporter to arrange for the disposal of the case by a children's hearing; or

(b) on that plea or finding may request the Principal Reporter to arrange a children's hearing for the purposes of obtaining their advice as to the treatment of the child.

(2) Where a court has acted in pursuance of paragraph (b) of subsection (1) above, the court, after consideration of the advice received from the children's hearing may, as it thinks proper, itself dispose of the case or remit the case as mentioned in paragraph (a) of that subsection.

(3) Where a child who is subject to a supervision requirement pleads guilty to, or is found guilty of, an offence the court dealing with the case if it is—

(a) the High Court, may; and

(b) the sheriff court, shall,

request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the child, and on consideration of that advice may, as it thinks proper, itself dispose of the case or remit the case as mentioned in subsection (1)(a) above.

(4) Where a court has remitted a case to the Principal Reporter under this section, the jurisdiction of the court in respect of the child shall cease, and his case shall stand referred to a children's hearing.

(5) Nothing in this section shall apply to a case in respect of an offence the sentence for which is fixed by law.

(6) Where a person who is—

(a) not subject to a supervision requirement;

(b) over the age of 16; and

(c) not within six months of attaining the age of 18,

is charged summarily with an offence and pleads guilty to, or has been found guilty of, the offence the court may request the Principal Reporter to arrange a children's hearing for the purpose of obtaining their advice as to the treatment of the person.

(7) On consideration of any advice obtained under subsection (6) above, the court may, as it thinks proper—

(a) itself dispose of the case; or

(b) where the hearing have so advised, remit the case to the Principal Reporter for the disposal of the case by a children's hearing.

50 Children and certain proceedings

(1) No child under 14 years of age (other than an infant in arms) shall be permitted to be present in court during any proceedings against any other person charged with an offence unless his presence is required as a witness or otherwise for the purposes of justice.

(2) Any child present in court when, under subsection (1) above, he is not to be permitted to be so shall be ordered to be removed.

(3) Where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a child is called as a witness, the court may direct that all or any persons, not being—

(a) members or officers of the court;

(b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;

(c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or

(d) such other persons as the court may specially authorise to be present,

shall be excluded from the court during the taking of the evidence of that witness.

(4) The powers conferred on a court by subsection (3) above shall be in addition and without prejudice to any other powers of the court to hear proceedings *in camera*.

(5) Where in any proceedings relating to any of the offences mentioned in Schedule 1 to this Act, the court is satisfied that the attendance before the court of any person under the age of 17 years in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of that person.

(6) Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings.

51 Remand and committal of children and young persons

(1) Where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail or ordained to appear, then, except as otherwise expressly provided by this section, the following provisions shall have effect—

(a) subject to paragraph (b) below, if he is under 16 years of age the court shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained—

(i) where the court so requires, in secure accommodation within the meaning of Part II of the Children (Scotland) Act 1995; and

(ii) in any other case, in a suitable place of safety chosen by the authority;

(b) if he is a person of over 16 years of age, or a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, he shall be committed to a remand centre instead of being committed to prison.

(2) Where any person is committed to a local authority or to a remand centre under any provision of this Act, that authority or centre shall be specified in the warrant, and he shall be detained by the authority or in the centre for the period for which he is committed or until he is liberated in due course of law.

(3) Where any person has been committed to a local authority under any provision of this Act, the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the committal and commit the said person—

(a) if the court has been notified that a remand centre is available for the reception from that court of persons of his class or description, to a remand centre; and

(b) if the court has not been so notified, to a prison.

(4) Where in the case of a person under 16 years of age who has been committed to prison or to a remand centre under this section, the sheriff is satisfied that his detention in prison or a remand centre is no longer necessary, he may revoke the committal and commit the person to the local authority in whose area the court is situated to be detained—

(a) where the court so requires, in secure accommodation within the meaning of Part II of the Children (Scotland) Act 1995; and

(b) in any other case, in a suitable place of safety chosen by the authority.

PART VI

MENTAL DISORDER

Committal of mentally disordered persons

52 Power of court to commit to hospital an accused suffering from mental disorder

(1) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of the prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

(2) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that

a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.

(3) Where an accused is committed to a hospital as mentioned in subsection (2) above, the hospital shall be specified in the warrant, and if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under Part V of the Mental Health (Scotland) Act 1984, he shall be detained in the hospital specified in the warrant for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.

(4) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.

(5) No person shall be committed to a hospital under this section except on the written or oral evidence of a registered medical practitioner.

(6) Without prejudice to subsection (4) above, the court may review an order under subsection (2) above on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may deal with him in such way mentioned in subsection (4) above as the court thinks appropriate;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and deal with him in such way mentioned in subsection (4) above as the court considers appropriate.

(7) Subsections (2) to (5) above shall apply to the review of an order under subsection (6) above as they apply to the making of an order under subsection (2) above.

Interim hospital orders

53 Interim hospital orders

(1) Where, in the case of a person to whom this section applies the court is satisfied on the written or oral evidence of two medical practitioners (complying with subsection (2) below and section 61 of this Act)—

(a) that the offender is suffering from mental disorder within the meaning of section 1(2) of the Mental Health (Scotland) Act 1984; and

(b) that there is reason to suppose—

(i) 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; and

(ii) that, having regard to section 58(5) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as "an interim hospital order")

authorising his admission to and detention in a state hospital or such other hospital as for special reasons the court may specify in the order.

(2) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be employed at the hospital which is to be specified in the order.

(3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(4) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.

(5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (3) above.

(6) An interim hospital order—

(a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but

(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,

but no such order shall continue in force for more than six months in all and the court shall 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) An interim hospital order may be renewed under subsection (6) above without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon 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.

(9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.

(10) The power conferred on the court by this section is without prejudice to the power of the court under section 200(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.

(11) This section applies to any person—

(a) convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law);

(b) charged on complaint in the sheriff court if the sheriff is satisfied that he did the act or made the omission charged but does not convict him; or

(c) remitted to the sheriff court from the district court under section 58(10) of this Act if the sheriff is satisfied as mentioned in paragraph (b) above.

(12) In this section "the court" means—

(a) the High Court, as regards a person—

(i) convicted on indictment in that court; or

(ii) convicted on indictment in the sheriff court and remitted for sentence to the High Court; and

(b) the sheriff court, as regards a person—

(i) convicted in the sheriff court and not remitted as mentioned in paragraph (a)(ii) above; or

(ii) referred to in paragraph (b) or (c) of subsection (11) above.

Insanity in bar of trial

54 Insanity in bar of trial

(1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged with the commission of an offence is insane so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (2) below—

(a) make a finding to that effect and state the reasons for that finding;

(b) discharge the trial diet and order that a diet (in this Act referred to as an "an examination of facts") be held under section 55 of this Act; and

(c) remand the person in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of two medical practitioners, that he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the Mental Health (Scotland) Act 1984; and

(ii) that a hospital is available for his admission and suitable for his detention,

make an order (in this section referred to as a "temporary hospital order") committing him to that hospital until the conclusion of the examination of facts.

(2) Subsection (1) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet *pro loco et tempore*.

(3) The court may, before making a finding under subsection (1) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.

(4) The court which made a temporary hospital order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and make such other order, under subsection (1)(c) above or any other provision of this Act, as the court considers appropriate.

(5) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is insane so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

(6) Where evidence is brought before the court that the accused was insane at the time of doing the act or making the omission constituting the offence with which he is charged and he is acquitted, the court shall—

(a) in proceedings on indictment, direct the jury to find; or

(b) in summary proceedings, state,

whether the accused was insane at such time as aforesaid, and, if so, to declare whether he was acquitted on account of his insanity at that time.

(7) It shall not be competent for a person charged summarily in the sheriff court to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is sworn, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where such notice is given, the court shall, if the prosecutor so moves, adjourn the case.

(8) In this section, "the court" means—

(a) as regards a person charged on indictment, the High Court or the sheriff court;

(b) as regards a person charged summarily, the sheriff court.

Examination of facts

55 Examination of facts

(1) At an examination of facts ordered under section 54(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—

(a) beyond reasonable doubt, as respects any charge on the indictment or, as the case may be, the complaint in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and

(b) on the balance of probabilities, that there are no grounds for acquitting him.

(2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.

(3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.

(4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.

(5) Where it appears to the court that it is not practical or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.

(6) Subject to the provisions of this section, section 56 of this Act and any Act of Adjournal the rules of evidence and procedure and the powers of the court shall, in respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.

(7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—

(a) commences when the indictment or, as the case may be, complaint is called; and

(b) concludes when the court—

(i) acquits the person under subsection (3) above;

(ii) makes an order under subsection (2) of section 57 of this Act; or

(iii) decides, under paragraph (e) of that subsection, not to make an order.

56 Examination of facts: supplementary provisions

(1) An examination of facts ordered under section 54(1)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.

(2) Where an examination of facts is ordered in connection with proceedings on indictment, a warrant for citation of an accused and witnesses under section 66(1) of this Act shall be sufficient warrant for citation to an examination of facts.

(3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.

(4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment or, as the case may be, complaint in priority to other such charges.

(5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts *pro loco et tempore* as respects either the whole indictment or, as the case may be, complaint or any charge therein.

(6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted *pro loco et tempore*—

(a) in the case of proceedings on indictment, the Lord Advocate may, at any time, raise and insist in a new indictment; or

(b) in the case of summary proceedings, the prosecutor may at any time raise a fresh libel,

notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

(7) If, in a case where a court has made a finding under subsection (2) of section 55 of this Act, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 57(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.

(8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.

Disposal in case of insanity

57 Disposal of case where accused found to be insane

(1) This section applies where—

(a) a person is, by virtue of section 54(6) or 55(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or

(b) following an examination of facts under section 55, a court makes a finding under subsection (2) of that section.

(2) Subject to subsection (3) below, where this section applies the court may, as it thinks fit—

(a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;

(b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;

(c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;

(d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 4 to this Act); or

(e) make no order.

(3) Where the offence with which the person was charged is murder, the court shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.

(4) Sections 58(1), (2) and (4) to (7) and 59 and 61 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.

(5) Schedule 4 to this Act shall have effect as regards supervision and treatment orders.

Hospital orders and guardianship

58 Order for hospital admission or guardianship

(1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—

(a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in—

(i) section 17(1); or, as the case may be

(ii) section 36(a),

of the Mental Health (Scotland) Act 1984 apply in relation to the offender;

(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,

subject to subsection (2) below, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified.

(2) Where the case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under subsection (1) above shall be exercisable by that court.

(3) Where in the case of a person charged summarily in the sheriff court with an act or omission constituting an offence the court would have power, on convicting him, to make an order under subsection (1) above, then, if it 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 him.

(4) An order for the admission of a person to a hospital (in this Act, referred to as "a hospital order") shall not be made under this section in respect of an offender or of a person to whom subsection (3) above applies unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.

(5) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) above, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.

(6) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied—

(a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and

(b) that that authority or person is willing to receive that person into guardianship.

(7) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental handicap or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) above, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.

(8) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order or a community service order in respect of the offence, but may make any other order which the court has power

to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention.

(9) The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (4) above; but a direction for the conveyance of a patient to a residential establishment shall not be given unless the court is satisfied that the authority is willing to receive the patient therein.

(10) Where a person is charged before the district court with an act or omission constituting an offence punishable with imprisonment, the district court, if it appears to it that that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 7(9) and (10) of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) above in respect of him as if he had been charged before that court with the said act or omission as an offence, or in dealing with him may exercise the like powers as the district court.

59 Hospital orders: restrictions on discharge

(1) Where a hospital order is made in respect of a person, and it appears to the court—

(a) having regard to the nature of the offence with which he is charged;

(b) the antecedents of the person; and

(c) the risk that as a result of his mental disorder he would commit offences if set at large,

that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984, without limit of time.

(2) An order under this section (in this Act referred to as "a restriction order") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 20 or section 39 of the Mental Health (Scotland) Act 1984, whose evidence is taken into account by the court under section 58(1)(a) of this Act, has given evidence orally before the court.

(3) Where a restriction order is in force in respect of a patient, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 60(3) of the Mental Health (Scotland) Act 1984 on the making of another hospital order, that order shall have the same effect in relation to the restriction order as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another restriction order to have effect on the expiration of the previous such order.

60 Appeals against hospital orders

Where a hospital order, interim hospital order (but not a renewal thereof), guardianship order or a restriction order has been made by a court in respect of a person charged or brought before it, he may without prejudice to any other form of appeal under any rule of law (or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed), appeal against that order in the same manner as against sentence.

Medical evidence

61 Requirements as to medical evidence

(1) Of the medical practitioners whose evidence is taken into account under sections 53(1), 54(1) and 58(1)(a) of this Act, at least one shall be a practitioner approved for the purposes of section 20 or section 39 of the Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.

(2) Written or oral evidence given for the purposes of the said section 58(1)(a) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.

(3) For the purposes of the said sections 54(1) and 58(1)(a) a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.

(4) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—

(a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;

(b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;

(c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused,

and where the court is of the opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.

(5) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital or, as respects a report for the purposes of the said section 54(1), remanded in custody for his examination by any medical practitioner, and any such examination may be made in private.

Appeals under Part VI

62 Appeal by accused in case involving insanity

(1) A person may appeal to the High Court against—

(a) a finding made under section 54(1) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;

(b) a finding under section 55(2) of this Act; or

(c) an order made under section 57(2) of this Act.

(2) An appeal under subsection (1) above shall be—

(a) in writing; and

(b) lodged—

(i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c) of that subsection, not later than 28 days after the conclusion of the examination of facts;

(iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;

(iv) in the case of an appeal under that paragraph against an order made on a finding under section 55(2), not later than 14 days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.

(4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.

(5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(6) In disposing of an appeal under subsection (1) above the High Court may—

(a) affirm the decision of the court of first instance;

(b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or

(c) remit the case to that court with such directions in the matter as the High Court thinks fit.

(7) Section 60 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.

63 Appeal by prosecutor in case involving insanity

(1) The prosecutor may appeal to the High Court on a point of law against—

(a) a finding under subsection (1) of section 54 of this Act that an accused is insane so that his trial cannot proceed or continue;

(b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (6) of that section;

(c) an acquittal under section 55(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or

(d) any order made under section 57(2) of this Act.

(2) An appeal under subsection (1) above shall be—

(a) in writing; and

(b) lodged—

(i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.

(4) A respondent in an appeal under this subsection shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(5) In disposing of an appeal under subsection (1) above the High Court may—

(a) affirm the decision of the court of first instance;

(b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or

(c) remit the case to that court with such directions in the matter as the High Court thinks fit.

(6) In this section, "the prosecutor" means, in relation to proceedings on indictment, the Lord Advocate.

PART VII

SOLEMN PROCEEDINGS

The indictment

64 Prosecution on indictment

(1) All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate.

(2) The indictment may be in the forms—

(a) set out in Schedule 2 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form.

(3) Indictments in proceedings before the High Court shall be signed by the Lord Advocate or one of his deputes.

(4) Indictments in proceedings before the sheriff sitting with a jury shall be signed by the procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of the procurator fiscal.

(5) The principal record and service copies of indictments and all notices of citation, lists of witnesses, productions and jurors, and all other official documents required in a

prosecution on indictment may be either written or printed or partly written and partly printed.

(6) Schedule 3 to this Act shall have effect as regards indictments under this Act.

65 Prevention of delay in trials

(1) Subject to subsections (2) and (3) below, an accused shall not be tried on indictment for any offence unless the trial is commenced within a period of 12 months of the first appearance of the accused on petition in respect of the offence; and, failing such commencement within that period, the accused shall be discharged forthwith and thereafter he shall be for ever free from all question or process for that offence.

(2) Nothing in subsection (1) above shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case.

(3) On an application made for the purpose, the sheriff or, where an indictment has been served on the accused in respect of the High Court, a single judge of that court, may on cause shown extend the said period of 12 months.

(4) Subject to subsections (5) to (9) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—

(a) 80 days, unless within that period the indictment is served on him, which failing he shall be liberated forthwith; or

(b) 110 days, unless the trial of the case is commenced within that period, which failing he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(5) Subject to subsection (6) below, a single judge of the High Court, may, on an application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (4)(a) above.

(6) An application under subsection (5) above shall not be granted if the judge is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within the period of 80 days.

(7) A single judge of the High Court may, on an application made to him for the purpose, extend the period mentioned in subsection (4)(b) above where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge;

(b) the absence or illness of any necessary witness;

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(8) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(9) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.

(10) In calculating the period of 12 months specified in subsections (1) and (3) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any other part of the United

Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).

66 Service and lodging of indictment, etc

(1) When a sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment—

(a) where the trial diet is to be held in the sheriff court, the sheriff clerk; and

(b) where the trial diet is to be held in the High Court, the Clerk of Justiciary,

shall issue a warrant to officers of law to cite the accused, witnesses and jurors, in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form, and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant for such citation.

(2) The execution of the citation against an accused, witness or juror shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

(3) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.

(4) The accused shall be served with a copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.

(5) Except in a case to which section 76 of this Act applies, the prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.

(6) Except where the indictment is served under section 76(1) of this Act, a notice shall be served on the accused with the indictment calling upon him to appear and answer to the indictment—

(a) where the case is to be tried in the sheriff court, at a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and

(b) at a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of the indictment and notice.

(7) Service of the indictment, lists of witnesses and productions, and any notice or intimation to the accused, and the citation of witnesses, whether for precognition or trial, may be effected by any officer of law.

(8) No objection to the service of an indictment or to the citation of a witness shall be upheld on the ground that the officer who effected service or executed the citation was not at the time in possession of the warrant of citation, and it shall not be necessary to produce the execution of citation of an indictment.

(9) The citation of witnesses may be effected by any officer of law duly authorised; and in any proceedings, the evidence on oath of the officer shall, subject to subsection (10) below, be sufficient evidence of the execution of the citation.

(10) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.

(11) No objection to the competency of the officer who served the indictment to give evidence in respect of such service shall be upheld on the ground that his name is not included in the list of witnesses served on the accused.

(12) Any deletion or correction made before service on the record or service copy of an indictment shall be sufficiently authenticated by the initials of the person who has signed, or could by law have signed, the indictment.

(13) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on an accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.

(14) Any deletion or correction made on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

67 Witnesses

(1) The list of witnesses shall consist of the names of the witnesses together with an address at which they can be contacted for the purposes of precognition.

(2) It shall not be necessary to include in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

(3) Any objection in respect of misnomer or misdescription of—

(a) any person named in the indictment; or

(b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, not less than ten clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

(4) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognosce him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.

(5) Without prejudice to—

(a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or

(b) subsection (6) below,

in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his

name and address as mentioned in subsection (1) above, has been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

(6) It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.

68 Productions

(1) The list of productions shall include the record, made under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of the accused.

(2) The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the trial diet is situated or, where the trial diet is to be in the High Court in Edinburgh, in the Justiciary Office.

(3) Where a person who has examined a production is adduced to give evidence with regard to it and the production has been lodged at least eight days before the trial diet, it shall not be necessary to prove—

(a) that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police; or

(b) that the production examined by him is that taken possession of by the procurator fiscal or the police,

unless the accused, at least four days before the trial diet, gives in accordance with subsection (4) below written notice that he does not admit that the production was received or returned as aforesaid or, as the case may be, that it is that taken possession of as aforesaid.

(4) The notice mentioned in subsection (3) above shall be given—

(a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and

(b) where he is cited to the sheriff court for the trial diet, to the procurator fiscal.

69 Notice of previous convictions

(1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.

(2) If the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form, and any conviction specified in the notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) below, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

(3) Intimation objecting to a conviction under subsection (2) above shall be given—

(a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; or

(b) where the accused is cited to the sheriff court for the trial diet, to the procurator fiscal,

at least five clear days before the first day of the sitting in which the trial diet is to be held.

(4) Where notice is given by the accused under section 76 of this Act of his intention to plead guilty and the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form.

(5) Where the accused pleads guilty at any diet, no objection to any conviction of which notice has been served on him under this section shall be entertained unless he has, at least two clear days before the diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for the diet.

70 Proceedings against bodies corporate

(1) This section applies to proceedings on indictment against a body corporate.

(2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.

(3) Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgement or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgement or certificate.

(4) A body corporate may, for the purpose of—

(a) stating objections to the competency or relevancy of the indictment or proceedings; or

(b) tendering a plea of guilty or not guilty; or

(c) making a statement in mitigation of sentence,

appear by a representative of the body corporate.

(5) Where at the trial diet the body corporate does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that subsection (2) above has been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(6) Where a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen's and Lord Treasurer's Remembrancer.

(7) Nothing in section 77 of this Act shall require a plea tendered by or on behalf of a body corporate to be signed.

(8) In this section, "representative", in relation to a body corporate, means an officer or employee of the body corporate duly appointed by it for the purpose of the proceedings; and a statement in writing purporting to be signed by the managing

director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of any proceedings to which this section applies shall be sufficient evidence of such appointment.

Pre-trial proceedings

71 First diet

(1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in any of paragraphs (a) to (d) of section 72(1) of this Act of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.

(3) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.

(4) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.

(5) A first diet may proceed notwithstanding the absence of the accused.

(6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.

(7) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further first diet.

(8) Subject to subsection (7) above, the court may, if it considers it appropriate to do so, adjourn a first diet.

(9) In this section "the court" means the sheriff court.

72 Preliminary diet: notice

(1) Subject to subsections (4) and (5) below, where a party to a case which is to be tried in the High Court within the appropriate period gives written notice to the court and to the other parties—

(a) that he intends to raise—

(i) a matter relating to the competency or relevancy of the indictment; or

(ii) an objection to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation;

(b) that he intends—

(i) to submit a plea in bar of trial;

(ii) to apply for separation or conjunction of charges or trials;

(iii) to raise a preliminary objection under section 255 of this Act; or

(iv) to make an application under section 278(2) of this Act;

(c) that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed;

(d) that there is some point, as regards any matter not mentioned in paragraph (a) to (c) above, which could in his opinion be resolved with advantage before the trial and that he therefore applies for a diet to be held before the trial diet,

the court shall in a case to which paragraph (a) above applies, and in any other case may, order that there be a diet before the trial diet, and a diet ordered under this subsection is in this Act referred to as a "preliminary diet".

(2) A party giving notice under subsection (1) above shall specify in the notice the matter or, as the case may be, the grounds of submission or the point to which the notice relates.

(3) The fact that a preliminary diet has been ordered on a particular notice under subsection (1) above shall not preclude the court's consideration at that diet of any other such notice as is mentioned in that subsection, which has been intimated to the court and to the other parties at least 24 hours before that diet.

(4) Subject to subsection (5) below, the court may on ordering a preliminary diet postpone the trial diet for a period not exceeding 21 days; and any such postponement (including postponement for a period which by virtue of the said subsection (5) exceeds 21 days) shall not count towards any time limit applying in respect of the case.

(5) Any period mentioned in subsection (4) above may be extended by the High Court in respect of the case.

(6) In subsection (1) above, "appropriate period" means as regards notice—

(a) under paragraph (a) of that subsection, the period of 15 clear days after service of the indictment;

(b) under paragraph (b) of that subsection, the period from service of the indictment to 10 clear days before the trial diet; and

(c) under paragraph (c) or (d) of that subsection, the period from service of the indictment to the trial diet.

73 Preliminary diet: procedure

(1) Where a preliminary diet is ordered, subject to subsection (2) below, the accused shall attend it, and he shall be required at the conclusion of the diet to state how he pleads to the indictment.

(2) The court may permit the diet to proceed notwithstanding the absence of an accused.

(3) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) of section 72 of this Act or referred to in

subsection (3) of that section, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(4) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) of the said section 72 or referred to in subsection (3) of that section or which it is required to ascertain under subsection (3) above.

(5) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further preliminary diet.

(6) Subject to subsection (5) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.

(7) Where an objection is taken to the relevancy of the indictment under subsection (1)(a)(i) of the said section 72, the clerk of court shall minute whether the objection is sustained or repelled and sign the minute.

(8) In subsection (1) above, the reference to the accused shall, without prejudice to section 6(c) of the Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

74 Appeals in connection with preliminary diets

(1) Without prejudice to—

(a) any right of appeal under section 106 or 108 of this Act; and

(b) section 131 of this Act,

and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or *ex proprio motu*) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary diet.

(2) An appeal under subsection (1) above—

(a) may not be taken against a decision to adjourn the first or, as the case may be, preliminary diet or to postpone the trial diet;

(b) must be taken not later than 2 days after the decision.

(3) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(4) In disposing of an appeal under subsection (1) above the High Court—

(a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; and

(b) where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed.

75 Computation of certain periods

Where the last day of any period mentioned in section 66(6), 67(3), 72 or 74 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

Plea of guilty

76 Procedure where accused desires to plead guilty

(1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

(2) In subsection (1) above, "appropriate court" means—

(a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and

(b) in any other case, the court specified in the notice served under section 66(6) of this Act on the accused.

(3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted *pro loco et tempore* and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act; except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.

77 Plea of guilty

(1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall do so in open court and, subject to section 70(7) of this Act, shall, if he is able to do so, sign a written copy of the plea; and the judge shall countersign such copy.

(2) Where the plea is to part only of the charge and the prosecutor does not accept the plea, such non-acceptance shall be recorded.

(3) Where an accused charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of the indictment, and that plea is accepted by the prosecutor, it shall be competent to convict the accused of the offence to which he has so pled guilty and to sentence him accordingly.

Notice by accused

78 Special defences, incrimination and notice of witnesses, etc

(1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—

(a) a plea of special defence or, as the case may be, notice of intention to lead such evidence has been lodged and intimated in writing in accordance with subsection (3) below—

(i) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and

(ii) where he is cited to the sheriff court for the trial diet, to the procurator fiscal,

and to any co-accused not less than 10 clear days before the trial diet; or

(b) the court, on cause shown, otherwise directs.

(2) Subsection (1) above shall apply to a defence of automatism or coercion as if it were a special defence.

(3) A plea or notice is lodged and intimated in accordance with this subsection—

(a) where the accused is cited to the High Court for the trial diet, by lodging the plea or notice with the Clerk of Justiciary and by intimating the plea or notice to the Crown Agent and to any co-accused not less than 10 clear days before the trial diet;

(b) where the accused is cited to the sheriff court for the trial diet, by lodging the plea or notice with the sheriff clerk and by intimating it to the procurator fiscal and to any co-accused at or before the first diet.

(4) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor unless—

(a) written notice of the names and addresses of such witnesses and of such productions has been given—

(i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and

(ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or

(b) the court, on cause shown, otherwise directs.

(5) A copy of every written notice required by subsection (4) above shall be lodged by the accused with the sheriff clerk of the district in which the trial diet is to be held, or in any case the trial diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the trial diet, for the use of the court.

79 Preliminary pleas

(1) Except by leave of the court on cause shown, no application, matter or point mentioned in subsection (1) of section 72 of this Act or that subsection as applied by section 71 of this Act shall be made, raised or submitted by an accused unless his intention to do so has been stated in a notice under the said subsection (1) or, as the case may be, under subsection (2) of the said section 71.

(2) No discrepancy, error or deficiency such as is mentioned in paragraph (a)(ii) of subsection (1) of the said section 72 or that subsection as applied by the said section 71 shall entitle the accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.

Alteration, etc, of diet

80 Alteration and postponement of trial diet

(1) Where an indictment is not brought to trial at the trial diet and a warrant for a subsequent sitting of the court on a day within two months after the date of the trial diet has been issued under section 66(1) of this Act by the clerk of court, the court may adjourn the trial diet to the subsequent sitting, and the warrant shall have effect as if the trial diet had originally been fixed for the date of the subsequent sitting.

(2) At any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.

(3) Subject to subsection (4) below, after hearing all the parties the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.

(4) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (3) above without hearing the parties.

(5) Where there is a hearing under this section the accused shall attend it, unless the court permits the hearing to proceed notwithstanding the absence of the accused.

(6) In subsection (5) above, the reference to the accused shall, without prejudice to section 6(c) of the Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

81 Procedure where trial does not take place

(1) Where at the trial diet—

(a) the diet has been deserted *pro loco et tempore* for any cause; or

(b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the last day of the sitting in which the trial diet was to be held to give notice to the accused on another copy of the indictment to appear to answer the indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a trial diet was to a different court.

(2) Without prejudice to subsection (1) above, where a trial diet has been deserted *pro loco et tempore* and the court has appointed a further trial diet to be held on a subsequent date at the same sitting the accused shall require to appear and answer the indictment at that further diet.

(3) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial *simpliciter* and its decision in that regard has not been reversed on appeal.

(4) The notice referred to in subsection (1) above shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(5) The further diet specified in the notice referred to in subsection (1) above shall be not earlier than nine clear days from the giving of the notice.

(6) On or before the day on which notice referred to in subsection (1) above is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which the notice applies in the manner provided in section 85(1) and (2) of this Act.

(7) The warrant issued under section 66(1) of this Act shall be sufficient warrant for the citation of accused and witnesses to the further diet.

82 Desertion or postponement where accused in custody

Where—

(a) a diet is deserted *pro loco et tempore*;

(b) a diet is postponed or adjourned; or

(c) an order is issued for the trial to take place at a different place from that first given notice of,

the warrant of committal on which the accused is at the time in custody till liberated in due course of law shall continue in force.

83 Transfer of sheriff court solemn proceedings

(1) Where an accused person has been cited to attend a sitting of the sheriff court the prosecutor may, at any time before the commencement of his trial, apply to the sheriff to transfer the case to a sheriff court in any other district in that sheriffdom.

(2) On an application under subsection (1) above the sheriff may—

(a) after giving the accused or his counsel or solicitor an opportunity to be heard; or

(b) on the joint application of the parties,

make an order for the transfer of the case.

Jurors for sittings

84 Juries: returns of jurors and preparation of lists

(1) For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.

(2) The Lord Justice General, whom failing the Lord Justice Clerk, may give directions as to the areas from which and the proportions in which jurors are to be summoned for trials to be held in the High Court, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

(3) Where a sitting of the High Court is to be held at a town in which the High Court does not usually sit, the jury summoned to try any case in such a sitting shall be summoned from the list of potential jurors of the sheriff court district in which the town is situated.

(4) For the purpose of a trial in the sheriff court, the clerk of court shall be furnished with a list of names from lists of potential jurors of the sheriff court district in which the court is held containing the number of persons required.

(5) The sheriff principal, in any return of jurors made by him to a court, shall take the names in regular order, beginning at the top of the list of potential jurors in each of the sheriff court districts, as required; and as often as a juror is returned to him, he shall mark or cause to be marked, in the list of potential jurors of the respective sheriff court districts the date when any such juror was returned to serve; and in any such return he shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they are entered, as directed by this subsection, and so to the end of the lists respectively.

(6) Where a person whose name has been entered in the lists of potential jurors dies, or ceases to be qualified to serve as a juror, the sheriff principal, in making returns of jurors in accordance with the Jurors (Scotland) Act 1825, shall pass over the name of that person, but the date at which his name has been so passed over, and the reason therefor, shall be entered at the time in the lists of potential jurors.

(7) Only the lists returned in accordance with this section by the sheriffs principal to the clerks of court shall be used for the trials for which they were required.

(8) The persons to serve as jurors at sittings of the High Court shall be listed and their names and addresses shall be inserted in one roll to be signed by the judge, and the list made up under this section shall be known as the "list of assize".

(9) When more than one case is set down for trial at a sitting of the High Court, it shall not be necessary to prepare more than one list of assize, and such list shall be authenticated by the signature of a judge of the Court, and shall be the list of assize for the trial of all parties cited to that particular sitting; and the persons included in such list shall be summoned to serve generally for the trials of all the accused cited to the sitting, and only one general execution of citation shall be returned against them; and a copy of the list of assize, certified by one of the clerks of court, shall have the like effect, for all purposes for which the list may be required, as the principal list of assize authenticated as aforesaid.

(10) No irregularity in—

(a) making up the lists in accordance with the provisions of this Act;
(b) transmitting the lists;
(c) the warrant of citation;
(d) summoning jurors; or
(e) in returning any execution of citation,

shall constitute an objection to jurors whose names are included in the jury list, subject to the ruling of the court in relation to the effect of an objection as to any criminal act by which jurors may be returned to serve in any case contrary to this Act or the Jurors (Scotland) Act l825.

85 Juries: citation and attendance of jurors

(1) It shall not be necessary to serve any list of jurors upon the accused, but on and after the date of the service of an indictment, a list of jurors prepared under the directions of the clerk of the court before which the trial is to take place shall be kept in the office

of the sheriff clerk of the district in which the court of the trial diet is situated, and the accused shall be entitled to have a copy supplied to him on application free of charge.

(2) Such list shall contain not less than 30 names, and shall be headed "List of Assize for the Sitting of the High Court of Justiciary (or, the Sheriff Court of ... ... at ... ...) on the ... ... of ... ... "

(3) It shall not be necessary to summon all the jurors contained in any list of jurors under this Act, but it shall be competent to summon such jurors only, commencing from the top of the list, as may be necessary to ensure a sufficient number for the trial of the cases which remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the trial diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and the jurors who are not so summoned shall be placed upon the next list issued, until they have attended to serve.

(4) The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held or the sheriff clerk of the sheriff court district in which any juror is to be cited where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the lists of potential jurors by registered post or recorded delivery or to be served on him by an officer of law; and a certificate under the hand of such sheriff clerk of the citation of any jurors or juror in the manner provided in this subsection shall be a legal citation.

(5) The sheriff clerk of the sheriffdom in which a sitting of the High Court is to be held shall issue citations to the whole jurors required for the sitting, whether the jurors reside in that or in any other sheriffdom.

(6) Persons cited to attend as jurors may, unless they have been excused in respect thereof under section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act l980, be fined up to level 3 on the standard scale if they fail to attend in compliance with the citation.

(7) A fine imposed under subsection (6) above may, on application, be remitted—

(a) by a Lord Commissioner of Justiciary where imposed in the High Court;

(b) by the sheriff court where imposed in the sheriff court,

and no court fees or expenses shall be exigible in respect of any such application.

(8) A person shall not be exempted by sex or marriage from the liability to serve as a juror.

86 Jurors: excusal and objections

(1) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.

(2) Nothing in subsection (1) above shall affect the right of the accused or the prosecutor to object to any juror on cause shown.

(3) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, such objection shall be proved only by the oath of the juror objected to.

(4) No objection to a juror shall be competent after he has been sworn to serve.

Non-availability of judge

87 Non-availability of judge

(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—

(a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for that sitting to—

(i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) a later sitting not more than two months after the date of the adjournment; or

(b) in a case where evidence has been led—

(i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) with the consent of the parties, desert the diet *pro loco et tempore*.

(2) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.

(3) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—

(a) further adjourn the diet; or

(b) desert the diet *pro loco et tempore*.

(4) Where a diet is deserted in pursuance of subsection (1)(b)(ii) or (3)(b) above, the Lord Advocate may raise and insist in a new indictment, and—

(a) where the accused is in custody it shall not be necessary to grant a new warrant for his incarceration, and the warrant or commitment on which he is at the time in custody till liberation in due course of law shall continue in force; and

(b) where the accused is at liberty on bail, his bail shall continue in force.

Jury for trial

88 Plea of not guilty, balloting and swearing of jury, etc

(1) Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.

(2) The jurors for the trial shall be chosen in open court by ballot from the list of persons summoned in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.

(3) It shall not be competent for the accused or the prosecutor to object to a juror on the ground that the juror has not been duly cited to attend.

(4) Notwithstanding subsection (1) above, the jurors chosen for any particular trial may, when that trial is disposed of, without a new ballot serve on the trials of other accused, provided that—

(a) the accused and the prosecutor consent;

(b) the names of the jurors are contained in the list of jurors; and

(c) the jurors are duly sworn to serve on each successive trial.

(5) When the jury has been balloted, the clerk of court shall inform the jury of the charge against the accused—

(a) by reading the words of the indictment (with the substitution of the third person for the second); or

(b) if the presiding judge, because of the length or complexity of the indictment, so directs, by reading to the jury a summary of the charge approved by the judge,

and copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions.

(6) After reading the charge as mentioned in subsection (5) above and any special defence as mentioned in section 89(1) of this Act, the clerk of court shall administer the oath in common form.

(7) The court may excuse a juror from serving on a trial where the juror has stated the ground for being excused in open court.

(8) Where a trial which is proceeding is adjourned from one day to another, the jury shall not be secluded during the adjournment, unless, on the motion of the prosecutor or the accused or *ex proprio motu* the court sees fit to order that the jury be kept secluded.

89 Jury to be informed of special defence

(1) Subject to subsection (2) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with section 88(5) of this Act, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.

(2) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (1) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.

(3) Copies of a plea of special defence shall be provided for each member of the jury.

90 Death or illness of jurors

(1) Where in the course of a trial—

(a) a juror dies; or

(b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror,

the court may in its discretion, on an application made by the prosecutor or an accused, direct that the trial shall proceed before the remaining jurors (if they are not less than twelve in number), and where such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial

and shall have power to return a verdict accordingly whether unanimous or, subject to subsection (2) below, by majority.

(2) The remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors inform the court that—

(a) fewer than eight of their number are in favour of a verdict of guilty; and

(b) there is not a majority in favour of any other verdict,

they shall be deemed to have returned a verdict of not guilty.

Trial

91 Trial to be continuous

Every trial shall proceed from day to day until it is concluded unless the court sees cause to adjourn over a day or days.

92 Trial in presence of accused

(1) Without prejudice to section 54 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—

(a) that he is removed from the court for so long as his conduct makes it necessary; and

(b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

(3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

93 Record of trial

(1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under Part VIII of this Act, shall be recorded by means of shorthand notes or by mechanical means.

(2) A shorthand writer shall—

(a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and

(b) retain the notes.

(3) A person recording such proceedings by mechanical means shall—

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings or, as the case may be, the part of the proceedings to which the record relates; and

(c) retain the record.

(4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by Treasury, out of money provided by Parliament.

(5) In subsection (1) above "proceedings at the trial" means the whole proceedings including, without prejudice to that generality—

(a) discussions—

(i) on any objection to the relevancy of the indictment;

(ii) with respect to any challenge of jurors; and

(iii) on all questions arising in the course of the trial;

(b) the decision of the court on any matter referred to in paragraph (a) above;

(c) the evidence led at the trial;

(d) any statement made by or on behalf of the accused whether before or after the verdict;

(e) the judge's charge to the jury;

(f) the speeches of counsel or agent;

(g) the verdict of the jury;

(h) the sentence by the judge.

94 Transcripts of record and documentary productions

(1) The Clerk of Justiciary may direct that a transcript of a record made under section 93(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.

(2) Subject to subsection (3) below, the Clerk of Justiciary shall, if requested to do so by—

(a) the Secretary of State; or

(b) any other person on payment of such charges as may be fixed for the time being by Treasury,

direct that such a transcript be made and sent to the person who requested it.

(3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.

(4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.

(5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.

(7) A transcript made in compliance with a direction under subsection (1) or (2) above—

(a) shall be in legible form; and

(b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.

(8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.

(9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—

(a) the prosecutor;

(b) any person convicted in the proceedings;

(c) any other person named in, or immediately affected by, any order made in the proceedings; and

(d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.

95 Verdict by judge alone

(1) Where, at any time after the jury has been sworn to serve in a trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.

(2) Where, at any time after the jury has been sworn to serve in a trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.

(3) Where an accused is convicted under subsection (2) above of an offence—

(a) the trial shall proceed only in respect of any other offence charged in the indictment; and

(b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following conviction until a verdict has been returned in respect of every other offence mentioned in paragraph (a) above.

96 Amendment of indictment

(1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.

(2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to—

(a) cure any error or defect in it;

(b) meet any objection to it; or

(c) cure any discrepancy or variance between the indictment and the evidence.

(3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.

(4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

97 No case to answer

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—

(a) on an offence charged in the indictment; and

(b) on any other offence of which he could be convicted under the indictment.

(2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the indictment.

(3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

(4) A submission under subsection (1) above shall be heard by the judge in the absence of the jury.

98 Defence to speak last

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

99 Seclusion of jury to consider verdict

(1) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and, except in so far as provided for, or is made necessary, by an instruction under subsection (4) below, neither he nor any other person shall be present with the jury after they are enclosed.

(2) Except in so far as is provided for, or is made necessary, by an instruction under subsection (4) below, until the jury intimate that they are ready to return their verdict—

(a) subject to subsection (3) below, no person shall visit the jury or communicate with them; and

(b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—

(i) for an instruction under subsection (4)(a), (c) or (d) below; or

(ii) regarding any matter in the cause.

(3) Nothing in paragraph (a) of subsection (2) above shall prohibit the judge, or any person authorised by him for the purpose, communicating with the jury for the purposes—

(a) of giving a direction, whether or not sought under paragraph (b) of that subsection; or

(b) responding to a request made under that paragraph.

(4) The judge may give such instructions as he considers appropriate as regards—

(a) the provision of meals and refreshments for the jury;

(b) the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided;

(c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or

(d) the provision of medical treatment, or other assistance, immediately required by a juror.

(5) If the prosecutor or any other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

(6) During the period in which the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.

Verdict and conviction

100 Verdict of jury

(1) The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned.

(2) Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record.

(3) The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

101 Previous convictions: solemn proceedings

(1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made to them in presence of the jury before the verdict is returned.

(2) Nothing in subsection (1) above shall prevent the prosecutor—

(a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or

(b) leading evidence of previous convictions where it is competent to do so under section 270 of this Act,

and nothing in this section or in section 69 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

(3) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 69 of this Act.

(4) On the conviction of the accused it shall be competent for the court, subject to subsection (5) below, to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect.

(5) An amendment made to the notice of previous convictions shall not be to the prejudice of the accused.

(6) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(7) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

(8) Where any such intimation as is mentioned in section 69 of this Act is given by the accused, it shall be competent to prove any previous conviction included in a notice under that section in the manner specified in section 285 of this Act, and the provisions of the said section shall apply accordingly.

102 Interruption of trial for other proceedings

(1) When the jury have retired to consider their verdict, and the diet in another criminal cause has been called, then, subject to subsection (3) below, if it appears to the judge presiding at the trial to be appropriate, he may interrupt the proceedings in such other cause—

(a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the case;

(b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause.

(2) Where in any case the diet of which has not been called, the accused intimates to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a case is remitted to the High Court for sentence, then, subject to subsection (3) below, any trial then proceeding may be interrupted for the purpose of receiving such plea or dealing with the remitted case and pronouncing sentence or otherwise disposing of any such case.

(3) In no case shall any proceedings in the preceding trial take place in the presence of the jury in the interrupted trial, but in every case that jury shall be directed to retire by the presiding judge.

(4) On the interrupted trial being resumed the diet shall be called *de novo*.

(5) In any case an interruption under this section shall not be deemed an irregularity, nor entitle the accused to take any objection to the proceedings.

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

103 Appeal sittings

(1) The High Court shall hold both during session and during vacation such sittings as are necessary for the disposal of appeals and other proceedings under this Part of this Act.

(2) Subject to subsection (3) below, for the purpose of hearing and determining any appeal or other proceeding under this Part of this Act three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

(3) For the purpose of hearing and determining any appeal under section 106(1)(b) to (e) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

(4) Subsections (1) and (2) above shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocation in like manner as they apply to appeals under this Part of this Act.

(5) The powers of the High Court under this Part of this Act—

(a) to extend the time within which intimation of intention to appeal and note of appeal may be given;

(b) to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave; and

(c) to admit an appellant to bail,

may be exercised by any judge of the High Court, sitting and acting wherever convenient, in the same manner as they may be exercised by the High Court, and subject to the same provisions.

(6) Where a judge acting under subsection (5) above refuses an application by an appellant to exercise under that subsection any power in his favour, the appellant shall be entitled to have the application determined by the High Court.

(7) Subject to subsection (5) above and without prejudice to it, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

(8) In all proceedings before a judge under section (5) above, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties may be represented and appear by a solicitor alone.

104 Power of High Court in appeals

(1) Without prejudice to any existing power of the High Court, it may for the purposes of an appeal under section 106(1) or 108 of this Act—

(a) order the production of any document or other thing connected with the proceedings;

(b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;

(c) take account of any circumstances relevant to the case which were not before the trial judge;

(d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;

(e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.

(2) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland.

(3) The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.

105 Appeal against refusal of application

(1) When an application or applications have been dealt with by a judge of the High Court, under section 103(5) of this Act, the Clerk of Justiciary shall—

(a) notify to the applicant the decision in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) where all or any of such applications have been refused, forward to the applicant the prescribed form for completion and return forthwith if he desires to have the application or applications determined by the High Court as fully constituted for the hearing of appeals under this Part of this Act.

(2) Where the applicant does not desire a determination as mentioned in subsection (1)(b) above, or does not return within five days to the Clerk the form duly completed by him, the refusal of his application or applications by the judge shall be final.

(3) Where an applicant who desires a determination by the High Court as mentioned in subsection (1)(b) above—

(a) is not legally represented, he may be present at the hearing and determination by the High Court of the application;

(b) is legally represented, he shall not be entitled to be present without leave of the court.

(4) When an applicant duly completes and returns to the Clerk of Justiciary within the prescribed time the form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the form shall be deemed to be an application by the applicant for leave to be so present, and the Clerk of Justiciary, on receiving the form, shall take the necessary steps for placing the application before the court.

(5) If the application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the application is granted, he shall notify the applicant and the Governor of the prison where the applicant is in custody and the Secretary of State.

(6) For the purpose of constituting a Court of Appeal, the judge who has refused any application may sit as a member of the court, and take part in determining the application.

106 Right of appeal

(1) Any person convicted on indictment may, with leave granted in accordance with section 107 of this Act, appeal in accordance with this Part of this Act, to the High Court—

(a) against such conviction;

(b) subject to subsection (2) below, against the sentence passed on such conviction;

(c) against his absolute discharge or admonition;

(d) against any probation order or any community service order;

(e) against any order deferring sentence; or

(f) against both such conviction and, subject to subsection (2) below, such sentence or disposal or order.

(2) There shall be no appeal against any sentence fixed by law.

(3) By an appeal under subsection (1) above a person may bring under review of the High Court any alleged miscarriage of justice in the proceedings in which he was convicted, including any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.

(4) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with subsections (5) to (9) below, be kept in the custody of the court in which the conviction took place.

(5) All documents and other productions produced at the trial of a convicted person shall be kept in the custody of the court of trial in such manner as it may direct until any period allowed under or by virtue of this Part of this Act for lodging intimation of intention to appeal has elapsed.

(6) Where no direction is given as mentioned in subsection (5) above, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on an intimation of intention to appeal being lodged, and if within such period there has been such lodgement under this Part of this Act, they shall be so kept until the appeal, if it is proceeded with, is determined.

(7) Notwithstanding subsections (5) and (6) above, the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.

(8) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for

inspection and for the purpose of making copies of documents or productions to a person who has lodged an intimation of intention to appeal or as the case may be, to the convicted person's counsel or agent, and to the Crown Agent and the procurator fiscal or his deputes.

(9) Where no intimation of intention to appeal is lodged within the period mentioned in subsection (6) above, all such documents and productions shall be dealt with as they are dealt with according to the existing law and practice at the conclusion of a trial; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.

107 Leave to appeal

(1) The decision whether to grant leave to appeal for the purposes of section 106(1) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the note of appeal lodged under section 110(1)(a) of this Act;

(b) in the case of an appeal against conviction or sentence in a sheriff court, the certified copy or, as the case may be, the record of the proceedings at the trial;

(c) where the judge who presided at the trial furnishes a report under section 113 of this Act, that report; and

(d) where, by virtue of section 94(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (7) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

108 Lord Advocate's appeal against sentence

Where a person has been convicted on indictment, the Lord Advocate may appeal against the sentence passed on conviction or against any probation order or any community service order or against the person's absolute discharge or admonition or against any order deferring sentence—

(a) if it appears to the Lord Advocate that, as the case may be—

(i) the sentence is unduly lenient;

(ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;

(iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or

(iv) the deferment of sentence is inappropriate or on unduly lenient conditions; or

(b) on a point of law.

109 Intimation of intention to appeal

(1) Subject to section 111(2) of this Act and to section 10 of the Proceeds of Crime (Scotland) Act 1995 (postponed confiscation orders), where a person desires to appeal under section 106(1)(a) or (f) of this Act, he shall within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation

of intention to appeal which shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal.

(2) A copy of intimation given under subsection (1) above shall be sent to the Crown Agent.

(3) On intimation under subsection (1) above being lodged by a person in custody, the Clerk of Justiciary shall give notice of the intimation to the Secretary of State.

(4) Subject to subsection (5) below, for the purposes of subsection (1) above and section 106(5) to (7) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court.

(5) Where in relation to an appeal under section 106(1)(a) of this Act sentence is deferred under section 202 of this Act, the proceedings shall be deemed finally determined on the day on which sentence is first so deferred in open court.

(6) Without prejudice to section 10 of the said Act of 1995, the reference in subsection (4) above to "the day on which sentence is passed in open court" shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made, whether or not a confiscation order is then made or any other sentence is then passed.

110 Note of appeal

(1) Subject to section 111(2) of this Act—

(a) within six weeks of lodging intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) of this Act, within two weeks of the passing of the sentence (or, as the case may be, of the making of the order disposing of the case or deferring sentence) in open court, the convicted person may lodge a written note of appeal with the Clerk of Justiciary who shall send a copy to the judge who presided at the trial and to the Crown Agent; or, as the case may be,

(b) within four weeks of the passing of the sentence in open court, the Lord Advocate may lodge such a note with the Clerk of Justiciary, who shall send a copy to the said judge and to the convicted person or that person's solicitor.

(2) The period of six weeks mentioned in paragraph (a) of subsection (1) above may be extended, before it expires, by the Clerk of Justiciary.

(3) A note of appeal shall—

(a) identify the proceedings;

(b) contain a full statement of all the grounds of appeal; and

(c) be in as nearly as may be the form prescribed by Act of Adjournal.

(4) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

(5) Subsection (4) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 107 of this Act.

(6) On a note of appeal under section 106(1)(b) to (e) of this Act being lodged by an appellant in custody the Clerk of Justiciary shall give notice of that fact to the Secretary of State.

111 Provisions supplementary to sections 109 and 110

(1) Where the last day of any period mentioned in sections 109(1) and 110(1) of this Act falls on a day on which the office of the Clerk of Justiciary is closed, such period shall extend to and include the next day on which such office is open.

(2) Any period mentioned in section 109(1) or 110(1)(a) of this Act may be extended at any time by the High Court in respect of any convicted person; and an application for such extension may be made under this subsection and shall be in as nearly as may be the form prescribed by Act of Adjournal.

112 Admission of appellant to bail

(1) Subject to subsection (2) below, the High Court may, if it thinks fit, on the application of a convicted person, admit him to bail pending the determination of—

(a) his appeal; or

(b) any relevant appeal by the Lord Advocate under section 108 of this Act.

(2) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

(a) where he is the appellant and has not lodged a note of appeal in accordance with section 110(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or

(b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted,

and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.

(3) A person who is admitted to bail under subsection (1) above shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.

(4) Where an appellant fails to appear personally in court as mentioned in subsection (3) above, the court may—

(a) if he is the appellant—

(i) decline to consider the appeal; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal; or

(ii) without prejudice to section 27 of this Act, make such other order as the court thinks fit.

(5) For the purposes of subsections (1), (3) and (4) above, "appellant" includes not only a person who has lodged a note of appeal but also one who has lodged an intimation of intention to appeal.

113 Judge's report

(1) As soon as is reasonably practicable after receiving the copy note of appeal sent to him under section 110(1) of this Act, the judge who presided at the trial shall furnish the Clerk of Justiciary with a written report giving the judge's opinion on the case generally and on the grounds contained in the note of appeal.

(2) The Clerk of Justiciary shall send a copy of the judge's report—

(a) to the convicted person or his solicitor;

(b) to the Crown Agent; and

(c) in a case referred under section 124(3) of this Act, to the Secretary of State.

(3) Where the judge's report is not furnished as mentioned in subsection (1) above, the High Court may call for the report to be furnished within such period as it may specify or, if it thinks fit, hear and determine the appeal without the report.

(4) Subject to subsection (2) above, the report of the judge shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

114 Applications made orally or in writing

Subject to any provision of this Part of this Act to the contrary, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing.

115 Presentation of appeal in writing

(1) If an appellant, other than the Lord Advocate, desires to present his case and his argument in writing instead of orally he shall, at least four days before the diet fixed for the hearing of the appeal—

(a) intimate this desire to the Clerk of Justiciary;

(b) lodge with the Clerk of Justiciary three copies of his case and argument; and

(c) send a copy of the intimation, case and argument to the Crown Agent.

(2) Any case or argument presented as mentioned in subsection (1) above shall be considered by the High Court.

(3) Unless the High Court otherwise directs, the respondent shall not make a written reply to a case and argument presented as mentioned in subsection (1) above, but shall reply orally at the diet fixed for the hearing of the appeal.

(4) Unless the High Court otherwise allows, an appellant who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal.

116 Abandonment of appeal

(1) An appellant may abandon his appeal by lodging with the Clerk of Justiciary a notice of abandonment in as nearly as may be the form prescribed by Act of Adjournal; and on such notice being lodged the appeal shall be deemed to have been dismissed by the court.

(2) A person who has appealed against both conviction and sentence (or, as the case may be, against both conviction and disposal or order) may abandon the appeal in so far as it is against conviction and may proceed with it against sentence (or disposal or order) alone.

117 Presence of appellant or applicant at hearing

(1) Where an appellant or applicant is in custody the Clerk of Justiciary shall notify—

(a) the appellant or applicant;

(b) the Governor of the prison in which the appellant or applicant then is; and

(c) the Secretary of State,

of the probable day on which the appeal or application will be heard.

(2) The Secretary of State shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

(3) A convicted appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, at the hearing of his appeal.

(4) When an appellant or applicant is to be present at any diet—

(a) before the High Court or any judge of that court; or

(b) for the taking of additional evidence before a person appointed for that purpose under section 104(1)(b) of this Act, or

(c) for an examination or investigation by a special commissioner in terms of section 104(1)(d) of this Act,

the Clerk of Justiciary shall give timeous notice to the Secretary of State, in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(5) A notice under subsection (4) above shall be sufficient warrant to the Secretary of State for transmitting the appellant or applicant in custody from prison to the place where the diet mentioned in that subsection or any subsequent diet is to be held and for reconveying him to prison at the conclusion of such diet.

(6) The appellant or applicant shall appear at any diet mentioned in subsection (4) above in ordinary civilian clothes.

(7) Where the Lord Advocate is the appellant, subsections (1) to (6) above shall apply in respect of the convicted person, if in custody, as they apply to an appellant or applicant in custody.

(8) The Secretary of State shall, on notice under subsection (4) above from the Clerk of Justiciary, ensure that sufficient male and female prison officers attend each sitting of the court, having regard to the list of appeals for the sitting.

(9) When the High Court fixes the date for the hearing of an appeal, or of an application under section 111(2) of this Act, the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the convicted person, or to the convicted person himself if he has no known solicitor.

118 Disposal of appeals

(1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—

(a) affirming the verdict of the trial court;

(b) setting aside the verdict of the trial court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or

(c) setting aside the verdict of the trial court and quashing the conviction and granting authority to bring a new prosecution in accordance with section 119 of this Act.

(2) An amended verdict of guilty substituted under subsection (1) above must be one which could have been returned on the indictment before the trial court.

(3) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant (or, as the case may be, any disposal or order made) as respects the indictment, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence (or disposal or order) related to the verdict set aside; or

(b) in any other case, where the sentence (or disposal or order) did not so relate,

may pass another (but not more severe) sentence or make another (but not more severe) disposal or order in substitution for the sentence, disposal or order so quashed.

(4) The High Court may, subject to subsection (5) below, dispose of an appeal against sentence by—

(a) affirming such sentence; or

(b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 106(3) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor,

and, in this subsection, "appeal against sentence" shall, without prejudice to the generality of the expression, be construed as including an appeal under section 106(1)(c) to (e), and any appeal under section 108, of this Act; and other references to sentence shall be construed accordingly.

(5) In relation to any appeal under section 106(1) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—

(a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity; and

(b) quashing any sentence imposed on the appellant (or disposal or order made) as respects the indictment and—

(i) making, in respect of the appellant, any order mentioned in section 57(2)(a) to (d) of this Act; or

(ii) making no order.

(6) Subsections (3) and (4) of section 57 of this Act shall apply to an order made under subsection (5)(b)(i) above as they apply to an order made under subsection (2) of that section.

(7) In disposing of an appeal under section 106(1)(b) to (f) or 108 of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

(8) No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

(a) shall be quashed for want of form; or

(b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—

(i) the relevancy of the indictment, or the want of specification therein; or

(ii) the competency or admission or rejection of evidence at the trial in the inferior court,

unless such objections were timeously stated.

119 Provision where High Court authorises new prosecution

(1) Subject to subsection (2) below, where authority is granted under section 118(1)(c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution.

(2) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

(4) A new prosecution may be brought under this section, notwithstanding that any time limit, other than the time limit mentioned in subsection (5) below, for the commencement of such proceedings has elapsed.

(5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.

(6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(7) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.

(8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced—

(a) in a case where a warrant to apprehend or to cite the accused is executed without unreasonable delay, on the date on which the warrant is granted; and

(b) in any other case, on the date on which the warrant is executed.

(9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 118(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

(10) On granting authority under section 118(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.

(11) Subsections (4)(b) and (7) to (9) of section 65 of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (10) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.

120 Appeals: supplementary provisions

(1) Where—

(a) intimation of the diet appointed for the hearing of the appeal has been made to the appellant;

(b) no appearance is made by or on behalf of an appellant at the diet; and

(c) no case or argument in writing has been timeously lodged,

the High Court shall dispose of the appeal as if it had been abandoned.

(2) The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant (or, where the Lord Advocate is the appellant, the convicted person) is for any reason not present.

(3) When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give to the applicant if he is in custody and has not been present at the hearing of such application notice of the decision of the court in relation to the said application.

(4) On the final determination of any appeal under this Part of this Act or of any matter under section 103(5) of this Act, the Clerk of Justiciary shall give notice of such determination—

(a) to the appellant or applicant if he is in custody and has not been present at such final determination;

(b) to the clerk of the court in which the conviction took place; and

(c) to the Secretary of State.

121 Suspension of disqualification, forfeiture, etc

(1) Any disqualification, forfeiture or disability which attaches to a person by reason of a conviction shall not attach—

(a) for the period of four weeks from the date of the verdict against him; or

(b) where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) or 108 of this Act, a note of appeal is lodged, until the appeal, if it is proceeded with, is determined.

(2) The destruction or forfeiture or any order for the destruction or forfeiture of any property, matter or thing which is the subject of or connected with any prosecution following upon a conviction shall be suspended—

(a) for the period of four weeks after the date of the verdict in the trial; or

(b) where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) or 108 of this Act, a note of appeal is lodged, until the appeal, if it is proceeded with, is determined.

(3) This section does not apply in the case of any disqualification, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which makes express provision for the suspension of the disqualification, destruction or forfeiture or order for destruction or forfeiture pending the determination of an appeal against conviction or sentence.

(4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 249 of this Act, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under section 106(1)(b) to (e) or 108 of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined—

(a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and

(b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under subsection (9) of the said section 249.

122 Fines and caution

(1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive the fine shall, on receiving it, retain it until the determination of any appeal in relation to the conviction or sentence.

(2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.

(3) An appellant who has been sentenced to the payment of a fine, and has paid it in accordance with the sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the High Court, to the return of the sum paid or any part of it.

(4) A convicted person who has been sentenced to the payment of a fine and has duly paid it shall, if an appeal against sentence by the Lord Advocate results in the sentence being quashed and no fine, or a lesser fine than that paid, being imposed, be entitled, subject to any order of the High Court, to the return of the sum paid or as the case may be to the return of the amount by which that sum exceeds the amount of the lesser fine.

123 Lord Advocate's reference

(1) Where a person tried on indictment is acquitted or convicted of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion; and the Clerk of Justiciary shall send to the person and to any solicitor who acted for the person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.

(2) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Lord Advocate either—

(a) that he elects to appear personally at the hearing; or

(b) that he elects to be represented thereat by counsel,

but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.

(3) Where there is no intimation under subsection (2)(b) above, the High Court shall appoint counsel to act at the hearing as *amicus curiae*.

(4) The costs of representation elected under subsection (2)(b) above or of an appointment under subsection (3) above shall, after being taxed by the Auditor of the Court of Session, be paid by the Lord Advocate.

(5) The opinion on the point referred under subsection (1) above shall not affect the acquittal or, as the case may be, conviction in the trial.

124 Finality of proceedings and Secretary of State's reference

(1) Nothing in this Part of this Act shall affect the prerogative of mercy.

(2) Subject to subsection (3) below, every interlocutor and sentence pronounced by the High Court under this Part of this Act shall be final and conclusive and not subject to review by any court whatsoever and it shall be incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part of this Act.

(3) The Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal against such conviction or sentence has previously been heard and determined by the High Court, refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under this Part of this Act.

(4) The power of the Secretary of State under this section to refer to the High Court the case of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

(5) This section shall apply in relation to a finding under section 55(2) and an order under section 57(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.

125 Reckoning of time spent pending appeal

(1) Subject to subsection (2) below, where a convicted person is admitted to bail under section 112 of this Act, the period beginning with the date of his admission to bail and ending on the date of his readmission to prison in consequence of the determination or abandonment of—

(a) his appeal; or, as the case may be,

(b) any relevant appeal by the Lord Advocate under section 108 of this Act,

shall not be reckoned as part of any term of imprisonment under his sentence.

(2) The time, including any period consequent on the recall of bail, during which an appellant is in custody pending the determination of his appeal or, as the case may be, of any relevant appeal by the Lord Advocate under section 108 of this Act shall, subject to any direction which the High Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence.

(3) Subject to any direction which the High Court may give to the contrary, imprisonment of an appellant or, where the appellant is the Lord Advocate, of a convicted person—

(a) who is in custody in consequence of the conviction or sentence appealed against, shall be deemed to run as from the date on which the sentence was passed;

(b) who is in custody other than in consequence of such conviction or sentence, shall be deemed to run or to be resumed as from the date on which his appeal was determined or abandoned;

(c) who is not in custody, shall be deemed to run or to be resumed as from the date on which he is received into prison under the sentence.

(4) In this section references to a prison and imprisonment shall include respectively references to a young offenders institution or place of safety or, as respects a child sentenced to be detained under section 208 of this Act, the place directed by the

Secretary of State and to detention in such institution, centre or place of safety, or, as respects such a child, place directed by the Secretary of State and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

126 Extract convictions

No extract conviction shall be issued—

(a) during the period of four weeks after the day on which the conviction took place, except in so far as it is required as a warrant for the detention of the person convicted under any sentence which has been pronounced against him; nor

(b) where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e) or 108 of this Act, a note of appeal is lodged, until the appeal, if it is proceeded with, is determined.

127 Forms in relation to appeals

(1) The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to intimations of intention to appeal, notes of appeal or notices of application under this Part of this Act to—

(a) any person who demands them; and

(b) to officers of courts, governors of prisons, and such other officers or persons as he thinks fit.

(2) The governor of a prison shall cause the forms and instructions mentioned in subsection (1) above to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act.

(3) The governor of a prison shall, if requested to do so by a prisoner, forwarded on the prisoner's behalf to the Clerk of Justiciary any intimation, note or notice mentioned in subsection (1) above given by the prisoner.

128 Fees and expenses

Except as otherwise provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an appeal or application under this Part of this Act.

129 Non-compliance with certain provisions may be waived

(1) Non-compliance with—

(a) the provisions of this Act set out in subsection (3) below; or

(b) any rule of practice for the time being in force under this Part of this Act relating to appeals,

shall not prevent the further prosecution of an appeal if the High Court or a judge thereof considers it just and proper that the non-compliance is waived or, in the manner directed by the High Court or judge, remedied by amendment or otherwise.

(2) Where the High Court or a judge thereof directs that the non-compliance is to be remedied, and the remedy is carried out, the appeal shall proceed.

(3) The provisions of this Act referred to in subsection (1) above are:—

section 94
section 103(1), (4), (6) and (7)
section 104(2) and (3)
section 105
section 106(4)
section 111
section 114
section 115
section 116
section 117
section 120(1), (3) and (4)
section 121
section 122
section 126
section 128.

(4) This section does not apply to any rule of practice relating to appeals under section 60 of this Act.

130 Bill of suspension not competent

It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgement or order pronounced in any proceedings on indictment in the sheriff court.

131 Prosecution appeal by bill of advocation

(1) Without prejudice to section 74 of this Act, the prosecutor's right to bring a decision under review of the High Court by way of bill of advocation in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.

(2) Where a decision to which a bill of advocation relates is reversed on the review of the decision the prosecutor may, whether or not there has already been a trial diet at which evidence has been led, proceed against the accused by serving him with an indictment containing, subject to subsection (3) below, the charge or charges which were affected by the decision.

(3) The wording of the charge or charges referred to in subsection (2) above shall be as it was immediately before the decision appealed against.

132 Interpretation of Part VIII

In this Part of this Act, unless the context otherwise requires—

"appellant" includes a person who has been convicted and desires to appeal under this Part of the Act;

"sentence" includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the

case of a person convicted and the power of the High Court to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

PART IX

SUMMARY PROCEEDINGS

General

133 Application of Part IX of Act

(1) This Part of this Act applies to summary proceedings in respect of any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried summarily.

(2) Without prejudice to subsection (1) above, this Part of this Act also applies to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in respect of—

(a) any offence or the recovery of a penalty under any enactment or rule of law which does not exclude summary procedure as well as, in accordance with section 211(3) and (4) of this Act, to the enforcement of a fine imposed in solemn proceedings; and

(b) any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction.

(3) Where any statute provides for summary proceedings to be taken under any public general or local enactment, such proceedings shall be taken under this Part of this Act.

(4) Nothing in this Part of this Act shall—

(a) extend to any complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever; or

(b) affect any right to raise any civil proceedings.

(5) Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.

134 Incidental applications

(1) This section applies to any application to a court for any warrant or order of court—

(a) as incidental to proceedings by complaint; or

(b) where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon.

(2) An application to which this section applies may be made by petition at the instance of the prosecutor in the form prescribed by Act of Adjournal.

(3) Where it is necessary for the execution of a warrant or order granted under this section, warrant to break open shut and lockfast places shall be implied.

135 Warrants of apprehension and search

(1) A warrant of apprehension or search may be in the form prescribed by Act of Adjournal or as nearly as may be in such form, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.

(2) A warrant of apprehension of an accused in the form mentioned in subsection (1) above shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station, police cell, or other convenient place.

(3) A person apprehended under a warrant or by virtue of power under any enactment or rule of law shall wherever practicable be brought before a court competent to deal with the case not later than in the course of the first day after he is taken into custody.

(4) The reference in subsection (3) above to the first day after he is taken into custody shall not include a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act; but nothing in this subsection shall prevent a person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.

(5) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused who has been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.

136 Time limit for certain offences

(1) Proceedings under this Part of this Act in respect of any offence to which this section applies shall be commenced—

(a) within six months after the contravention occurred;

(b) in the case of a continuous contravention, within six months after the last date of such contravention,

and it shall be competent in a prosecution of a contravention mentioned in paragraph (b) above to include the entire period during which the contravention occurred.

(2) This section applies to any offence triable only summarily and consisting of the contravention of any enactment, unless the enactment fixes a different time limit.

(3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

137 Alteration of diets

(1) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet and fix an earlier diet in lieu.

(2) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix a later diet in lieu unless the court considers that it should not do so because there has been unnecessary delay on the part of one of more of the parties.

(3) Where all the parties join in an application under subsection (2) above, the court may proceed under that subsection without hearing the parties.

(4) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 134 of this Act; and after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.

(5) Where an accused had intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.

Complaints

138 Complaints

(1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint signed by the prosecutor or by a solicitor on behalf of a prosecutor other than the procurator fiscal.

(2) The complaint shall be in the form—

(a) set out in Schedule 5 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form.

(3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the procurator fiscal.

(4) Schedule 3 to this Act shall have effect as regards complaints under this Act.

139 Complaints: orders and warrants

(1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—

(a) to pronounce an order assigning a diet for the disposal of the case to which the accused may be cited as mentioned in section 141 of this Act;

(b) to grant warrant to apprehend the accused where this appears to the judge expedient;

(c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any

offence charged in the complaint, and to take possession of such documents, articles or property;

(d) to grant any other order or warrant of court or warrant which may be competent in the circumstances.

(2) The power of a judge under subsection (1) above—

(a) to pronounce an order assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;

(b) to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.

Citation

140 Citation

(1) This Act shall be a sufficient warrant for the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.

(2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form and shall, in the case of the accused, proceed on an induciae of at least 48 hours unless in the special circumstances of the case the court fixes a shorter induciae.

(3) This section shall apply to the citation of witnesses for precognition by the prosecutor where a judge on the application of the prosecutor deems it expedient to grant warrant to cite witnesses for precognition in regard to any offence which may be competently tried in the court of that judge, and whether or not any person has at the time of such application been charged with such offence.

141 Manner of citation

(1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet shall be effected by delivering the citation to him personally or leaving it for him at his dwelling-house or place of business with a resident or, as the case may be, employee at that place or, where he has no known dwelling-house or place of business, at any other place in which he may be resident at the time.

(2) Notwithstanding subsection (1) above, citation may also be effected—

(a) where the accused or witness is the master of, or a seaman or person employed in a vessel, if the citation is left with a person on board the vessel and connected with it;

(b) where the accused is a partnership, association or body corporate—

(i) if the citation is left at its ordinary place of business with a partner, director, secretary or other official; or

(ii) if it is cited in the same manner as if the proceedings were in a civil court; or

(c) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.

(3) Subject to subsection (4) below, the citation of the accused or a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is signed by the prosecutor and—

(a) in the case of the accused, sent by post in a registered envelope or through the recorded delivery service; and

(b) in the case of a witness, sent by ordinary post,

to the dwelling-house or place of business of the accused or witness or, if he has no known dwelling-house or place of business, to any other place in which he may be resident at the time.

(4) Where the accused fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, subsections (3) and (5) to (7) of section 150 of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.

(5) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited as mentioned in subsection (3) above in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of subsection (4) above.

(6) When the citation of any person is effected by post in terms of this section or any other provision of this Act to which this section is applied, the induciae shall be reckoned from 24 hours after the time of posting.

(7) It shall be sufficient evidence that a citation has been sent by post in terms of this section or any other provision of this Act mentioned in subsection (6) above, if there is produced in court a written execution, signed by the person who signed the citation in the form prescribed by Act of Adjournal, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter.

Children

142 Summary proceedings against children

(1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings: and no person shall be present at any sitting for the purposes of such proceedings except—

(a) members and officers of the court;

(b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;

(c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings;

(d) such other persons as the court may specially authorise to be present.

(2) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if he thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child.

(3) When a sheriff sitting summarily has remanded a child for information to be obtained with respect to him, any sheriff sitting summarily in the same place—

(a) may in his absence extend the period for which he is remanded provided that he appears before a sheriff or a justice at least once every 21 days;

(b) when the required information has been obtained, may deal with him finally,

and where the sheriff by whom he was originally remanded has recorded a finding that he is guilty of an offence charged against him it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.

(4) Any direction in any enactment that a charge shall be brought before a juvenile court shall be construed as a direction that he shall be brought before the sheriff sitting as a court of summary jurisdiction, and no such direction shall be construed as restricting the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

(5) This section does not apply to summary proceedings before the sheriff in respect of an offence where a child has been charged jointly with a person who is not a child.

Companies

143 Prosecution of companies, etc

(1) Without prejudice to any other or wider powers conferred by statute, this section shall apply in relation to the prosecution by summary procedure of a partnership, association, body corporate or body of trustees.

(2) Proceedings may be taken against the partnership, association, body corporate or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in accordance with section 221 of this Act.

(3) Proceedings may be taken against an individual representative of a partnership, association or body corporate as follows:—

(a) in the case of a partnership or firm, any one of the partners, or the manager or the person in charge or locally in charge of its affairs;

(b) in the case of an association or body corporate, the managing director or the secretary or other person in charge, or locally in charge, of its affairs,

may be dealt with as if he was the person offending, and the offence shall be deemed to be the offence of the partnership, association or body corporate.

First diet

144 Procedure at first diet

(1) Where the accused is present at the first calling of the case in a summary prosecution and—

(a) the complaint has been served on him, or

(b) the complaint or the substance thereof has been read to him, or

(c) he has legal assistance in his defence,

he shall, unless the court adjourns the case under the section 145 of this Act and subject to subsection (4) below, be asked to plead to the charge.

(2) Where the accused is not present at a calling of the case in a summary prosecution and either—

(a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that the intimation has been made or authorised by the accused; or

(b) counsel or a solicitor, or a person not being counsel or a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,

subsection (3) below shall apply.

(3) Where this subsection applies—

(a) in the case of a plea of not guilty, this Part of this Act except section 146(2) shall apply in like manner as if the accused had appeared and tendered the plea; and

(b) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.

(4) Any objection to the competency or relevancy of a summary complaint or the proceedings thereon, or any denial that the accused is the person charged by the police with the offence shall be stated before the accused pleads to the charge or any plea is tendered on his behalf.

(5) No objection or denial such as is mentioned in subsection (4) above shall be allowed to be stated or issued at any future diet in the case except with the leave of the court, which may be granted only on cause shown.

(6) Where in pursuance of subsection (3)(b) above the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of detention in a young offenders institution, remand centre or other establishment.

(7) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to only part of the charge, but where a plea of guilty to only part of a charge is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.

(8) It shall not be competent for any person appearing to answer a complaint, or for counsel or a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

(9) In this section, a reference to the first calling of a case includes a reference to any adjourned diet fixed by virtue of section 145 of this Act.

145 Adjournment for inquiry at first calling

(1) Without prejudice to section 150(1) to (7) of this Act, at the first calling of a case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to

any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and, subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.

(2) Where the accused is remanded in custody, the total period for which he is so remanded under this section shall not exceed 21 days and no one period of adjournment shall, except on special cause shown, exceed 7 days.

(3) Where the accused is remanded on bail or ordained to appear, no one period of adjournment shall exceed 28 days.

146 Plea of not guilty

(1) This section applies where the accused in a summary prosecution—

(a) pleads not guilty to the charge; or

(b) pleads guilty to only part of the charge and the prosecutor does not accept the partial plea.

(2) The court may proceed to trial at once unless either party moves for an adjournment and the court considers it expedient to grant it.

(3) The court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, and the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one.

(4) Where the accused is brought before the court from custody the court shall inform the accused of his right to an adjournment of the case for not less than 48 hours and if he requests such adjournment before the prosecutor has commenced his proof, subject to subsection (5) below, the adjournment shall be granted.

(5) Where the court considers that it is necessary to secure the examination of witnesses who otherwise would not be available, the case may proceed to trial at once or on a shorter adjournment than 48 hours.

(6) Where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial—

(a) if he is neither granted bail nor ordained to appear; or

(b) if he is granted bail on a condition imposed under section 24(6) of this Act that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.

(7) The court may from time to time at any stage of the case on the motion of either party or *ex proprio motu* grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate the continuation to the accused.

(8) It shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty.

(9) The court may, in any case where it considers it expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

Pre-trial procedure

147 Prevention of delay in trials

(1) Subject to subsections (2) and (3) below, a person charged with an offence in summary proceedings shall not be detained in that respect for a total of more than 40 days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge;

(b) the absence or illness of any necessary witness; or

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.

148 Intermediate diet

(1) The court may at any time, as respects a case which is adjourned for trial, fix a diet (to be known as an intermediate diet) for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

(a) the state of preparation of the prosecutor and of the accused with respect to their cases;

(b) whether the accused intends to adhere to the plea of not guilty; and

(c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(2) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further intermediate diet.

(3) Subject to subsection (2) above, the court may, if it considers it appropriate to do so, adjourn an intermediate diet.

(4) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.

(5) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited unless—

(a) he is legally represented; and

(b) the court considers that there are exceptional circumstances justifying him not attending.

(6) A plea of guilty may be tendered at the intermediate diet.

(7) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—

(a) in subsection (1), for the word "may" there shall be substituted "shall, subject to subsection (1A) below,"; and

(b) after subsection (1) there shall be inserted the following subsections—

"(1A) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.

(1B) The court may consider an application under subsection (1A) above without hearing the parties.".

(8) An order under subsection (7) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

149 Alibi

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, at any time before the first witness is sworn, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it; and, on such notice being given, the prosecutor shall be entitled, if he so desires, to an adjournment of the case.

Failure of accused to appear

150 Failure of accused to appear

(1) This section applies where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited other than a diet which, by virtue of section 148(5) of this Act, he is not required to attend.

(2) The court may adjourn the proceedings to another diet, and order the accused to attend at such diet, and appoint intimation of the diet to be made to him.

(3) The court may grant warrant to apprehend the accused.

(4) Intimation under subsection (2) above shall be sufficiently given by an officer of law, or by letter signed by the clerk of court or prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgement or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given.

(5) Where the accused is charged with a statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on

or conferring jurisdiction authorises procedure in the absence of the accused, the court, on the motion of the prosecutor and upon being satisfied that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, may subject to subsections (6) and (7) below, proceed to hear and dispose of the case in the absence of the accused.

(6) Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court.

(7) In a case to which subsection (5) above applies, the court may, if it considers it expedient, allow counsel or a solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him.

(8) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—

(a) to a fine not exceeding level 3 on the standard scale; and

(b) to a period of imprisonment not exceeding—

(i) in the district court, 60 days; or

(ii) in the sheriff court, 3 months.

(9) The penalties provided for in subsection (8) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

(10) An accused may be dealt with for an offence under subsection (8) above either at his diet of trial for the original offence or at a separate trial.

Non-availability of judge

151 Death, illness or absence of judge

(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—

(a) where the diet has not been called, to convene the court and adjourn the diet;

(b) where the diet has been called but no evidence has been led, to adjourn the diet; and

(c) where the diet has been called and evidence has been led—

(i) with the agreement of the parties, to desert the diet *pro loco et tempore*; or

(ii) to adjourn the diet.

(2) Where, under subsection (1)(c)(i) above, a diet has been deserted *pro loco et tempore*, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.

(3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

Trial diet

152 Desertion of diet

(1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore.*

(2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet *pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.

(3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.

153 Trial in presence of accused

(1) Without prejudice to section 150 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—

(a) that he is removed from the court for so long as his conduct makes it necessary; and

(b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

154 Proof of official documents

(1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.

(2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.

(3) Subsection (2) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being *ultra vires* of the authority making it or on any other competent ground.

(4) Where an order such as is mentioned in subsection (2) above is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.

(5) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

155 Punishment of witness for contempt

(1) If a witness in a summary prosecution—

(a) wilfully fails to attend after being duly cited; or

(b) unlawfully refuses to be sworn; or

(c) after the oath has been administered to him refuses to answer any question which the court may allow; or

(d) prevaricates in his evidence,

he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding level 3 on the standard scale or by imprisonment for any period not exceeding 21 days.

(2) Where punishment is summarily imposed as mentioned in subsection (1) above, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.

(3) Subsections (1) and (2) above are without prejudice to the right of the prosecutor to proceed by way of formal complaint for any such contempt where a summary punishment, as mentioned in the said subsection (1), is not imposed.

(4) Any witness who, having been duly cited in accordance with section 140 of this Act—

(a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

(b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,

shall be liable to the like punishment as is provided in subsection (1) above.

156 Apprehension of witness

(1) Where a witness, having been duly cited, fails to appear at the diet fixed for his attendance and no just excuse is offered by him or on his behalf, the court may, if it is satisfied that he received the citation or that its contents came to his knowledge, issue a warrant for his apprehension.

(2) Where the court is satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, it may issue a warrant for his apprehension.

(3) A warrant of apprehension of a witness in the form mentioned in section 135(1) of this Act shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station, police cell, or other convenient place, until—

(a) the date fixed for the hearing of the case; or

(b) the date when security to the amount fixed under subsection (4) below is found,

whichever is the earlier.

(4) A witness apprehended under a warrant under subsection (1) or (2) above shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.

157 Record of proceedings

(1) Proceedings in a summary prosecution shall be conducted summarily *viva voce* and, except where otherwise provided and subject to subsection (2) below, no record need be kept of the proceedings other than the complaint, or a copy of the complaint certified as a true copy by the procurator fiscal, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court.

(2) Any objection taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

158 Interruption of summary proceedings for verdict in earlier trial

Where the sheriff is sitting in summary proceedings during the period in which the jury in a criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—

(a) in order to receive the verdict of the jury and dispose of the cause to which it relates;

(b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter,

and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

159 Amendment of complaint

(1) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or any notice of previous conviction relative thereto by deletion, alteration or addition, so as to—

(a) cure any error or defect in it;

(b) meet any objection to it; or

(c) cure any discrepancy or variance between the complaint or notice and the evidence.

(2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.

(3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

160 No case to answer

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—

(a) on an offence charged in the complaint; and

(b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.

(2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the complaint.

(3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

161 Defence to speak last

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

Verdict and conviction

162 Judges equally divided

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

163 Conviction: miscellaneous provisions

(1) Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form prescribed by Act of Adjournal shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.

(2) In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

164 Conviction of part of charge

A conviction of a part or parts only of the charge or charges libelled in a complaint shall imply dismissal of the rest of the complaint.

165 "Conviction" and "sentence" not to be used for children

The words "conviction" and "sentence" shall not be used in relation to children dealt with summarily and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction or a sentence shall in the case of a child 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.

166 Previous convictions: summary proceedings

(1) This section shall apply where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court.

(2) A notice in the form prescribed by Act of Adjournal or as nearly as may be in such form specifying the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead.

(3) The previous conviction shall not be laid before the judge until he is satisfied that the charge is proved.

(4) If a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in subsection (2) above before the judge, and—

(a) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which the plea is tendered;

(b) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,

and if such admission is made or deemed to be made it shall be entered in the record of the proceedings; and it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted.

(5) Where the accused does not admit any previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet.

(6) A copy of any notice served on the accused under this section shall be entered in the record of the proceedings.

(7) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

(8) Nothing in this section shall prevent the prosecutor—

(a) asking the accused questions tending to show that the accused has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or

(b) leading evidence of previous convictions where it is competent to do so—

(i) as evidence in support of a substantive charge; or

(ii) under section 270 of this Act.

167 Forms of finding and sentence

(1) Every sentence imposed by a court of summary jurisdiction shall unless otherwise provided be pronounced in open court in the presence of the accused, but need not be written out or signed in his presence.

(2) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any enactment, shall be entered in the record of the proceedings in the form, as nearly as may be, prescribed by Act of Adjournal.

(3) The record of the proceedings shall be sufficient warrant for all execution on a finding, sentence or order and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof.

(4) When imprisonment forms part of any sentence or other judgement, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.

(5) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the non-payment thereof.

(6) Where several charges at common law or under any enactment are embraced in one complaint, a cumulo penalty may be imposed in respect of all or any of such charges of which the accused is convicted.

(7) A court of summary jurisdiction may frame—

(a) a sentence following on conviction; or

(b) an order for committal in default of payment of any sum of money or for contempt of court,

so as to take effect on the expiry of any previous sentence or order which, at the date of the later conviction or order, the accused is undergoing.

(8) It shall be competent at any time before imprisonment has followed on a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent, and—

(a) the signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds; and

(b) the power conferred by this subsection to alter or modify a sentence may be exercised without requiring the attendance of the accused.

168 Caution

(1) This section applies with regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act.

(2) Caution may be found by consignation of the amount with the clerk of court, or by bond of caution signed by the cautioner.

(3) Where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery of the caution.

(4) Where a cautioner fails to pay the amount due under his bond within six days after he has received a charge to that effect, the court may—

(a) order him to be imprisoned for the maximum period applicable in pursuance of section 219 of this Act to that amount or until payment is made; or

(b) if it considers it expedient, on the application of the cautioner grant time for payment; or

(c) instead of ordering imprisonment, order recovery by civil diligence in accordance with section 221 of this Act.

169 Detention in precincts of court

(1) Where a court of summary jurisdiction has power to impose imprisonment or detention on an offender it may, in lieu of so doing and subject to subsection (2) below, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct.

(2) Before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

Miscellaneous

170 Damages in respect of summary proceedings

(1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced in any summary proceedings under this Act, unless—

(a) the person suing has suffered imprisonment in consequence thereof; and

(b) such proceedings, act, judgment, decree or sentence has been quashed; and

(c) the person suing specifically avers and proves that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.

(2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor establishes that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

(3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.

(4) In this section "judge" shall not include "sheriff", and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

171 Recovery of penalties

(1) All penalties, for the recovery of which no special provision has been made by any enactment may be recovered by the public prosecutor in any court having jurisdiction.

(2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

172 Forms of procedure

(1) The forms of procedure for the purposes of summary proceedings under this Act and appeals therefrom shall be in such forms as are prescribed by Act of Adjournal or as nearly as may be in such forms.

(2) All warrants (other than warrants of apprehension or search), orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.

(3) Where, preliminary to any procedure, a statement on oath is required, the statement may be given before any judge, whether the subsequent procedure is in his court or another court.

PART X

APPEALS FROM SUMMARY PROCEEDINGS

General

173 Quorum of High Court in relation to appeals

(1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

(2) For the purpose of hearing and determining appeals under section 175(2)(b) or (c) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

174 Appeals relating to preliminary pleas

(1) Without prejudice to any right of appeal under section 175(1) to (6) or 191 of this Act, a party may, with the leave of the court (granted either on the motion of the party or

ex proprio motu) and in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in section 144(4) of this Act; but such appeal must be taken not later than two days after such decision.

(2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(3) If leave to appeal under subsection (1) above is granted by the court it shall not proceed to trial at once under subsection (2) of section 146 of this Act; and subsection (3) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.

(4) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)

175 Right of appeal

(1) This section is without prejudice to any right of appeal under section 191 of this Act.

(2) Any person convicted, or found to have committed an offence, in summary proceedings may, with leave granted in accordance with section 180 or, as the case may be, 187 of this Act, appeal under this section to the High Court—

(a) against such conviction, or finding;

(b) against the sentence passed on such conviction;

(c) against his absolute discharge or admonition or any probation order or any community service order or any order deferring sentence; or

(d) against both such conviction and such sentence or disposal or order.

(3) The prosecutor in summary proceedings may appeal under this section to the High Court on a point of law—

(a) against an acquittal in such proceedings; or

(b) against a sentence passed on conviction in such proceedings.

(4) The prosecutor in such proceedings, in any class of case specified by order made by the Secretary of State under this subsection, may appeal to the High Court against the sentence passed on such conviction or, whether the person has been convicted or not, against any probation order or any community service order or against the person's absolute discharge or admonition or against any order deferring sentence if it appears to the prosecutor that, as the case may be—

(a) the sentence is unduly lenient;

(b) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;

(c) to dismiss with an admonition or to discharge absolutely is unduly lenient; or

(d) the deferment of sentence is inappropriate or on unduly lenient conditions.

(5) By an appeal under subsection (2) above or, as the case may be, against acquittal under subsection (3) above, an appellant may bring under review of the High Court any alleged miscarriage of justice in the proceedings including, in the case of an appeal under the said subsection (2), any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.

(6) The power of the Secretary of State to make an order under subsection (4) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Where a person desires to appeal under subsection (2)(a) or (d) or (3) above, he shall pursue such appeal in accordance with sections 176 to 179, 181 to 185, 188, 190 and 192(1) and (2) of this Act.

(8) A person who has appealed against both conviction and sentence, may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone, subject to such procedure as may be prescribed by Act of Adjournal.

(9) Where a convicted person or as the case may be a person found to have committed an offence desires to appeal under subsection (2)(b) or (c) above, or the prosecutor desires so to appeal by virtue of subsection (4) above, he shall pursue such appeal in accordance with sections 186, 189(1) to (6), 190 and 192(1) and (2) of this Act; but nothing in this section shall prejudice any right to proceed by bill of suspension, or as the case may be advocation, against an alleged fundamental irregularity relating to the imposition of sentence.

(10) Where any statute provides for an appeal from summary proceedings to be taken under any public general or local enactment, such appeal shall be taken under this Part of this Act.

Stated case

176 Stated case: manner and time of appeal

(1) An appeal under section 175(2)(a) or (d) or (3) of this Act shall be by application for a stated case, which application shall—

(a) be made within one week of the final determination of the proceedings;

(b) contain a full statement of all the matters which the appellant desires to bring under review and, where the appeal is also against sentence or disposal or order, the ground of appeal against that sentence or disposal or order; and

(c) be signed by the appellant or his solicitor and lodged with the clerk of court,

and a copy of the application shall, within the period mentioned in paragraph (a) above, be sent by the appellant to the respondent or the respondent's solicitor.

(2) The clerk of court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.

(3) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 179 of this Act, or within any further period afforded him by virtue of section 181(1) of this Act, amend any matter stated in his application or add a new matter; and he shall intimate any such amendment, or addition, to the respondent or the respondent's solicitor.

(4) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.

(5) The record of the procedure in the inferior court in an appeal mentioned in subsection (1) above shall be as nearly as may be in the form prescribed by Act of Adjournal.

177 Procedure where appellant in custody

(1) If an appellant making an application under section 176 of this Act is in custody, the court of first instance may—

(a) grant bail;

(b) grant a sist of execution;

(c) make any other interim order.

(2) An application for bail shall be disposed of by the court within 24 hours after such application has been made.

(3) If bail is refused or the appellant is dissatisfied with the conditions imposed, he may, within 24 hours after the judgment of the court, appeal against it by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant bail on such conditions as the Court or judge may think fit, or to refuse bail.

(4) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the conditions imposed or on account of refusal of bail by a court of summary jurisdiction.

(5) If an appellant who has been granted bail does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his bail remained unexpired and, subject to subsection (6) below, such period shall run from the date of his imprisonment under the warrant or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against.

(6) Where an appellant who has been granted bail does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is in custody or serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which any term or terms of imprisonment subsequently imposed expired.

(7) The court shall not make an order under subsection (6) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first

notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.

178 Stated case: preparation of draft

(1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 176 of this Act—

(a) where the appeal is taken from the district court and the trial was presided over by a justice of the peace or justices of the peace, the Clerk of Court; or

(b) in any other case the judge who presided at the trial,

shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.

(2) A stated case shall be, as nearly as may be, in the form prescribed by Act of Adjournal, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

179 Stated case: adjustment and signature

(1) Subject to section 181(1) of this Act, within three weeks of the issue of the draft stated case under section 178 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal.

(2) The adjustments mentioned in subsection (1) above shall relate to evidence heard or purported to have been heard at the trial and not to such additional evidence as is mentioned in section 175(5) of this Act.

(3) Subject to section 181(1) of this Act, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments to propose, he shall be deemed to have abandoned his appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

(4) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under section 181(1) of this Act, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.

(5) Where a party neither attends nor secures that he is represented at a hearing under subsection (4) above, the hearing shall nevertheless proceed.

(6) Where at a hearing under subsection (4) above—

(a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge; or

(b) any alteration proposed by the judge is not accepted by all the parties,

that fact shall be recorded in the minute of the proceedings of the hearing.

(7) Within two weeks of the date of the hearing under subsection (4) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in subsection (1)

above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—

(a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that adjustment and the reasons for his rejection of that adjustment and evidence; and

(b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (4) above.

(8) As soon as the case is signed under subsection (7) above the clerk of court—

(a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and

(b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.

(9) Subject to section 181(1) of this Act, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.

(10) Subject to section 181(1) of this Act, if the appellant or his solicitor fails to comply with subsection (9) above the appellant shall be deemed to have abandoned the appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

180 Leave to appeal against conviction etc

(1) The decision whether to grant leave to appeal for the purposes of section 175(2)(a) or (d) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the stated case lodged under subsection (9) of section 179 of this Act; and

(b) the documents transmitted to the Clerk of Justiciary under subsection (8)(b) of that section.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) The question whether to grant leave to appeal under subsection (1) or (5) above shall be considered and determined in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

181 Stated case: directions by High Court

(1) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with subsection (2) below, that the applicant has failed to comply with any of the requirements of—

(a) subsection (1) of section 176 of this Act; or

(b) subsection (1) or (9) of section 179 of this Act,

the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.

(2) Any application for a direction under subsection (1) above shall be made in writing to the Clerk of Justiciary and shall state the ground for the application, and, in the case of an application for the purposes of paragraph (a) of subsection (1) above, notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.

(3) The High Court shall dispose of any application under subsection (1) above in like manner as an application to review the decision of an inferior court on a grant of bail, but shall have power—

(a) to dispense with a hearing; and

(b) to make such enquiry in relation to the application as the court may think fit,

and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.

182 Stated case: hearing of appeal

(1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix.

(2) For the avoidance of doubt, where an appellant, in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application), refers to an alleged miscarriage of justice, but in stating a case under section 179(7) of this Act the inferior court is unable to take the allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.

(3) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a matter not contained in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application).

(4) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 180 of this Act.

(5) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—

(a) order the production of any document or other thing connected with the proceedings;

(b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge at the High Court or by such other person as it may appoint for that purpose;

(c) take account of any circumstances relevant to the case which were not before the trial judge;

(d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;

(e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case;

(f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection;

(g) take account of any evidence contained in a note of evidence such as is mentioned in section 179(7) of this Act.

(6) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.

183 Stated case: disposal of appeal

(1) The High Court may, subject to subsection (3) below and to section 190(1) of this Act, dispose of a stated case by—

(a) remitting the cause to the inferior court with its opinion and any direction thereon;

(b) affirming the verdict of the inferior court;

(c) setting aside the verdict of the inferior court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or

(d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 185 of this Act.

(2) An amended verdict of guilty substituted under subsection (1)(c) above must be one which could have been returned on the complaint before the inferior court.

(3) The High Court shall, in an appeal—

(a) against both conviction and sentence, subject to section 190(1) of this Act, dispose of the appeal against sentence; or

(b) by the prosecutor, against sentence, dispose of the appeal,

by exercise of the power mentioned in section 189(1) of this Act.

(4) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside; or

(b) in any other case, where the sentence did not so relate,

may pass another (but not more severe) sentence in substitution for the sentence so quashed.

(5) For the purposes of subsections (3) and (4) above, "sentence" shall be construed as including disposal or order.

(6) Where an appeal against acquittal is sustained, the High Court may—

(a) convict and, subject to subsection (7) below, sentence the respondent;

(b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the court for such purpose; or

(c) remit the case to the inferior court with their opinion thereon.

(7) Where the High Court sentences the respondent under subsection (6)(a) above it shall not in any case impose a sentence beyond the maximum sentence which could have been passed by the inferior court.

(8) Any reference in subsection (6) above to convicting and sentencing shall be construed as including a reference to—

(a) convicting and making some other disposal; or

(b) convicting and deferring sentence.

(9) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.

(10) Where, following an appeal, other than an appeal under section 175(2)(b) or (3) of this Act, the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have the power where at the time of disposal of the appeal the appellant—

(a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation;

(b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.

184 Abandonment of appeal

(1) An appellant in an appeal such as is mentioned in section 176(1) of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and intimated to the respondent or the respondent's solicitor, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocation or suspension.

(2) Subject to section 191 of this Act, on the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

New prosecution

185 Authorisation of new prosecution

(1) Subject to subsection (2) below, where authority is granted under section 183(1)(d) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the stated case arose shall not be a bar to such prosecution.

(2) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

(4) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (5) below) for the commencement of such proceedings has elapsed.

(5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.

(6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(7) The complaint in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.

(8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced—

(a) in a case where such warrant is executed without unreasonable delay, on the date on which a warrant to apprehend or to cite the accused is granted; and

(b) in any other case, on the date on which the warrant is executed.

(9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 183(1)(d) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

(10) On granting authority under section 183(1)(d) of this Act to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody; but an accused person may not be detained by virtue of this subsection for a period of more than 40 days.

Appeals against sentence

186 Appeals against sentence only

(1) An appeal under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act shall be by note of appeal, which shall state the ground of appeal.

(2) The note of appeal shall, where the appeal is—

(a) under section 175(2)(b) or (c) be lodged, within one week of—

(i) the passing of the sentence; or

(ii) the making of the order disposing of the case or deferring sentence,

with the clerk of the court from which the appeal is to be taken; or

(b) by virtue of section 175(4) be so lodged within four weeks of such passing or making.

(3) The clerk of court on receipt of the note of appeal shall—

(a) send a copy of the note to the respondent or his solicitor; and

(b) obtain a report from the judge who sentenced the convicted person or, as the case may be, who disposed of the case or deferred sentence.

(4) Subject to subsection (5) below, the clerk of court shall within two weeks of the passing of the sentence or within two weeks of the disposal or order against which the appeal is taken—

(a) send to the Clerk of Justiciary the note of appeal, together with the report mentioned in subsection (3)(b) above, a certified copy of the complaint, the minute of proceedings and any other relevant documents; and

(b) send copies of that report to the appellant and respondent or their solicitors.

(5) Where a judge—

(a) is temporarily absent from duty for any cause;
(b) is a temporary sheriff; or
(c) is a justice of the peace,

the sheriff principal of the sheriffdom in which the judgment was pronounced may extend the period of two weeks specified in subsection (4) above for such period as he considers reasonable.

(6) Subject to subsection (4) above, the report mentioned in subsection (3)(b) above shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

(7) Where the judge's report is not furnished within the period mentioned in subsection (4) above or such period as extended under subsection (5) above, the High Court may extend such period, or, if it thinks fit, hear and determine the appeal without the report.

(8) Section 181 of this Act shall apply where an appellant fails to comply with the requirement of subsection (2)(a) above as they apply where an applicant fails to comply with any of the requirements of section 176(1) of this Act.

(9) An appellant under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act may at any time prior to the hearing of the appeal abandon his appeal by minute, signed by himself or his solicitor, lodged—
(a) in a case where the note of appeal has not yet been sent under subsection (4)(a) above to the Clerk of Justiciary, with the clerk of court;
(b) in any other case, with the Clerk of Justiciary,

and intimated to the respondent.

(10) Sections 176(5), 177 and 182(5)(a) to (e) of this Act shall apply to appeals under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act as they apply to appeals under section 175(2)(a) or (d) of this Act, except that, for the purposes of such application to any appeal by virtue of section 175(4), references in subsections (1) to (4) of section 177 to the appellant shall be construed as references to the convicted person and subsections (6) and (7) of that section shall be disregarded.

187 Leave to appeal against sentence

(1) The decision whether to grant leave to appeal for the purposes of section 175(2)(b) or (c) of this Act shall be made by a judge of the High Court who shall—
(a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 186(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
(b) in any other case—
(i) refuse leave to appeal and give reasons in writing for the refusal; and
(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (3) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.

(4) In deciding an application under subsection (3) above the High Court shall—

(a) if, after considering the note of appeal and other documents mentioned in subsection (1) above and the reasons for the refusal, it is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(5) The question whether to grant leave to appeal under subsection (1) or (4) above shall be considered and determined in chambers without the parties being present.

(6) Comments in writing made under subsection (1)(a) or (4)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(7) Where the arguable grounds of appeal are specified by virtue of subsection (6) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(8) Any application by the appellant for the leave of the High Court under subsection (7) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(9) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (4) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

Disposal of appeals

188 Setting aside conviction or sentence: prosecutor's consent or application

(1) Without prejudice to section 175(3) or (4) of this Act, where—

(a) an appeal has been taken under section 175(2) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction or sentence or, as the case may be, conviction and sentence ("sentence" being construed in this section as including disposal or order) being set aside either in whole or in part; or

(b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded or the sentence imposed following such conviction he may, by a relevant minute, apply for the conviction or sentence or, as the case may be, conviction and sentence to be set aside.

(2) For the purposes of subsection (1) above, a "relevant minute" is a minute, signed by the prosecutor—

(a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and

(b) written on the complaint or lodged with the clerk of court.

(3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—

(a) thereupon ascertain and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and

(b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.

(4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—

(a) set aside the conviction or the sentence, or both, either in whole or in part and—

(i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit;

(ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; and

(iii) where the sentence is set aside, pass another (but not more severe) sentence; or

(b) refuse to set aside the conviction or sentence or, as the case may be, conviction and sentence, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.

(5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.

(6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.

(7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act.

189 Disposal of appeal against sentence

(1) An appeal against sentence by note of appeal shall be heard by the High Court on such date as it may fix, and the High Court may, subject to section 190(1) of this Act, dispose of such appeal by—

(a) affirming the sentence; or

(b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 175(5) of this Act, a different sentence should have been passed, quashing the sentence and, subject to subsection (2) below, passing another sentence, whether more or less severe, in substitution therefor.

(2) In passing another sentence under subsection (1)(b) above, the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

(3) The High Court shall have power in an appeal by note of appeal to award such expenses both in the High Court and in the inferior court as it may think fit.

(4) Where, following an appeal under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act, the convicted person remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the High Court shall have power where at the time of disposal of the appeal the convicted person—

(a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation; or

(b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.

(5) In subsection (1) above, "appeal against sentence" shall, without prejudice to the generality of the expression, be construed as including an appeal under section 175(2)(c), and any appeal by virtue of section 175(4), of this Act; and without prejudice to subsection (6) below, other references to sentence in that subsection and in subsection (4) above shall be construed accordingly.

(6) In disposing of any appeal in a case where the accused has not been convicted, the High Court may proceed to convict him; and where it does, the reference in subsection (4) above to the conviction in respect of which the sentence appealed against was imposed shall be construed as a reference to the disposal or order appealed against.

(7) In disposing of an appeal under section 175(2)(b) to (d), (3)(b) or (4) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

190 Disposal of appeal where appellant insane

(1) In relation to any appeal under section 175(2) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—

(a) setting aside the verdict of the inferior court and substituting therefor a verdict of acquittal on the ground of insanity; and

(b) quashing any sentence imposed on the appellant as respects the complaint and—

(i) making, in respect of the appellant, any order mentioned in section 57(2)(a) to (d) of this Act; or

(ii) making no order.

(2) Subsection (4) of section 57 of this Act shall apply to an order made under subsection (1)(b)(i) above as it applies to an order made under subsection (2) of that section.

Miscellaneous

191 Appeal by suspension or advocation on ground of miscarriage of justice

(1) Notwithstanding section 184(2) of this Act, a party to a summary prosecution may, where an appeal under section 175 of this Act would be incompetent or would in the circumstances be inappropriate, appeal to the High Court, by bill of suspension against a conviction or, as the case may be, by advocation against an acquittal on the ground of an alleged miscarriage of justice in the proceedings.

(2) Where the alleged miscarriage of justice is referred to in an application under section 176(1) of this Act, for a stated case as regards the proceedings (or in a duly made amendment or addition to that application), an appeal under subsection (1) above shall not proceed without the leave of the High Court until the appeal to which the application relates has been finally disposed of or abandoned.

(3) Sections 182(5)(a) to (e), 183(1)(d) and (4) and 185 of this Act shall apply to appeals under this section as they apply to appeals such as are mentioned in section 176(1) of this Act.

(4) This section is without prejudice to any rule of law relating to bills of suspension or advocation in so far as such rule of law is not inconsistent with this section.

192 Appeals: miscellaneous provisions

(1) Where an appellant has been granted bail, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court at the diet appointed for the hearing of the appeal.

(2) Where an appellant who has been granted bail does not appear at such a diet, the High Court shall either—

(a) dispose of the appeal as if it had been abandoned (in which case subsection (5) of section 177 of this Act shall apply accordingly); or

(b) on cause shown permit the appeal to be heard in his absence.

(3) No conviction, sentence, judgement, order of court or other proceeding whatsoever in or for the purposes of summary proceedings under this Act—

(a) shall be quashed for want of form; or

(b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—

(i) the relevancy of the complaint, or to the want of specification therein; or

(ii) the competency or admission or rejection of evidence at the trial in the inferior court,

unless such objections were timeously stated.

(4) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.

(5) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

193 Suspension of disqualification, forfeiture etc

(1) Where upon conviction of any person—

(a) any disqualification, forfeiture or disability attaches to him by reason of such conviction; or

(b) any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited,

if the court before which he was convicted thinks fit, the disqualification, forfeiture or disability or, as the case may be, destruction or forfeiture or order for destruction or forfeiture shall be suspended pending the determination of any appeal against conviction or sentence (or disposal or order).

(2) Subsection (1) above does not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence (or disposal or order).

(3) Where, upon conviction, a fine has been imposed upon a person or a compensation order has been made against him under section 249 of this Act—

(a) the fine or compensation order shall not be enforced against him and he shall not be liable to make any payment in respect of the fine or compensation order; and

(b) any money paid under the compensation order shall not be paid by the clerk of court to the entitled person under subsection (9) of that section,

pending the determination of any appeal against conviction or sentence (or disposal or order).

194 Computation of time

(1) If any period of time specified in any provision of this Part of this Act relating to appeals expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.

(2) Where a judge against whose judgement an appeal is taken—

(a) is temporarily absent from duty for any cause;

(b) is a temporary sheriff; or

(c) is a justice of the peace,

the sheriff principal of the sheriffdom in which the court at which the judgement was pronounced is situated may extend any period specified in sections 178(1) and 179(4) and (7) of this Act for such period as he considers reasonable.

(3) For the purposes of sections 176(1)(a) and 178(1) of this Act, summary proceedings shall be deemed to be finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal—

(a) under section 175(2)(a) or (3)(a); or

(b) in so far as it is against conviction, under section 175(2)(d),

of this Act sentence is deferred under section 202 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.

PART XI

SENTENCING

General

195 Remit to High Court for sentence

(1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—

(a) endorse upon the record copy of the indictment a certificate of the plea or the verdict, as the case may be;

(b) by interlocutor written on the record copy remit the convicted person to the High Court for sentence; and

(c) append to the interlocutor a note of his reasons for the remit,

and a remit under this section shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the person is sentenced.

(2) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to remit the accused to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.

(3) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent.

(4) Subject to subsection (3) above, the note of reasons shall be available only to the High Court and the parties.

196 Sentence following guilty plea

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may 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 that indication was given.

197 Sentencing guidelines

Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under section 118(7) or section 189(7) of this Act.

198 Form of sentence

(1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form prescribed by Act of Adjournal.

(2) In recording a sentence of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the accused, without specifying the prison in which the sentence is to be carried out; and an entry of sentence, signed by the clerk of court, shall be full warrant and authority for any subsequent execution of the sentence and for the clerk to issue extracts for the purposes of execution or otherwise.

(3) In extracting a sentence of imprisonment, the extract may be in the form set out in an Act of Adjournal or as nearly as may be in such form.

199 Power to mitigate penalties

(1) Subject to subsection (3) below, where a person is convicted of the contravention of an enactment and the penalty which may be imposed involves—

(a) imprisonment;

(b) the imposition of a fine;

(c) the finding of caution for good behaviour or otherwise whether or not imposed in addition to imprisonment or a fine,

subsection (2) below shall apply.

(2) Where this subsection applies, the court, in addition to any other power conferred by statute, shall have power—

(a) to reduce the period of imprisonment;

(b) to substitute for imprisonment a fine (either with or without the finding of caution for good behaviour);

(c) to substitute for imprisonment or a fine the finding of caution;

(d) to reduce the amount of the fine;

(e) to dispense with the finding of caution.

(3) Subsection (2) above shall not apply—

(a) in relation to an enactment which carries into effect a treaty, convention, or agreement with a foreign state which stipulates for a fine of a minimum amount; or

(b) to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.

(4) Where, in summary proceedings, a fine is imposed in substitution for imprisonment, the fine—

(a) in the case of an offence which is triable either summarily or on indictment, shall not exceed the prescribed sum; and

(b) in the case of an offence triable only summarily, shall not exceed level 4 on the standard scale.

(5) Where the finding of caution is imposed under this section—

(a) in respect of an offence which is triable only summarily, the amount shall not exceed level 4 on the standard scale and the period shall not exceed that which the court may impose under this Act; and

(b) in any other case, the amount shall not exceed the prescribed sum and the period shall not exceed 12 months.

Pre-sentencing procedure

200 Remand for inquiry into physical or mental condition

(1) Without prejudice to any powers exercisable by a court under section 201 of this Act, where—

(a) the court finds that an accused has committed an offence punishable with imprisonment; and

(b) it appears to the court that before the method of dealing with him is determined an inquiry ought to be made into his physical or mental condition,

subsection (2) below shall apply.

(2) Where this subsection applies the court shall—

(a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;

(b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and

(ii) that a hospital is available for his admission and suitable for his detention,

make an order committing him to that hospital,

for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.

(3) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (2) above, the court may—

(a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and

(b) in any other case, remand the person in custody or on bail in accordance with subsection (2) above.

(4) An order under subsection (3)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.

(5) Where, before the expiry of the period specified in an order for committal to hospital under subsection (2)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (2)(a) above or any other provision of this Part of this Act, as the court considers appropriate.

(6) Where an accused is remanded on bail under this section, it shall be a condition of the order granting bail that he shall—

(a) undergo a medical examination by a duly qualified registered medical practitioner or, where the inquiry is into his mental condition, and the order granting bail so specifies, two such practitioners; and

(b) for the purpose of such examination, attend at an institution or place, or on any such practitioner specified in the order granting bail and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified,

and, if arrangements have been made for his reception, it may be a condition of the order granting bail that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.

(7) On exercising the powers conferred by this section to remand in custody or on bail the court shall—

(a) where the person is remanded in custody, send to the institution or place in which he is detained; and

(b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,

a statement of the reasons for which it appears to the court that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.

(8) On making an order of committal to hospital under subsection (2)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.

(9) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed and a person committed to hospital under this section may appeal against the order of committal within 24 hours of his remand or, as the case may be, committal, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—

(a) review the order and grant bail on such conditions as it thinks fit; or

(b) confirm the order; or

(c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.

(10) The court may, on cause shown, vary an order for committal to hospital under subsection (2)(b) above by substituting another hospital for the hospital specified in the order.

(11) Subsection (2)(b) above shall apply to the variation of an order under subsection (10) above as it applies to the making of an order for committal to hospital.

201 Power of court to adjourn case before sentence

(1) Where an accused has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, subject to subsection (3) below, the court may adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

(2) Where the court adjourns a case solely for the purpose mentioned in subsection (1) above, it shall remand the accused in custody or on bail or ordain him to appear at the adjourned diet.

(3) A court shall not adjourn the hearing of a case as mentioned in subsection (1) above for any single period exceeding—

(a) where the accused is remanded in custody, three weeks; and

(b) where he is remanded on bail or ordained to appear, four weeks or, on cause shown, eight weeks.

(4) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may, after hearing parties—

(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet; or

(b) confirm the order.

202 Deferred sentence

(1) It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.

(2) If it appears to the court which deferred sentence on an accused under subsection (1) above that he has been convicted during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the court which deferred sentence may—

(a) issue a warrant for the arrest of the accused; or

(b) instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation,

and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.

(3) Where a court which has deferred sentence on an accused under subsection (1) above convicts him of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal

with him on the expiry of the period of deferment, as well as for the offence committed during the said period.

203 Reports

(1) Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

(a) the circumstances of the offence; and

(b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.

(2) In subsection (1) above, "the court" does not include a district court.

(3) Where, in any case, a report by an officer of a local authority is made to the court with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor.

Imprisonment, etc.

204 Restrictions on passing sentence of imprisonment or detention

(1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom, unless the accused either—

(a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or

(b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.

(2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom unless the court considers that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with such a person is appropriate the court shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.

(3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.

(4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—

(a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the Powers of Criminal Courts Act

1973 or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968;

(b) construe detention as meaning —

(i) in relation to Scotland, detention in a young offenders institution or detention centre;

(ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and

(iii) in relation to Northern Ireland, detention in a young offenders centre.

(5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.

(6) In this section—

"legal aid" means legal aid for the purposes of any part of the proceedings before the court;

"legally represented" means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

205 Punishment for murder

(1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.

(2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.

(3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.

(4) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section 1(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, the Secretary of State releases that person on licence.

(5) When making a recommendation under subsection (4) above, the judge shall state his reasons for so recommending.

(6) Notwithstanding subsection (2) of section 106 of this Act it shall be competent to appeal under paragraph (b) or (f) of subsection (1) of that section against a recommendation made under subsection (4) above; and for the purposes of such appeal (including the High Court's power of disposal under section 118(4)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

206 Minimum periods of imprisonment

(1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.

(2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as mentioned in subsection (4) below is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.

(3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act 1989.

(4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.

(5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.

(6) In this section the expression "police authority" has the same meaning as in the Police (Scotland) Act 1967.

207 Detention of young offenders

(1) It shall not be competent to impose imprisonment on a person under 21 years of age.

(2) Subject to section 205(2) and (3) of this Act and to subsections (3) and (4) below, a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and a period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.

(3) The court shall not under subsection (2) above impose detention on an offender unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.

(4) To enable the court to form an opinion under subsection (3) above, it shall obtain from an officer of a local authority or otherwise such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.

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

208 Detention of children convicted on indictment

Subject to section 205 of this Act, where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and

the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

209 Supervised release orders

(1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (3) below.

(2) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.

(3) The order referred to in subsection (1) above (to be known as a "supervised release order") is that the person, during a relevant period—

(a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993);

(b) comply with;

(i) such requirements as may be imposed by the court in the order; and

(ii) such requirements as that officer may reasonably specify,

for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced); and

(c) comply with the standard requirements imposed by virtue of subsection (4)(a)(i) below.

(4) A supervised release order—

(a) shall—

(i) without prejudice to subsection (3)(b) above, contain such requirements (in this section referred to as the "standard requirements"); and

(ii) be as nearly as possible in such form,

as may be prescribed by Act of Adjournal;

(b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and

(c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.

(5) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.

(6) The clerk of the court by which a supervised release order is made in respect of a person shall—

(a) forthwith send a copy of the order to the person and to the Secretary of State; and

(b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.

(7) In this section—

"relevant officer" has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

"relevant period" means such period as may be specified in the supervised release order, being a period—

(a) not exceeding twelve months after the date of the person's release; and

(b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

"supervising officer" means, where an authority has or justices have been designated as is mentioned in subsection (3)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.

(8) This section applies to a person sentenced under section 207 of this Act as it applies to a person sentenced to a period of imprisonment.

210 Consideration of time spent in custody

(1) A court, in passing a sentence of imprisonment or detention on a person for an offence, shall—

(a) in determining the period of imprisonment or detention, have regard to any period of time spent in custody by the person on remand awaiting trial or sentence, or spent in custody awaiting extradition to the United Kingdom;

(b) specify the date of commencement of the sentence; and

(c) if the person—

(i) has spent a period of time in custody on remand awaiting trial or sentence; or

(ii) is an extradited prisoner for the purposes of this section,

and the date specified under paragraph (b) above is not earlier than the date on which sentence was passed, state its reasons for not specifying an earlier date.

(2) A prisoner is an extradited prisoner for the purposes of this section if—

(a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—

(i) after having been extradited to the United Kingdom; and

(ii) without having first been restored to the state from which he was extradited or having had an opportunity of leaving the United Kingdom; and

(b) he was for any period in custody while awaiting such extradition.

(3) In this section "extradited to the United Kingdom" means returned to the United Kingdom—

(a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);

(b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);

(c) under that Act as extended to a colony or under any corresponding law of a colony;

(d) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force; or

(e) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.

Fines

211 Fines

(1) Where an accused who is convicted on indictment of any offence (whether triable only on indictment or triable either on indictment or summarily other than by virtue of section 292(6) of this Act) would apart from this subsection be liable to a fine of or not exceeding a specified amount, he shall by virtue of this subsection be liable to a fine of any amount.

(2) Where any Act confers a power by subordinate instrument to make a person liable on conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be imposed in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.

(3) Any sentence or decree for any fine or expenses pronounced by a sheriff court or district court may be enforced against the person or effects of any party against whom the sentence or decree was awarded—

(a) in the district where the sentence or decree was pronounced; or

(b) in any other such district.

(4) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—

(a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides; and

(b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.

(5) Any fine imposed in the High Court on the accused, and on a juror for non-attendance, and any forfeiture for non-appearance of a party, witness or juror in the High Court shall be payable to and recoverable by the Treasury, except where the High Court orders that the whole or any part of the fine shall be otherwise disposed of.

(6) All fines and expenses imposed in summary proceedings under this Act shall be paid to the clerk of court to be accounted for by him to the person entitled to such fines and expenses, and it shall not be necessary to specify in any sentence the person entitled to payment of such fines or expenses unless it is necessary to provide for the division of the penalty.

(7) A court in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.

212 Fines in summary proceedings

(1) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a young offenders institution in default of payment of the fine, may, unless the court otherwise directs and subject to subsection (2) below, be applied towards payment of the fine, and the surplus if any shall be returned to him.

(2) Money shall not be applied as mentioned in subsection (1) above if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.

(3) When a court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, considers that any money found on the offender on apprehension, or after he has been searched by order of the court, should not be applied towards payment of such sum, the court, shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine before it is issued by the clerk of the court.

(4) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at that time, that any sum of money which has been found on his person should not be applied in payment of the fine adjudged to be paid by him.

(5) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to that person, may apply to such court either orally or in writing for a direction that the money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.

(6) A court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender, if he is in prison, for the purpose of ascertaining the ownership of money which has been found on his person.

(7) A notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

213 Remission of fines

(1) A fine may at any time be remitted in whole or in part by—

(a) in a case where a transfer of fine order under section 222 of this Act is effective and the court by which payment is enforceable is, in terms of the order, a court of summary jurisdiction in Scotland, that court; or

(b) in any other case, the court which imposed the fine or, where that court was the High Court, by which payment was first enforceable.

(2) Where the court remits the whole or part of a fine after imprisonment has been imposed under section 214(2) or (4) of this Act, it shall also remit the whole period of imprisonment or, as the case may be, reduce the period by an amount which bears the same proportion to the whole period as the amount remitted bears to the whole fine.

(3) The power conferred by subsection (1) above shall be exercisable without requiring the attendance of the accused.

214 Fines: time for payment and payment by instalments

(1) Where a court has imposed a fine on an offender or ordered him to find caution the court shall, subject to subsection (2) below, allow him at least seven days to pay the fine or the first instalment thereof or, as the case may be, to find caution; and any reference in this section and section 216 of this Act to a failure to pay a fine or other like expression shall include a reference to a failure to find caution.

(2) If on the occasion of the imposition of a fine—

(a) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or

(b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or

(c) he fails to satisfy the court that he has a fixed abode; or

(d) the court is satisfied for any other special reason that no time should be allowed for payment,

the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.

(3) In all cases where time is not allowed by a court for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.

(4) Where time is allowed for payment of a fine or payment by instalments is ordered, the court shall not, on the occasion of the imposition of a fine, impose imprisonment in the event of a future default in paying the fine or an instalment thereof unless the offender is before it and the court determines that, having regard to the gravity of the offence or to the character of the offender, or to other special reason, it is expedient that he should be imprisoned without further inquiry in default of payment; and where a court so determines, it shall state the special reason for its decision.

(5) Where a court has imposed imprisonment in accordance with subsection (4) above, then, if at any time the offender asks the court to commit him to prison, the court may do so notwithstanding subsection (1) of this section.

(6) Nothing in the foregoing provisions of this section shall affect any power of the court to order a fine to be recovered by civil diligence.

(7) Where time has been allowed for payment of a fine imposed by the court, it may, on an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.

(8) Without prejudice to subsection (2) above, where a court has imposed a fine on an offender, the court may, of its own accord or on the application of the offender, order payment of that fine by instalments of such amounts and at such time as it may think fit.

(9) Where the court has ordered payment of a fine by instalments it may—

(a) allow further time for payment of any instalment thereof;

(b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed,

and the powers conferred by this subsection shall be exercisable without requiring the attendance of the accused.

215 Application for further time to pay fine

(1) An application by an offender for further time in which to pay a fine imposed on him by a court, or of instalments thereof, shall be made, subject to subsection (2) below, to that court.

(2) Where a transfer of fine order has been made under section 222 of this Act, section 90 of the Magistrates' Courts Act 1980 or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981, an application under subsection (1) above shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.

(3) A court to which an application is made under this section shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.

(4) An application made under this section may be made orally or in writing.

216 Fines: restriction on imprisonment for default

(1) Where a court has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, subject to subsection (2) below, it shall not impose imprisonment on an offender for failing to make payment of the fine or, as the case may be, to find caution, unless on an occasion subsequent to that sentence the court has enquired into in his presence the reason why the fine has not been paid or, as the case may be, caution has not been found.

(2) Subsection (1) above shall not apply where the offender is in prison.

(3) A court may, for the purpose of enabling enquiry to be made under this section—

(a) issue a citation requiring the offender to appear before the court at a time and place appointed in the citation; or

(b) issue a warrant of apprehension.

(4) On the failure of the offender to appear before the court in response to a citation under this section, the court may issue a warrant of apprehension.

(5) The citation of an offender to appear before a court in terms of subsection (3)(a) above shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act, and—

(a) the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor; and

(b) the forms relating to the citation of an accused shall not apply to such citation.

(6) The following matters shall be, or as nearly as may be, in such form as is prescribed by Act of Adjournal—

(a) the citation of an offender under this section;

(b) if the citation of the offender is effected by an officer of law, the written execution, if any, of that officer of law;

(c) a warrant of apprehension issued by a court under subsection (4) above; and

(d) the minute of procedure in relation to an enquiry into the means of an offender under this section.

(7) Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

217 Fines: supervision pending payment

(1) Where an offender has been allowed time for payment of a fine, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of such person, in this section referred to as the "supervising officer", as the court may from time to time appoint for the purpose of assisting and advising the offender in regard to payment of the fine.

(2) An order made in pursuance of subsection (1) above shall remain in force so long as the offender to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under subsection (3) below.

(3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 222 of this Act in respect of the fine or may be discharged by the court that made it without prejudice, in either case, to the making of a new order.

(4) Where an offender under 21 years of age has been allowed time for payment of a fine, the court shall not order the form of detention appropriate to him in default of payment of the fine unless—

(a) he has been placed under supervision in respect of the fine; or

(b) the court is satisfied that it is impracticable to place him under supervision.

(5) Where a court, on being satisfied as mentioned in subsection (4)(b) above, orders the detention of a person under 21 years of age without an order under this section having been made, the court shall state the grounds on which it is so satisfied.

(6) Where an order under this section is in force in respect of an offender, the court shall not impose imprisonment in default of the payment of the fine unless before doing so it has—

(a) taken such steps as may be reasonably practicable to obtain from the supervising officer a report, which may be oral, on the offender's conduct and means, and has considered any such report; and

(b) in a case where an enquiry is required by section 216 of this Act, considered such enquiry.

(7) When a court appoints a different supervising officer under subsection (1) above, a notice shall be sent by the clerk of the court to the offender in such form, as nearly as may be, as is prescribed by Act of Adjournal.

(8) The supervising officer shall communicate with the offender with a view to assisting and advising him in regard to payment of the fine, and unless the fine or any instalment thereof is paid to the clerk of the court within the time allowed by the court for

payment, the supervising officer shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

218 Fines: supplementary provisions as to payment

(1) Where under the provisions of section 214 or 217 of this Act a court is required to state a special reason for its decision or the grounds on which it is satisfied that it is undesirable or impracticable to place an offender under supervision, the reason or, as the case may be, the grounds shall be entered in the record of the proceedings along with the finding and sentence.

(2) Any reference in the said sections 214 and 217 to imprisonment shall be construed, in the case of an offender on whom by reason of his age imprisonment may not lawfully be imposed, as a reference to the lawful form of detention in default of payment of a fine appropriate to that person, and any reference to prison shall be construed accordingly.

(3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 211(6) of this Act, pay such fine in full to a constable; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.

219 Fines: periods of imprisonment for non-payment

(1) Subject to sections 214 to 218 of this Act—

(a) a court may, when imposing a fine, impose a period of imprisonment in default of payment; or

(b) where no order has been made under paragraph (a) above and a person fails to pay a fine, or any part or instalment of a fine, by the time ordered by the court (or, where section 214(2) of this Act applies, immediately) the court may, subject to section 235(1) of this Act, impose a period of imprisonment for such failure either with immediate effect or to take effect in the event of the person failing to pay the fine or any part or instalment of it by such further time as the court may order,

whether or not the fine is imposed under an enactment which makes provision for its enforcement or recovery.

(2) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

Amount of Fine or Caution	*Maximum Period of Imprisonment*
Not exceeding £200	7 days
Exceeding £200 but not exceeding £500	14 days
Exceeding £500 but not exceeding £1,000	28 days
Exceeding £1,000 but not exceeding £2,500	45 days
Exceeding £2,500 but not exceeding £5,000	3 months

Amount of Fine or Caution	*Maximum Period of Imprisonment*
Exceeding £5,000 but not exceeding £10,000	6 months
Exceeding £10,000 but not exceeding £20,000	12 months
Exceeding £20,000 but not exceeding £50,000	18 months
Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1 Million	5 years
Exceeding £1 Million	10 years

(3) Where an offender is fined on the same day before the same court for offences charged in the same indictment or complaint or in separate indictments or complaints, the amount of the fine shall, for the purposes of this section, be taken to be the total of the fines imposed.

(4) Where a court has imposed a period of imprisonment in default of payment of a fine, and—

(a) an instalment of the fine is not paid at the time ordered; or

(b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a period which bears to the period so imposed the same proportion, as nearly as may be, as the amount outstanding at the time when warrant is issued for imprisonment of the offender in default bears to the original fine.

(5) Where no period of imprisonment in default of payment of a fine has been imposed and—

(a) an instalment of the fine is not paid at the time ordered; or

(b) part only of the fine has been paid within the time allowed for payment,

the offender shall be liable to imprisonment for a maximum period which bears, as nearly as may be, the same proportion to the maximum period of imprisonment which could have been imposed by virtue of the Table in subsection (2) above in default of payment of the original fine as the amount outstanding at the time when he appears before the court bears to the original fine.

(6) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.

(7) The provisions of this section shall be without prejudice to the operation of section 220 of this Act.

(8) Where in any case—

(a) the sheriff considers that the imposition of imprisonment for the number of years for the time being specified in section 3(3) of this Act would be inadequate; and

(b) the maximum period of imprisonment which may be imposed under subsection (1) above (or under that subsection as read with either or both of sections 252(2) of this Act and section 14(2) of the Proceeds of Crime (Scotland) Act 1995) exceeds that number of years,

he shall remit the case to the High Court for sentence.

220 Fines: part payment by prisoners

(1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1989, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced (or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment.

(2) The day on which any sum is paid as mentioned in subsection (1) above shall not be regarded as a day served by the prisoner as part of the said term of imprisonment.

(3) All sums paid under this section shall be handed over on receipt by the governor of the prison to the clerk of the court in which the conviction was obtained, and thereafter paid and applied *pro tanto* in the same manner and for the same purposes as sums adjudged to be paid by the conviction and sentence of the court, and paid and recovered in terms thereof, are lawfully paid and applied.

(4) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

221 Fines: recovery by civil diligence

(1) Where any fine falls to be recovered by civil diligence in pursuance of this Act or in any case in which a court may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine a warrant for civil diligence in a form prescribed by Act of Adjournal which shall have the effect of authorising—

(a) the charging of the person who has been fined to pay the fine within the period specified in the charge and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the poinding of articles belonging to him and, if necessary for the purpose of executing the poinding, the opening of shut and lockfast places;

(b) an arrestment other than an arrestment of earnings in the hands of his employer,

and such diligence, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(2) Subject to subsection (3) below, proceedings by civil diligence under this section may be taken at any time after the imposition of the fine to which they relate.

(3) No such proceedings shall be authorised after the offender has been imprisoned in consequence of his having defaulted in payment of the fine.

(4) Where proceedings by civil diligence for the recovery of a fine or caution are taken, imprisonment for non-payment of the fine or for failure to find such caution shall remain competent and such proceedings may be authorised after the court has imposed imprisonment for, or in the event of, the non-payment or the failure but before imprisonment has followed such imposition.

222 Transfer of fine orders

(1) Where a court has imposed a fine on a person convicted of an offence and it appears to the court that he is residing—

(a) within the jurisdiction of another court in Scotland; or

(b) in any petty sessions area in England and Wales; or

(c) in any petty sessions district in Northern Ireland,

the court may order that payment of the fine shall be enforceable by that other court or in that petty sessions area or petty sessions district as the case may be.

(2) An order under this section (in this section referred to as a "transfer of fine order") shall specify the court by which or the petty sessions area or petty sessions district in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.

(3) Subject to subsections (4) and (5) below, where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.

(4) Where—

(a) the court specified in a transfer of fine order is satisfied, after inquiry, that the offender is not residing within the jurisdiction of that court; and

(b) the clerk of that court, within 14 days of receiving the notice required by section 223(1) of this Act, sends to the clerk of the court which made the order notice to that effect,

the order shall cease to have effect.

(5) Where a transfer of fine order ceases to have effect by virtue of subsection (4) above, the functions referred to in subsection (3) above shall again be exercisable by the court which made the order or, as the case may be, by the clerk of that court.

(6) Where a transfer of fine order under this section, section 90 of the Magistrates' Courts Act 1980 or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 specifies a court of summary jurisdiction in Scotland, that court and the clerk of that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section, the said Act of 1980 or the said Order of 1981 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court.

(7) The functions of the court to which subsection (6) above relates shall be deemed to include the court's power to apply to the Secretary of State under any regulations made by him under section 24(1)(a) of the Criminal Justice Act 1991 (power to deduct fines etc from income support).

(8) Where a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981, or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, the term of imprisonment which may be imposed under this Part of this Act shall be the term fixed in pursuance of section 31 of the Powers of Criminal Courts Act 1973 by the Crown Court or a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, notwithstanding that the term exceeds the period applicable to the case under section 219 of this Act.

223 Transfer of fines: procedure for clerk of court

(1) Where a court makes a transfer of fine order under section 222 of this Act, the clerk of the court shall send to the clerk of the court specified in the order—

(a) a notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form;

(b) a statement of the offence of which the offender was convicted; and

(c) a statement of the steps, if any, taken to recover the fine,

and shall give him such further information, if any, as, in his opinion, is likely to assist the court specified in the order in recovering the fine.

(2) In the case of a further transfer of fine order, the clerk of the court which made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice sent to the clerk of the court specified in the order.

(3) The clerk of court specified in a transfer of fine order shall, as soon as may be after he has received the notice mentioned in subsection (1)(a) above, send an intimation to the offender in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(4) The clerk of court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine to the clerk of the court by which the fine was imposed, and if the sentence has been enforced otherwise than by payment of the fine, he shall inform the clerk of court how the sentence was enforced.

224 Discharge from imprisonment to be specified

All warrants of imprisonment in default of payment of a fine, or on failure to find caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding the fine has not been paid, or caution found.

225 Penalties: standard scale, prescribed sum and uprating

(1) There shall be a standard scale of fines for offences triable only summarily, which shall be known as "the standard scale".

(2) The standard scale is shown below—

Level on the scale	*Amount of Fine*
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

(3) Any reference in any enactment, whenever passed or made, to a specified level on the standard scale shall be construed as referring to the amount which corresponds to that level on the standard scale referred to in subsection (2) above.

(4) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum or sums for the time being specified in the provisions mentioned in subsection (5) below such other sum or sums as appear to him justified by the change.

(5) The provisions referred to in subsection (4) above are—

(a) subsection (2) above;

(b) subsection (8) below;

(c) section 219(2) of this Act;

(d) column 5 or 6 of Schedule 4 to the Misuse of Drugs Act 1971 so far as the column in question relates to the offences under provisions of that Act specified in column 1 of that Schedule in respect of which the maximum fines were increased by Part II of Schedule 8 to the Criminal Justice and Public Order Act 1994.

(6) In subsection (4) above "the relevant date" means—

(a) in relation to the first order made under that subsection, the date the last order was made under section 289D(1) of the Criminal Procedure (Scotland) Act 1975; and

(b) in relation to each subsequent order, the date of the previous order.

(7) An order under subsection (4) above—

(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked by a subsequent order thereunder; and

(b) without prejudice to Schedule 14 to the Criminal Law Act 1977, shall not affect the punishment for an offence committed before that order comes into force.

(8) In this Act "the prescribed sum" means £5,000 or such sum as is for the time being substituted in this definition by an order in force under subsection (4) above.

226 Penalties: exceptionally high maximum fines

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

(a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

(b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.

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

(a) is higher than level 5 on the standard scale; and

(b) is specified as the fine or the maximum fine which may be imposed on conviction of an offence which is triable only summarily.

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

(a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

(b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.

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

(a) is higher than the statutory maximum; and

(b) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either on indictment or summarily.

(5) An order under this section—

(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and

(b) shall not affect the punishment for an offence committed before that order comes into force.

(6) In this section "enactment" includes an enactment contained in an Act or subordinate instrument passed or made after the commencement of this Act.

Caution

227 Caution

Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

Probation

228 Probation orders

(1) Subject to subsection (2) below, where an accused is convicted of an offence (other than an offence the sentence for which is fixed by law) the court if it is of the opinion that it is expedient to do so—

(a) having regard to the circumstances, including the nature of the offence and the character of the offender; and

(b) having obtained a report as to the circumstances and character of the offender,

may, instead of sentencing him, make an order requiring the offender to be under supervision for a period to be specified in the order of not less than six months nor more than three years; and such an order is, in this Act, referred to as a "probation order".

(2) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made—

(a) in a case other than that mentioned in paragraph (b) below, by the local authority in whose area he resides or is to reside; or

(b) in a case where, by virtue of section 234(1) of this Act, subsections (3) and (4) below would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order.

(3) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall—

(a) name the local authority area in which the offender resides or is to reside; and

(b) subject to subsection (4) below, make provision for the offender to be under the supervision of an officer of the local authority of that area.

(4) Where the offender resides or is to reside in a local authority area in which the court which makes the order has no jurisdiction, the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with Schedule 6 to this Act) in the area of residence or intended residence, and the appropriate court shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.

(5) Before making a probation order, the court shall explain to the offender in ordinary language—

(a) the effect of the order, including any additional requirements proposed to be inserted under section 229 or 230 of this Act; and

(b) that if he fails to comply with the order or commits another offence during the probation period he will be liable to be sentenced for the original offence,

and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.

(6) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall—

(a) cause copies of the probation order to be given to the officer of the local authority who is to supervise the probationer and to the person in charge of any institution or place in which the probationer is required to reside under the probation order; and

(b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

229 Probation orders: additional requirements

(1) Subject to section 230 of this Act, a probation order may require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers—

(a) conducive to securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences; or

(b) where the probation order is to include such a requirement as is mentioned in subsection (4) or (6) below, conducive to securing or, as the case may be, preventing the matters mentioned in paragraph (a) above.

(2) Without prejudice to the generality of subsection (1) above, a probation order may, subject to subsection (3) below, include requirements relating to the residence of the offender.

(3) In relation to a probation order including a requirement such as is mentioned in subsection (2) above—

(a) before making the order, the court shall consider the home surroundings of the offender; and

(b) if the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.

(4) Without prejudice to the generality of subsection (1) above, where an offender has been convicted of an offence punishable by imprisonment and a court which is considering making a probation order—

(a) is satisfied that the offender is of or over 16 years of age and that the conditions specified in paragraphs (a) and (c) of section 238(2) of this Act for the making of a community service order have been met;

(b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and

(c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than 40 nor more than 240) as may be specified in the probation order.

(5) Sections 238 (except subsections (1), (2)(b) and (d) and (4)(b)), 239(1) to (3), and 240 of this Act shall apply, subject to any necessary modifications, to a probation order including a requirement such as is mentioned in subsection (4) above as they apply to a community service order, and in the application of subsection (5) of the said section 238 for the words "subsection (1) above" there shall be substituted the words "subsection (4) of section 229 of this Act".

(6) Without prejudice to the generality of subsection (1) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation

either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of this Act shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—

section 249(3) to (5), (8) to (10);

section 250(2);

section 251(1) and (2)(b);

section 253.

(7) Where the court imposes a requirement to pay compensation under subsection (6) above—

(a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than 18 months after the making of the order or not later than two months before the end of the period of probation, whichever first occurs;

(b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and

(c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.

230 Probation orders: requirement of treatment for mental condition

(1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act, or under this Act, the court may, if it makes a probation order, include a requirement that the offender shall submit, for such period, not extending beyond 12 months from the date of the requirement, as may be specified in the order, to treatment by or under the direction of a registered medical practitioner or chartered psychologist with a view to the improvement of the offender's mental condition.

(2) The treatment required by virtue of subsection (1) above shall be such one of the following kinds of treatment as may be specified in the order, that is to say—

(a) treatment as a resident patient in a hospital within the meaning of the said Act of 1984, not being a State hospital within the meaning of the Act;

(b) treatment as a non-resident patient at such institution or place as may be specified in the order; or

(c) treatment by or under the direction of such registered medical practitioner or chartered psychologist as may be specified in the order,

but otherwise the nature of the treatment shall not be specified in the order.

(3) A court shall not make a probation order containing a requirement under subsection (1) above unless it is satisfied that arrangements have been made for the treatment

intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.

(4) Where the registered medical practitioner or chartered psychologist by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of the opinion—

(a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5) below could have been specified in the probation order; or

(b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,

he may, subject to subsection (6) below, make arrangements for the probationer to be treated accordingly.

(5) Arrangements made under subsection (4) above may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified for that purpose in the probation order.

(6) Arrangements shall not be made under subsection (4) above unless—

(a) the probationer and any officer responsible for his supervision agree;

(b) the treatment will be given by or under the direction of a registered medical practitioner or chartered psychologist who has agreed to accept the probationer as his patient; and

(c) where such treatment entails the probationer's being a resident patient, he will be received as such.

(7) Where any such arrangements as are mentioned in subsection (4) above are made for the treatment of a probationer—

(a) any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements; and

(b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

(8) Subsections (3) to (5) of section 61 of this Act shall apply for the purposes of this section as if for the reference in subsection (3) to section 58(1)(a) of this Act there were substituted a reference to subsection (1) above.

(9) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

231 Probation orders: amendment and discharge

(1) Schedule 6 to this Act shall have effect in relation to the discharge and amendment of probation orders.

(2) Where, under section 232 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

232 Probation orders: failure to comply with requirement

(1) If, on information from—

(a) the officer supervising the probationer;

(b) the chief social work officer of the local authority whose officer is supervising the probationer; or

(c) an officer appointed by the chief social work officer to act on his behalf for the purposes of this subsection,

it appears to the court which made the probation order or to the appropriate court that the probationer has failed to comply with any requirement of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.

(2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of subsection (1) above that he has failed to comply with a requirement of the probation order, the court may—

(a) except in the case of a failure to comply with a requirement to pay compensation and without prejudice to the continuance in force of the probation order, impose a fine not exceeding level 3 on the standard scale; or

(b) sentence the offender for the offence for which the order was made; or

(c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order; or

(d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by sections 238 to 244 of this Act are satisfied, make a community service order, and those sections shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.

(3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.

(4) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

(5) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

(6) Without prejudice to section 233 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to be dealt with under this section for failing to comply with any requirement of the probation order.

(7) The citation of a probationer to appear before a court of summary jurisdiction in terms of subsection (1) above or section 233(1) of this Act shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act.

233 Probation orders: commission of further offence

(1) If it appears to—

(a) the court which made a probation order; or, as the case may be,

(b) the appropriate court,

in this section referred to as "the court", that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act.

(2) Where a probationer is convicted by the court of an offence committed during the probation period, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

(3) Where—

(a) a court has, under section 229(4) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and

(b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

(a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and

(b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

234 Probation orders: persons residing in England and Wales

(1) Where the court which made a probation order to which this subsection applies is satisfied that the offender has attained the age of 16 years and resides or will reside in England and Wales, subsections (3) and (4) of section 228 of this Act shall not apply to the order, but—

(a) the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside; and

(b) that area shall be named in the order,

and where the order includes a requirement that the probationer performs unpaid work for a number of hours, the number specified shall not exceed one hundred.

(2) Subsection (1) above applies to a probation order which is made under the said section 228 but does not include a requirement which would, if made, correspond to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the 1973 Act, but would, if included in a probation order made under that Act, fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule.

(3) Where a probation order has been made under the said section 228 and the court in Scotland which made the order or the appropriate court is satisfied—

(a) that the probationer has attained the age of 16 years;

(b) that he proposes to reside, or is residing, in England and Wales; and

(c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside,

the power of that court to amend the order under Schedule 6 to this Act shall include power to insert the provisions required by subsection (1) above or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred, and the court may so amend the order without summoning the probationer and without his consent.

(4) A probation order made or amended by virtue of this section may, notwithstanding section 230(9) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—

(a) subsections (1), (3) and (8) of the said section 230 and paragraph 5(3) of Schedule 1A to the 1973 Act (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of the said section 230 and paragraph 5 of the said Schedule 1A respectively; and

(b) sub-paragraphs (5) to (7) of the said paragraph 5 (functions of supervising officer and registered medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England and Wales in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.

(5) Sections 231(1) and 232(1) of this Act shall not apply to any order made or amended under this section; but subject to subsection (6) below, Schedule 2 to the 1991 Act shall apply to the order—

(a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the 1973 Act; and

(b) in the case of an order which contains a requirement such as is mentioned in section 229(4) of this Act, as if it were a combination order made under section 11 of the 1991 Act.

(6) Part III of Schedule 2 to the 1991 Act shall not apply as mentioned in subsection (5) above; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.

(7) If it appears on information to a justice acting for the petty sessions area named in a probation order made or amended under this section that the person to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order he may issue—

(a) a summons requiring that person to appear, at the place and time specified in the summons, before the court in Scotland which made the probation order; or

(b) if the information is in writing and on oath, a warrant for his arrest, directing that person to be brought before the last-mentioned court.

(8) If a warrant for the arrest of a probationer issued under section 233 of this Act by a court is executed in England and Wales and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.

(9) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named in the order, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.

(10) Where a probation order which is amended under subsection (3) above is an order to which the provisions of this Act apply by virtue of section 10 of the 1973 Act (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England and Wales.

(11) In this section—

"the 1973 Act" means the Powers of Criminal Courts Act 1973; and

"the 1991 Act" means the Criminal Justice Act 1991.

Supervised attendance

235 Supervised attendance orders

(1) A court may make a supervised attendance order in the circumstances specified in subsection (3) below and shall, subject to paragraph 1 of Schedule 7 to this Act, make such an order where subsection (4) below applies.

(2) A supervised attendance order is an order made by a court in respect of an offender requiring him—

(a) to attend a place of supervision for such period, being a period of not less than 10 hours and not more than—

(i) where the amount of the fine, part or instalment which the offender has failed to pay does not exceed level 1 on the standard scale, 50 hours; and

(ii) in any other case, 100 hours, as is specified in the order; and

(b) during that period, to carry out such instructions as may be given to him by the supervising officer.

(3) The circumstances referred to in subsection (1) above are where—

(a) the offender is of or over 18 years of age; and

(b) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would also have imposed on him a period of imprisonment under subsection (1) of section 219 of this Act; and

(c) the court considers a supervised attendance order more appropriate than the serving of or, as the case may be, imposition of such a period of imprisonment.

(4) This subsection applies where—

(a) the court is a court prescribed for the purposes of this subsection by order made by the Secretary of State;

(b) the offender is of or over 18 years of age and is not serving a sentence of imprisonment;

(c) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would have imposed on him a period of imprisonment under section 219(1)(b) of this Act; and

(d) the fine, or as the case may be, the part or instalment, is of an amount not exceeding level 2 on the standard scale.

(5) An order under subsection (4)(a) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) The coming into force of a supervised attendance order shall have the effect of discharging the fine referred to in subsection (3)(b) or (4)(c) above or, as the case may be, section 236(3)(a) or 237(1) of this Act.

(7) Schedule 7 to this Act has effect for the purpose of making further and qualifying provision as to supervised attendance orders.

(8) In this section—

"imprisonment" includes detention;

"place of supervision" means such place as may be determined for the purposes of a supervised attendance order by the supervising officer; and

"supervising officer", in relation to a supervised attendance order, means a person appointed or assigned under Schedule 7 to this Act by the local authority whose area includes the locality in which the offender resides or will be residing when the order comes into force.

236 Supervised attendance orders in place of fines for 16 and 17 year olds

(1) This section applies where a person of 16 or 17 years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.

(2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.

(3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—

(a) impose the fine; and

(b) subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in default of payment of the fine within 28 days.

(4) A supervised attendance order made under subsection (3)(b) above—

(a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;

(b) shall, for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.

(5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.

(6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall, subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in respect of that person.

(7) Sections 211(3), 213, 214(1) to (7), 215, 216(1) to (6), 217 to 219, 222 and 223 of this Act shall not apply in respect of a person to whom this section applies.

(8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.

(9) In this section "supervised attendance order" means an order made in accordance with section 235(2), (7) and (8) of this Act.

237 Supervised attendance orders where court allows further time to pay fine

(1) Where a court, on an application to it under section 215(1) of this Act, allows a person further time for payment of a fine or instalments thereof it may, in addition, subject to paragraph 1 of Schedule 7 to this Act, impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.

(2) A supervised attendance order made under subsection (1) above shall—

(a) if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and

(b) for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.

(3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.

(4) In this section "supervised attendance order" means an order made in accordance with section 235(2), (7) and (8) of this Act.

Community service by offenders

238 Community service orders

(1) Subject to the provisions of this Act, where a person of or over 16 years of age is convicted of an offence punishable by imprisonment, other than an offence the sentence for which is fixed by law, the court may, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention, make an order (in this Act referred to as "a community service order") requiring him to perform unpaid work for such number of hours (being in total not less than 40 nor more than 240) as may be specified in the order.

(2) A court shall not make a community service order in respect of any offender unless—

(a) the offender consents;

(b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in which the offender resides, or will be residing when the order comes into force, to perform work under such an order;

(c) the court is satisfied, after considering a report by an officer of a local authority about the offender and his circumstances, and, if the court thinks it necessary, hearing that officer, that the offender is a suitable person to perform work under such an order; and

(d) the court is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform work under such an order.

(3) A copy of the report mentioned in subsection (2)(c) above shall be supplied to the offender or his solicitor.

(4) Before making a community service order the court shall explain to the offender in ordinary language—

(a) the purpose and effect of the order and in particular the obligations on the offender as specified in subsections (1) to (3) of section 239 of this Act;

(b) the consequences which may follow under subsections (4) to (6) of that section if he fails to comply with any of those requirements; and

(c) that the court has under section 240 of this Act the power to review the order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides.

(5) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the maximum or minimum number of hours specified in that subsection as originally enacted or as subsequently amended under this subsection, such number of hours as may be specified in the order; and an order under this subsection may specify a different maximum or minimum number of hours for different classes of case.

(6) An order under subsection (5) above shall be made by statutory instrument, but no such order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament; and any such order may be varied or revoked by a subsequent order under that subsection.

(7) Nothing in subsection (1) above shall be construed as preventing a court which makes a community service in respect of any offence from—

(a) imposing any disqualification on the offender;
(b) making an order for forfeiture in respect of the offence;
(c) ordering the offender to find caution for good behaviour.

(8) A community service order shall—
(a) specify the locality in which the offender resides or will be residing when the order comes into force;
(b) require the local authority in whose area the locality specified under paragraph (a) above is situated to appoint or assign an officer (referred to in this section and sections 239 to 245 of this Act as "the local authority officer") who will discharge the functions assigned to him by those sections; and
(c) state the number of hours of work which the offender is required to perform.

(9) Where, whether on the same occasion or on separate occasions, an offender is made subject to more than one community service order, or to both a community service order and a probation order which includes a requirement that that offender shall perform any unpaid work, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that at no time shall the offender have an outstanding number of hours of work to perform in excess of the maximum provided for in subsection (1) above.

(10) Upon making a community service order the court shall—
(a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
(b) send a copy of the order to the chief social work officer of the local authority in whose area the offender resides or will be residing when the order comes into force; and
(c) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.

(11) Where a copy of a community service order has, under subsection (10)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

239 Community service orders: requirements

(1) An offender in respect of whom a community service order is in force shall—
(a) report to the local authority officer and notify him without delay of any change of address or in the times, if any, at which he usually works; and
(b) perform for the number of hours specified in the order such work at such times as the local authority officer may instruct.

(2) Subject to section 240(1) of this Act, the work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.

(3) The instructions given by the local authority officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and

any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

(4) If at any time while a community service order is in force in respect of any offender it appears to the appropriate court, on information from the local authority officer, that that offender has failed to comply with any of the requirements of subsections (1) to (3) above (including any failure satisfactorily to perform the work which he has been instructed to do), that court may issue a warrant for the arrest of that offender, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring that offender to appear before that court at such time as may be specified in the citation.

(5) If it is proved to the satisfaction of the court before which an offender appears or is brought in pursuance of subsection (4) above that he has failed without reasonable excuse to comply with any of the requirements of the said subsections (1) to (3), that court may—

(a) without prejudice to the continuance in force of the order, impose on him a fine not exceeding level 3 on the standard scale;

(b) revoke the order and deal with that offender in any manner in which he could have been dealt with for the original offence by the court which made the order if the order had not been made; or

(c) subject to section 238(1) of this Act, vary the number of hours specified in the order.

(6) The evidence of one witness shall, for the purposes of subsection (5) above, be sufficient evidence.

240 Community service orders: amendment and revocation etc

(1) Where a community service order is in force in respect of any offender and, on the application of that offender or of the local authority 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, that court may—

(a) extend, in relation to the order, the period of 12 months specified in section 239(2) of this Act;

(b) subject to section 238(1) of this Act, vary the number of hours specified in the order;

(c) revoke the order; or

(d) revoke the order and deal with the offender for the original offence in any manner 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) If the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the locality for the time being specified under section 238(8)(a) of this Act to another locality and—

(a) that court has been notified by the Secretary of State that arrangements exist for persons who reside in that other locality to perform work under community service orders; and

(b) it appears to that court that provision can be made under those arrangements for him to perform work under the order,

that court may, and on the application of the local authority officer shall, amend the order by substituting that other locality for the locality for the time being specified in the order; and sections 238 to 245 of this Act shall apply to the order as amended.

(3) Where the court proposes to exercise its powers under subsection (1)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring him to appear before the court and, if he fails to appear, may issue a warrant for his arrest.

241 Community service order: commission of offence while order in force

(1) Where—

(a) a court has made a community service order in respect of an offender; and

(b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,

the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(2) The circumstances referred to in subsection (1) above are that the offence was committed—

(a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and

(b) in any place where unpaid work under the order was being or had previously been performed.

(3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

242 Community service orders: persons residing in England and Wales

(1) Where a court is considering the making of a community service order and it is satisfied that the offender has attained the age of 16 years and resides, or will be residing when the order comes into force, in England or Wales, then—

(a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—

(i) paragraph (b) shall be omitted;

(ii) in paragraph (c) for the words "such an order" there shall be substituted the words "a community service order"; and

(iii) for paragraph (d) there shall be substituted the following paragraph—

"(d) it appears to that court that provision can be made for the offender to perform work under the order made under subsection (1) above under the arrangements which exist in the petty sessions area in which he resides or will be residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973;"; and

(b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in section 238(2)(d) of this Act as substituted by paragraph (a) above.

(2) Where a community service order has been made and—

(a) the appropriate court is satisfied that the offender has attained the age of 16 years and proposes to reside or is residing in England or Wales; and

(b) it appears to that court that provision can be made for the offender to perform work under the order made under the arrangements which exist in the petty sessions area in which he proposes to reside or is residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973,

it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in paragraph (b) of this subsection.

(3) A community service order made under section 238(1) as amended by or in accordance with this section shall—

(a) specify the petty sessions area in England or Wales in which the offender resides or will be residing when the order or the amendment comes into force; and

(b) require the probation committee for that area to appoint or assign a probation officer who will discharge in respect of the order the functions in respect of community service orders conferred on relevant officers by the Powers of Criminal Courts Act 1973.

243 Community service orders: persons residing in Northern Ireland

(1) Where a court is considering the making of a community service order and it is satisfied that the offender resides, or will be residing when the order comes into force, in Northern Ireland, then—

(a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—

(i) paragraph (b) shall be omitted;

(ii) for paragraph (d) there shall be substituted the following paragraph—

"(d) it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under such an order;";

(b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in section 238(2)(d) of this Act as substituted by paragraph (a) above.

(2) Where a community service order has been made and—

(a) the appropriate court is satisfied that the offender proposes to reside or is residing in Northern Ireland; and

(b) it appears to that court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order,

it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in paragraph (b) of this subsection.

(3) A community service order made under section 238(1) of this Act as amended by or in accordance with this section shall—

(a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or the amendment comes into force; and

(b) require the Probation Board for Northern Ireland to select an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the relevant officer by the Treatment of Offenders (Northern Ireland) Order 1976.

244 Community service orders: general provisions relating to persons living in England and Wales or Northern Ireland

(1) Where a community service order is made or amended in the circumstances specified in section 242 or 243 of this Act, the court which makes or amends the order shall send three copies of it as made or amended to the home court, together with such documents and information relating to the case as it considers likely to be of assistance to that court.

(2) In this section—

"home court" means—

(a) if the offender resides in England or Wales, or will be residing in England or Wales at the relevant time, the magistrates' court acting for the petty sessions area in which he resides or proposes to reside; and

(b) if he resides in Northern Ireland, or will be residing in Northern Ireland, at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside; and

"the relevant time" means the time when the order or the amendment to it comes into force.

(3) A community service order made or amended in the circumstances specified in section 242 or 243 of this Act shall be treated, subject to the following provisions of this section, as if it were a community service order made in the part of the United Kingdom in which the offender resides, or will be residing at the relevant time; and the legislation relating to community service orders which has effect in that part of the United Kingdom shall apply accordingly.

(4) Before making or amending a community service order in those circumstances the court shall explain to the offender in ordinary language—

(a) the requirements of the legislation relating to community service orders which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time;

(b) the powers of the home court under that legislation, as modified by this section; and

(c) its own powers under this section,

and an explanation given in accordance with this section shall be sufficient without the addition of an explanation under section 238(4) of this Act.

(5) The home court may exercise in relation to the community service order any power which it could exercise in relation to a community service order made by a court in the part of the United Kingdom in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part of the United Kingdom, except—

(a) a power to vary the order by substituting for the number of hours' work specified in it any greater number than the court which made the order could have specified;

(b) a power to revoke the order; and

(c) a power to revoke the order and deal with the offender for the offence in respect of which it was made in any manner 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.

(6) If at any time while legislation relating to community service orders which has effect in one part of the United Kingdom applies by virtue of subsection (3) above to a community service order made in another part—

(a) it appears to the home court—

(i) if that court is in England or Wales, on information to a justice of the peace acting for the petty sessions area for the time being specified in the order; or

(ii) if it is in Northern Ireland, upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order,

that the offender has failed to comply with any of the requirements of the legislation applicable to the order; or

(b) it appears to the home court on the application of—

(i) the offender; or

(ii) if that court is in England and Wales, the relevant officer under the Powers of Criminal Courts Act 1973; or

(iii) if that court is in Northern Ireland, the relevant officer under the Treatment of Offenders (Northern Ireland) Order 1976,

that it would be in the interests of justice to exercise a power mentioned in subsection (5)(b) or (c) above,

the home court may require the offender to appear before the court by which the order was made.

(7) Where an offender is required by virtue of subsection (6) above to appear before the court which made a community service order, that court—

(a) may issue a warrant for his arrest; and

(b) may exercise any power which it could exercise in respect of the community service order if the offender resided in the part of the United Kingdom where the court has jurisdiction,

and any enactment relating to the exercise of such powers shall have effect accordingly.

245 Community service orders: rules, annual report and interpretation

(1) The Secretary of State may make rules for regulating the performance of work under community service orders or probation orders which include a requirement that the offender shall perform unpaid work.

(2) Without prejudice to the generality of subsection (1) above, rules under this section may—

(a) limit the number of hours' work to be done by a person under such an order on any one day;
(b) make provision as to the reckoning of time worked under such orders;
(c) make provision for the payment of travelling and other expenses in connection with the performance of work under such orders;
(d) provide for records to be kept of the work done by any person under such an order.

(3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Secretary of State shall lay before Parliament each year, or incorporate in annual reports he already makes, a report of the working of community service orders.

(5) In sections 238 to 243 of this Act, "the appropriate court" means—
(a) where the relevant community service order has been made by the High Court, the High Court;
(b) in any other case, the court having jurisdiction in the locality for the time being specified in the order under section 238(8)(a) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or a district court, but in a case where the order has been made by a district court and there is no district court in that locality, the sheriff court.

Admonition and absolute discharge

246 Admonition and absolute discharge

(1) A court may, if it appears to meet the justice of the case, dismiss with an admonition any person convicted by the court of any offence.

(2) Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law), if it appears to the court, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate it may instead of sentencing him make an order discharging him absolutely.

(3) Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it 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 inflict punishment and that a probation order is not appropriate may without proceeding to conviction make an order discharging him absolutely.

247 Effect of probation and absolute discharge

(1) Subject to the following provisions of this section, a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence.

(2) Without prejudice to subsection (1) above, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for

the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

(3) Subsections (1) and (2) above shall not affect any right to appeal.

(4) Where a person charged with an offence has at any time previously been discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to lay before the court the order of absolute discharge in like manner as if the order were a conviction.

(5) Where an offender is discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.

(6) Where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as mentioned in subsection (1) above, is subsequently sentenced under this Act for that offence, the provisions of that subsection shall cease to apply to the conviction.

Disqualification

248 Disqualification where vehicle used to commit offence

(1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purposes of committing or facilitating the commission of that offence, the court may order him to be disqualified for such a period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.

(2) A court which makes an order under this section disqualifying a person from holding or obtaining a licence shall require him to produce any such licence held by him and its counterpart.

(3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(4) In relation to licences which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.

Compensation

249 Compensation order against convicted person

(1) Subject to subsections (2) and (4) below, where a person is convicted of an offence the court, instead of or in addition to dealing with him in any other way, may make an order (in this Part of this Act referred to as "a compensation order") requiring him to pay compensation for any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence.

(2) It shall not be competent for a court to make a compensation order—

(a) where, under section 246(2) of this Act, it makes an order discharging him absolutely;
(b) where, under section 228 of this Act, it makes a probation order; or
(c) at the same time as, under section 202 of this Act, it defers sentence.

(3) Where, in the case of an offence involving dishonest appropriation, or the unlawful taking and using of property or a contravention of section 178(1) of the Road Traffic Act 1988 (taking motor vehicle without authority etc.) the property is recovered, but has been damaged while out of the owner's possession, that damage, however and by whomsoever it was in fact caused, shall be treated for the purposes of subsection (1) above as having been caused by the acts which constituted the offence.

(4) No compensation order shall be made in respect of—
(a) loss suffered in consequence of the death of any person; or
(b) injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated, by virtue of subsection (3) above, as having been caused by the convicted person's acts.

(5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such order, the court shall take into consideration his means so far as known to the court.

(6) For the purposes of subsection (5) above, in assessing the means of a person who is serving, or is to serve, a period of imprisonment or detention, no account shall be taken of earnings contingent upon his obtaining employment after release.

(7) In solemn proceedings there shall be no limit on the amount which may be awarded under a compensation order.

(8) In summary proceedings—
(a) a sheriff, or a stipendiary magistrate appointed under section 5 of the District Courts (Scotland) Act 1975, shall have power to make a compensation order awarding in respect of each offence an amount not exceeding the prescribed sum;
(b) a judge of a district court (other than such stipendiary magistrate) shall have power to make a compensation order awarding in respect of each offence an amount not exceeding level 4 on the standard scale.

(9) Payment of any amount under a compensation order shall be made to the clerk of the court who shall account for the amount to the person entitled thereto.

(10) Only the court shall have power to enforce a compensation order.

250 Compensation orders: supplementary provisions

(1) Where a court considers that in respect of an offence it would be appropriate to impose a fine and to make a compensation order but the convicted person has insufficient means to pay both an appropriate fine and an appropriate amount in compensation the court should prefer a compensation order.

(2) Where a convicted person has both been fined and had a compensation order made against him in respect of the same offence or different offences in the same proceedings, a payment by the convicted person shall first be applied in satisfaction of the compensation order.

(3) For the purposes of any appeal or review, a compensation order is a sentence.

(4) Where a compensation order has been made against a person, a payment made to the court in respect of the order shall be retained until the determination of any appeal in relation to the order.

251 Review of compensation order

(1) Without prejudice to the power contained in section 213 of this Act, (as applied by section 252 of this Act), at any time before a compensation order has been complied with or fully complied with, the court, on the application of the person against whom the compensation order was made, may discharge the compensation order or reduce the amount that remains to be paid if it appears to the court that—

(a) the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the compensation order; or

(b) that property the loss of which is reflected in the compensation order has been recovered.

(2) In subsection (1) above "the court" means—

(a) in a case where, as respects the compensation order, a transfer of fine order under section 222 of this Act (as applied by the said section 252) is effective and the court by which the compensation order is enforceable is in terms of the transfer of fine order a court of summary jurisdiction in Scotland, that court; or

(b) in any other case, the court which made the compensation order or, where that court was the High Court, by which the order was first enforceable.

252 Enforcement of compensation orders: application of provisions relating to fines

(1) The provisions of this Act specified in subsection (2) below shall, subject to any necessary modifications and to the qualifications mentioned in that subsection, apply in relation to compensation orders as they apply in relation to fines; and section 91 of the Magistrates' Courts Act 1980 and article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 shall be construed accordingly.

(2) The provisions mentioned in subsection (1) above are—

section 211(3), (4) and (7) to (9) (enforcement of fines);

section 212 (fines in summary proceedings);

section 213 (power to remit fines), with the omission of the words "or (4)" in subsection (2) of that section;

section 214 (time for payment) with the omission of—

(a) the words from "unless" to "its decision" in subsection (4); and

(b) subsection (5);

section 215 (further time for payment);

section 216 (reasons for default);

section 217 (supervision pending payment of fine);

section 218 (supplementary provisions), except that subsection (1) of that section shall not apply in relation to compensation orders made in solemn proceedings;

subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8) (maximum period of imprisonment for non-payment of fine);

section 220 (payment of fine in part by prisoner);
section 221 (recovery by civil diligence);
section 222 (transfer of fine orders);
section 223 (action of clerk of court on transfer of fine order); and
section 224 (discharge from imprisonment to be specified).

(3) In the application of the provisions of section 219 of this Act mentioned in subsection (2) above for the purposes of subsection (1) above—

(a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a compensation order but not vice versa; and

(b) where a court imposes imprisonment both in respect of a fine and of a compensation order the amounts in respect of which imprisonment is imposed shall, for the purposes of subsection (2) of the said section 219, be aggregated.

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

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

(2) The damages in the civil proceedings shall be assessed without regard to the order or award; but where the whole or part of the amount awarded by the order or award has been paid, the damages awarded in the civil proceedings shall be restricted to the amount (if any) by which, as so assessed, they exceed the amount paid under the order or award.

(3) Where the whole or part of the amount awarded by the order or award remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order or award was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or of his imprisonment for default or otherwise), the court shall direct that the judgment—

(a) if it is for an amount not exceeding the amount unpaid under the order or award, shall not be enforced; or

(b) if it is for an amount exceeding the amount unpaid under the order or award, shall not be enforced except to the extent that it exceeds the amount unpaid,

without the leave of the court.

(4) In this section a "service compensation order or award" means—

(a) an order requiring the payment of compensation under paragraph 11 of—

(i) Schedule 5A to the Army Act 1955;

(ii) Schedule 5A to the Air Force Act 1955; or

(iii) Schedule 4A to the Naval Discipline Act 1957; or

(b) an award of stoppages payable by way of compensation under any of those Acts.

Forfeiture

254 Search warrant for forfeited articles

Where a court has made an order for the forfeiture of an article, the court or any justice may, if satisfied on information on oath—

(a) that there is reasonable cause to believe that the article is to be found in any place or premises; and

(b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.

PART XII

EVIDENCE

Special capacity

255 Special capacity

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged—

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.

Agreed evidence

256 Agreements and admissions as to evidence

(1) In any trial it shall not be necessary for the accused or for the prosecutor—

(a) to prove any fact which is admitted by the other; or

(b) to prove any document, the terms and application of which are not in dispute between them,

and, without prejudice to paragraph 1 of Schedule 8 to this Act, copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals.

(2) For the purposes of subsection (1) above, any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—

(a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, by his counsel or solicitor; and

(b) in the case of an agreement, by the prosecutor and the accused or, if he is legally represented, his counsel or solicitor.

(3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved.

257 Duty to seek agreement of evidence

(1) Subject to subsection (2) below, the prosecutor and the accused (or each of the accused if more than one) shall each identify any facts which are facts—

(a) which he would, apart from this section, be seeking to prove;

(b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and

(c) in proof of which he does not wish to lead oral evidence,

and shall, without prejudice to section 258 of this Act, take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies—

(a) in relation to proceedings on indictment, from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 76 of this Act, the date of that intimation; and

(b) in relation to summary proceedings, from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

258 Uncontroversial evidence

(1) This section applies where, in any criminal proceedings, a party (in this section referred to as "the first party") considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.

(2) Where this section applies, the first party may prepare and sign a statement—

(a) specifying the facts concerned; or

(b) referring to such facts as set out in a document annexed to the statement,

and shall, not less than 14 days before the trial diet, serve a copy of the statement and any such document on every other party.

(3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

(4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.

(5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.

(6) Notwithstanding subsections (3) and (4) above, the court—

(a) may, on the application of any party, where it is satisfied that there are special circumstances; and

(b) shall, on the joint application of all the parties,

direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.

(7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor's address to the court on the evidence.

(8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to section 268 of this Act, permit any party to lead evidence as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

Hearsay

259 Exceptions to the rule that hearsay evidence is inadmissible

(1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—

(a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;

(b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;

(c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and

(d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—

(i) it is contained in a document; or

(ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.

(2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—

(a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;

(b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;

(c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;

(d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or

(e) is called as a witness and either—

(i) refuses to take the oath or affirmation; or

(ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.

(3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—

(a) the person in support of whose case the evidence would be given; or

(b) any other person acting on his behalf,

for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.

(4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—

(a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;

(b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and

(c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

(5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, before the trial diet, give notice in writing of—

(a) that fact;

(b) the witnesses and productions to be adduced in connection with such evidence; and

(c) such other matters as may be prescribed by Act of Adjournal,

to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(6) A party shall not be required to give notice as mentioned in subsection (5) above where—

(a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or

(b) he satisfies the judge that there was good reason for not giving such notice.

(7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue of subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.

(8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—

(a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and

(b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—

(i) from the circumstances in which the statement was made or otherwise came into being; or

(ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.

(9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

260 Admissibility of prior statements of witnesses

(1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.

(2) A prior statement shall not be admissible under this section unless—

(a) the statement is contained in a document;

(b) the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and

(c) at the time the statement was made, the person who made it would have been a competent witness in the proceedings.

(3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.

(4) Subsections (2) and (3) above do not apply to a prior statement—

(a) contained in a precognition on oath; or

(b) made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,

and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.

261 Statements by accused

(1) Subject to the following provisions of this section, nothing in sections 259 and 260 of this Act shall apply to a statement made by the accused.

(2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 259 at the instance of another accused in the same proceedings as evidence in relation to that other accused.

(3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—

(a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 259; and

(b) to have been, at the time the statement was made, a competent witness in the proceedings.

(4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 259; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.

262 Construction of sections 259 to 261

(1) For the purposes of sections 259 to 261 of this Act, a "statement" includes—

(a) any representation, however made or expressed, of fact or opinion; and

(b) any part of a statement,

but does not include a statement in a precognition other than a precognition on oath.

(2) For the purposes of the said sections 259 to 261 a statement is contained in a document where the person who makes it—

(a) makes the statement in the document personally;

(b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or

(c) approves a document as embodying the statement.

(3) In the said sections 259 to 261—

"criminal proceedings" include any hearing by the sheriff of an application made under Chapter 3 of Part II of the Children (Scotland) Act 1995 for a finding as to whether grounds for the referral of a child's case to a children's hearing are established, in so far as the application relates to the commission of an offence by the child, or for a review of such a finding;

"document" includes, in addition to a document in writing—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

"film" includes a microfilm;

"made" includes allegedly made.

(4) Nothing in the said sections 259 to 261 shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.

Witnesses

263 Examination of witnesses

(1) In any trial, it shall be competent for the party against whom a witness is produced and sworn *in causa* to examine such witness both in cross and *in causa*.

(2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party ("the first witness") shall be interrupted to permit the examination of another witness for that party.

(3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.

(4) In a trial, a witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in the trial; and evidence may be led in the trial to prove that the witness made the different statement on the occasion specified.

(5) In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.

264 Spouse of accused a competent witness

(1) The spouse of an accused may be called as a witness—

(a) by the accused;

(b) by a co-accused or by the prosecutor without the consent of the accused.

(2) Nothing in this section shall—

(a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;

(b) compel a spouse to disclose any communication made between the spouses during the marriage.

(3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.

(4) The spouse of a person charged with bigamy may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

265 Witnesses not excluded for conviction, interest, relationship, etc

(1) Every person adduced as a witness who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, and no objection to the admissibility of a witness shall be competent on the ground of—

(a) conviction of or punishment for an offence;

(b) interest;

(c) agency or partial counsel;

(d) the absence of due citation to attend; or

(e) his having been precognosced subsequently to the date of citation.

(2) Where any person who is or has been an agent of the accused is adduced and examined as a witness for the accused, it shall not be competent for the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

(3) No objection to the admissibility of a witness shall be competent on the ground that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing the witness in any trial.

(4) It shall not be competent for any witness to decline to be examined and give evidence on the ground of any relationship mentioned in subsection (3) above.

266 Accused as witness

(1) Subject to subsections (2) to (8) below, the accused shall be a competent witness for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused.

(2) The accused shall not be called as a witness in pursuance of this section except upon his own application or in accordance with subsection (9) or (10) below.

(3) An accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged.

(4) An accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or

(b) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establishing the accused's good character or impugning the character of the complainer, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution or of the complainer; or

(c) the accused has given evidence against any other person charged in the same proceedings.

(5) In a case to which paragraph (b) of subsection (4) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that subsection only if the court, on the application of the prosecutor, permits him to do so.

(6) An application under subsection (5) above in proceedings on indictment shall be made in the course of the trial but in the absence of the jury.

(7) In subsection (4) above, references to the complainer include references to a victim who is deceased.

(8) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(9) The accused may—

(a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or

(b) ask a co-accused any question in cross-examination if that co-accused gives evidence,

but he may not do both in relation to the same co-accused.

(10) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to or been acquitted of all charges against him which remain before the court (whether or not, in a case where the co-accused has pleaded guilty to any charge, he has been sentenced) or in respect of whom the diet has been deserted; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.

(11) Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.

267 Witnesses in court during trial

(1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.

(2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

Additional evidence, etc.

268 Additional evidence

(1) Subject to subsection (2) below, the judge may, on a motion of the prosecutor or the accused made—

(a) in proceedings on indictment, at any time before the commencement of the speeches to the jury;

(b) in summary proceedings, at any time before the prosecutor proceeds to address the judge on the evidence,

permit him to lead additional evidence.

(2) Permission shall only be granted under subsection (1) above where the judge—

(a) considers that the additional evidence is *prima facie* material; and

(b) accepts that at the commencement of the trial either—

(i) the additional evidence was not available and could not reasonably have been made available; or

(ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.

(3) The judge may permit the additional evidence to be led notwithstanding that—

(a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or

(b) in any case, a witness must be recalled.

(4) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

(5) In this section "the commencement of the trial" means—

(a) in proceedings on indictment, the time when the jury is sworn; and

(b) in summary proceedings, the time when the first witness for the prosecution is sworn.

269 Evidence in replication

(1) The judge may, on a motion of the prosecutor made at the relevant time, permit the prosecutor to lead additional evidence for the purpose of—

(a) contradicting evidence given by any defence witness which could not reasonably have been anticipated by the prosecutor; or

(b) providing such proof as is mentioned in section 263(4) of this Act.

(2) The judge may permit the additional evidence to be led notwithstanding that—

(a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or

(b) in any case, a witness must be recalled.

(3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

(4) In subsection (1) above, "the relevant time" means—

(a) in proceedings on indictment, after the close of the defence evidence and before the commencement of the speeches to the jury; and

(b) in summary proceedings, after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence.

270 Evidence of criminal record and character of accused

(1) This section applies where—

(a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused's good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or

(b) the nature or conduct of the defence is such as to tend to establish the accused's good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.

(2) Where this section applies the court may, without prejudice to section 268 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that, in proceedings on indictment, a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(3) In proceedings on indictment, an application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.

(4) In subsection (1) above, references to the complainer include references to a victim who is deceased.

Evidence of children

271 Evidence of children: special provisions

(1) Subject to subsections (7) and (8) below, where a child has been cited to give evidence in a trial the court may appoint a commissioner to take the evidence of the child if—

(a) in solemn proceedings, at any time before the oath is administered to the jury;

(b) in summary proceedings, at any time before the first witness is sworn;

(c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,

application is made to the court in that regard; but to be so appointed a person must be, and for a period of at least five years have been, a member of the Faculty of Advocates or a solicitor.

(2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.

(3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.

(4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.

(5) Subject to subsections (7) and (8) below, where a child has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by the child by means of a live television link.

(6) Subject to subsections (7) and (8) below, where a child has been or is likely to be cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of the child while the child is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the child.

(7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—

(a) the possible effect on the child if required to give evidence, no such application having been granted;

(b) whether it is likely that the child would be better able to give evidence if such application were granted; and

(c) the views of the child.

(8) In considering whether to grant an application under subsection (1), (5) or (6) above, the court may take into account, where appropriate, any of the following—

(a) the age and maturity of the child;

(b) the nature of the alleged offence;

(c) the nature of the evidence which the child is likely to be called on to give; and

(d) the relationship, if any, between the child and the accused.

(9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation

or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.

(10) The sheriff court to which a case is transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.

(11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a child, and the child gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the child prior to the trial shall be admissible as evidence as to such identification.

(12) In this section—

"child" means a person under the age of 16 years;

"court" means the High Court or the sheriff court; and

"trial" means a trial under solemn or under summary procedure.

Evidence on commission and from abroad

272 Evidence by letter of request or on commission

(1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—

(a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in that country or territory; or

(b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who—

(i) by reason of being ill or infirm is unable to attend the trial diet; or

(ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.

(2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed.

(3) An application under subsection (1) above may be granted only if the judge is satisfied that—

(a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and

(b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.

(4) Any such record as is mentioned in paragraph (b) of subsection (3) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.

(5) Where any such record as is mentioned in paragraph (b) of subsection (3) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (4) above unless it is accompanied by a transcript of its contents.

(6) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section.

(7) In subsection (1) above, "appropriate time" means as regards—

(a) solemn proceedings, any time before the oath is administered to the jury;

(b) summary proceedings, any time before the first witness is sworn,

or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a) or, as the case may be, (b) of this subsection.

(8) In subsection (3) and (4) above, "record" includes, in addition to a document in writing—

(a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(9) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.

273 Television link evidence from abroad

(1) In any solemn proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—

(a) the witness is outside the United Kingdom;

(b) an application under subsection (2) below for the issue of a letter of request has been granted; and

(c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.

(2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—

(a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or

(b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,

requesting assistance in facilitating the giving of evidence by that witness through a live television link.

(3) An application under subsection (2) above shall be granted only if the judge is satisfied that—

(a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and

(b) the granting of the application —

(i) is in the interests of justice; and

(ii) in the case of an application by the prosecutor, is not unfair to the accused.

Evidence relating to sexual offences

274 Restrictions on evidence relating to sexual offences

(1) In any trial of a person on any charge to which this section applies, subject to section 275 of this Act, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—

(a) is not of good character in relation to sexual matters;

(b) is a prostitute or an associate of prostitutes; or

(c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.

(2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say—

(a) rape;

(b) sodomy;

(c) clandestine injury to women;

(d) assault with intent to rape;

(e) indecent assault;

(f) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);

(g) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient); or

(h) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995—

(i) sections 1 to 3 (incest and related offences);

(ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);

(iii) section 6 (indecent behaviour toward girl between 12 and 16);

(iv) section 7(2) and (3) (procuring by threats etc.);

(v) section 8 (abduction and unlawful detention);

(vi) section 13(5) (homosexual offences).

(3) In this section "complainer" means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.

(4) This section does not apply to questioning, or evidence being adduced, by the Crown.

275 Exceptions to restrictions under section 274

(1) Notwithstanding section 274 of this Act, in any trial of an accused on any charge to which that section applies, where the court is satisfied on an application by the accused—

(a) that the questioning or evidence referred to in subsection (1) of that section is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of the accused;

(b) that the questioning or evidence referred to in paragraph (c) of that subsection—

(i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject matter of the charge; or

(ii) is relevant to the defence of incrimination; or

(c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in that subsection,

the court shall allow the questioning or, as the case may be, admit the evidence.

(2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.

(3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.

Biological material

276 Evidence of biological material

(1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production.

(2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

Transcripts and records

277 Transcript of police interview sufficient evidence

(1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between—

(a) a police officer and an accused person; or

(b) a person commissioned, appointed or authorised under section 6(3) of the Customs and Excise Management Act 1979 and an accused person,

shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.

(2) Subsection (1) above shall not apply to a transcript—

(a) unless a copy of it has been served on the accused not less than 14 days before his trial; or

(b) if the accused, not less than six days before his trial, or by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.

(3) A copy of the transcript or a notice under subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

278 Record of proceedings at examination as evidence

(1) Subject to subsection (2) below, the record made, under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary in proceedings on indictment to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.

(2) On the application of either an accused or the prosecutor—

(a) in proceedings on indictment, subject to sections 37(5) and 72(1)(b)(iv) of this Act, the court may determine that the record or part of the record shall not be read to the jury; and

(b) in summary proceedings, subject to the said section 37(5) and to subsection (4) below, the court may refuse to admit the record or some part of the record as evidence.

(3) At the hearing of an application under subsection (2) above, it shall be competent for the prosecutor or the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for either party to examine those witnesses upon any matters regarding the said proceedings.

(4) In summary proceedings, except on cause shown, an application under subsection (2)(b) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.

(5) In subsection (2) above, the "record" comprises—

(a) as regards any trial of an indictment, each record included, under section 68(1) of this Act, in the list of productions; and

(b) as regards a summary trial, each record which it is sought to have received under subsection (1) above.

Documentary evidence

279 Evidence from documents

Schedule 8 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

Routine evidence

280 Routine evidence

(1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 9 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (6) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.

(2) The Secretary of State may by order—

(a) amend or repeal the entry in Schedule 9 to this Act in respect of any enactment; or

(b) insert in that Schedule an entry in respect of a further enactment.

(3) An order under subsection (2) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.

(4) For the purposes of any criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (5) below, be sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatories.

(5) A forensic scientist is authorised for the purposes of subsection (4) above if—

(a) he is authorised for those purposes by the Secretary of State; or

(b) he—

(i) is a constable or is employed by a police authority under section 9 of the Police (Scotland) Act 1967;

(ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and

(iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.

(6) Subsections (1) and (4) above shall not apply to a certificate or, as the case may be, report tendered on behalf of the prosecutor or the accused—

(a) unless a copy has been served on the other party not less than fourteen days before the trial; or

(b) where the other party, not more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time as the court may in special circumstances allow, has served notice on the first party that the accused challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (4) above.

(7) A copy of a certificate or, as the case may be, report required by subsection (6) above, to be served on the accused or the prosecutor or of a notice required by that subsection or by subsection (1) or (2) of section 281 of this Act to be served on the prosecutor shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

(8) Where, following service of a notice under subsection (6)(b) above, evidence is given in relation to a report referred to in subsection (4) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

(9) At any trial of an offence it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.

(10) An order made under subsection (2) or (5)(b)(ii) above shall be made by statutory instrument.

(11) No order shall be made under subsection (2) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(12) A statutory instrument containing an order under subsection (5)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

281 Routine evidence: autopsy and forensic science reports

(1) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than six days before the trial, or by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.

(2) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists (whom the prosecutor shall specify) purporting to have signed the report shall be called to give evidence in respect thereof; and the evidence of that pathologist or forensic scientist shall be sufficient evidence of any fact or conclusion as to fact contained in the report and of the qualifications of the signatories, unless the accused, not less than six days before the trial or by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.

(3) Where, following service of a notice by the accused under subsection (2) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

Sufficient evidence

282 Evidence as to controlled drugs and medicinal products

(1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—

(a) a particular controlled drug or medicinal product; or

(b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,

shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.

(2) Those conditions are—

(a) that the substance is in a sealed container bearing a label identifying the contents of the container; or

(b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer's mark.

(3) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on the other party ("the second party")—

(a) a notice to that effect; and

(b) where the evidence is contained in a report, a copy of the report,

and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.

(4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(5) In this section—

"controlled drug" has the same meaning as in the Misuse of Drugs Act 1971; and

"medicinal product" has the same meaning as in the Medicines Act 1968.

283 Evidence as to time and place of video surveillance recordings

(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—

(a) the location of the camera;

(b) the nature and extent of the person's responsibility for the system; and

(c) that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified,

shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.

(2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on the other party ("the second party") a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) In this section, "video surveillance system" means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

284 Evidence in relation to fingerprints

(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by two constables and certifying that the fingerprints produced thereon were taken from a person designated in the certificate at a time, date and place specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.

(2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on the other party ("the second party") a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

Proof of previous convictions

285 Previous convictions: proof, general

(1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this subsection and subsections (2) to (6) below 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 Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of rules for the time being in force

under sections 12 and 39 of the Prisons (Scotland) Act 1989, or regulations for the time being in force under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

(3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as mentioned in subsection (2) above by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as mentioned in subsection (3) or (4) above, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.

(6) An extract conviction of any crime committed in any part of the United Kingdom bearing to have been issued by an officer whose duties include the issue of extract convictions shall be received in evidence without being sworn to by witnesses.

(7) It shall be competent to prove a previous conviction or any fact relevant to the admissibility of the conviction by witnesses, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses with regard to such conviction or fact.

(8) An official of any prison in which the accused has been detained on such conviction shall be a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which such conviction relates.

(9) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

286 Previous convictions: proof in support of substantive charge

(1) Without prejudice to section 285(6) to (9) or, as the case may be, section 166 of this Act, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

(a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and

(b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(2) A copy of a conviction or extract conviction served under subsection (1) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.

PART XIII

MISCELLANEOUS

Lord Advocate

287 Demission of office by Lord Advocate

(1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.

(2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in name of the Solicitor General then in office.

(3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.

(4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—

(a) by virtue of subsection (1) above, remains effective; or

(b) by virtue of subsection (2) above, is in the name of the Solicitor General.

(5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.

(6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before the Secretary of State or any Lord Commissioner of Justiciary.

288 Intimation of proceedings in High Court to Lord Advocate

(1) In any proceeding in the High Court (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the court to order intimation of such proceeding to the Lord Advocate.

(2) On intimation being made to the Lord Advocate under subsection (1) above, the Lord Advocate shall be entitled to appear and be heard in such proceeding.

Treason trials

289 Procedure and evidence in trials for treason

The procedure and rules of evidence in proceedings for treason and misprision of treason shall be the same as in proceedings according to the law of Scotland for murder.

Certain rights of accused

290 Accused's right to request identification parade

(1) Subject to subsection (2) below, the sheriff may, on an application by an accused at any time after the accused has been charged with an offence, order that, in relation to the alleged offence, the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade.

(2) The sheriff shall make an order in accordance with subsection (1) above only after giving the prosecutor an opportunity to be heard and only if—

(a) an identification parade, such as is mentioned in subsection (1) above, has not been held at the instance of the prosecutor;

(b) after a request by the accused, the prosecutor has refused to hold, or has unreasonably delayed holding, such an identification parade; and

(c) the sheriff considers the application under subsection (1) above to be reasonable.

291 Precognition on oath of defence witnesses

(1) The sheriff may, on the application of an accused, grant warrant to cite any person (other than a co-accused), who is alleged to be a witness in relation to any offence of which the accused has been charged, to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by the accused or his solicitor in relation to that offence, if the court is satisfied that it is reasonable to require such precognition on oath in the circumstances.

(2) Any person who, having been duly cited to attend for precognition under subsection (1) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned, ordering him to be brought before a sheriff for precognition on oath.

(3) Any person who, having been duly cited to attend for precognition under subsection (1) above, attends but—

(a) refuses to give information within his knowledge or to produce evidence in his possession; or

(b) prevaricates in his evidence,

shall be guilty of an offence and shall be liable to be summarily subjected forthwith to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days.

Mode of trial

292 Mode of trial of certain offences

(1) Subject to subsection (6) below, the offences mentioned (and broadly described) in Schedule 10 to this Act shall be triable only summarily.

(2) An offence created by statute shall be triable only summarily if—

(a) the enactment creating the offence or any other enactment expressly so provides (in whatever words); or

(b) subject to subsections (4) and (5)(a) below, the offence was created by an Act passed on or before 29 July 1977 (the date of passing of the Criminal Law Act 1977) and the penalty or maximum penalty in force immediately before that date, on any conviction of that offence, did not include any of the following—

(i) a fine exceeding £400;

(ii) subject to subsection (3) below, imprisonment for a period exceeding 3 months;

(iii) a fine exceeding £50 in respect of a specified quantity or number of things, or in respect of a specified period during which a continuing offence is committed.

(3) In the application of paragraph (b)(ii) of subsection (2) above, no regard shall be paid to the fact that section 5(3) of this Act permits the imposition of imprisonment for a period exceeding 3 months in certain circumstances.

(4) An offence created by statute which is triable only on indictment shall continue only to be so triable.

(5) An offence created by statute shall be triable either on indictment or summarily if—

(a) the enactment creating the offence or any other enactment expressly so provides (in whatever words); or

(b) it is an offence to which neither subsection (2) nor subsection (4) above applies.

(6) An offence which may under any enactment (including an enactment in this Act or passed after this Act) be tried only summarily, being an offence which, if it had been triable on indictment, could competently have been libelled as an additional or alternative charge in the indictment, may (the provisions of this or any other enactment notwithstanding) be so libelled, and tried accordingly.

(7) Where an offence is libelled and tried on indictment by virtue of subsection (6) above, the penalty which may be imposed for that offence in that case shall not exceed that which is competent on summary conviction.

Art and part and attempt

293 Statutory offences: art and part and aiding and abetting

(1) A person may be convicted of, and punished for, a contravention of any enactment, notwithstanding that he was guilty of such contravention as art and part only.

(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.

294 Attempt at crime

(1) Attempt to commit any indictable crime is itself an indictable crime.

(2) Attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint.

Legal custody

295 Legal custody

Any person required or authorised by or under this Act or any other enactment to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.

Warrants

296 Warrants for search and apprehension to be signed by judge

Any warrant for search or apprehension granted under this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.

297 Execution of warrants and service of complaints, etc

(1) Any warrant granted by a justice may, without being backed or endorsed by any other justice, be executed throughout Scotland in the same way as it may be executed within the jurisdiction of the justice who granted it.

(2) Any complaint, warrant, or other proceeding for the purposes of any summary proceedings under this Act may without endorsation be served or executed at any place within Scotland by any officer of law, and such service or execution may be proved either by the oath in court of the officer or by production of his written execution.

(3) A warrant issued in the Isle of Man for the arrest of a person charged with an offence may, after it has been endorsed by a justice in Scotland, be executed there by the person bringing that warrant, by any person to whom the warrant was originally directed or

by any officer of law of the sheriff court district where the warrant has been endorsed in like manner as any such warrant issued in Scotland.

(4) In subsection (3) above, "endorsed" means endorsed in the like manner as a process to which section 4 of the Summary Jurisdiction (Process) Act 1881 applies.

(5) The Indictable Offences Act Amendment Act 1868 shall apply in relation to the execution in Scotland of warrants issued in the Channel Islands.

Trial judge's report

298 Trial judge's report

(1) Without prejudice to sections 113 and 186(3)(b) of this Act, the High Court may, in relation to—

(a) an appeal under section 106(1), 108 or 175(2) to (4) of this Act;

(b) an appeal by way of bill of suspension or advocation; or

(c) a petition to the nobile officium,

at any time before the appeal is finally determined or, as the case may be, petition finally disposed of, order the judge who presided at the trial, passed sentence or otherwise disposed of the case to provide to the Clerk of Justiciary a report in writing giving the judge's opinion on the case generally or in relation to any particular matter specified in the order.

(2) The Clerk of Justiciary shall send a copy of a report provided under subsection (1) above to the convicted person or his solicitor, the Crown Agent and, in relation to cases referred under section 124(3) of this Act, the Secretary of State.

(3) Subject to subsection (2) above, the report of the judge shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.

Correction of entries

299 Correction of entries

(1) Subject to the provisions of this section, it shall be competent to correct any entry in—

(a) the record of proceedings in a prosecution; or

(b) the extract of a sentence passed or an order of court made in such proceedings,

in so far as that entry constitutes an error of recording or is incomplete.

(2) An entry mentioned in subsection (1) above may be corrected—

(a) by the clerk of the court, at any time before either the sentence or order of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;

(b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence or order of the court but before such transmission as is mentioned in paragraph (a) above; or

(c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.

(3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.

(4) Where during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—

(a) may consider and determine the appeal as if such entry were corrected; and

(b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.

(5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authorisation.

300 Amendment of records of conviction and sentence in summary proceedings

(1) Without prejudice to section 299 of this Act, where, on an application in accordance with subsection (2) below, the High Court is satisfied that a record of conviction or sentence in summary proceedings inaccurately records the identity of any person, it may authorise the clerk of the court which convicted or, as the case may be, sentenced the person to correct the record.

(2) An application under subsection (1) above shall be made after the determination of the summary prosecution and may be made by any party to the summary proceedings or any other person having an interest in the correction of the alleged inaccuracy.

(3) The High Court shall order intimation of an application under subsection (1) above to such persons as it considers appropriate and shall not determine the application without affording to the parties to the summary proceedings and to any other person having an interest in the correction of the alleged inaccuracy an opportunity to be heard.

(4) The power of the High Court under this section may be exercised by a single judge of the High Court in the same manner as it may be exercised by the High Court, and subject to the same provisions.

Rights of audience

301 Rights of audience

(1) Without prejudice to section 103(8) of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.

(2) Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.

Fixed penalties

302 Fixed penalty: conditional offer by procurator fiscal

(1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a conditional offer); and where he issues a conditional offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the conditional offer and of its terms.

(2) A conditional offer—

(a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;

(b) shall state—

(i) the amount of the appropriate fixed penalty for that offence;

(ii) the amount of the instalments by which the penalty may be paid; and

(iii) the intervals at which such instalments should be paid;

(c) shall indicate that if, within 28 days of the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer, the alleged offender accepts the offer by making payment of the fixed penalty or of the first instalment thereof to the clerk of court specified in the conditional offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;

(d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the conditional offer was issued, or such longer period as may be specified in the conditional offer; and

(e) shall state that acceptance of the offer in the manner described in paragraph (c) above by the alleged offender shall not be a conviction nor be recorded as such.

(3) A conditional offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount of the appropriate fixed penalty for all the offences in respect of which it is made.

(4) Where payment of the appropriate fixed penalty or of the first instalment has not been made to the clerk of court, he shall, upon the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the conditional offer, notify the procurator fiscal who issued the conditional offer that no payment has been made.

(5) Proceedings shall not be brought against any person for the offence to which a conditional offer relates until the procurator fiscal receives notification from the clerk of court in accordance with subsection (4) above.

(6) Where an alleged offender makes payment of the appropriate fixed penalty or of the first instalment to the clerk of court specified in the conditional offer no proceedings shall be brought against the alleged offender for the offence.

(7) The Secretary of State shall, by order, prescribe a scale of fixed penalties for the purpose of this section, the amount of the maximum penalty on the scale being a sum not exceeding level 1 on the standard scale.

(8) An order under subsection (7) above—

(a) may contain provision as to the payment of fixed penalties by instalments; and

(b) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section—

(a) "a relevant offence" means any offence in respect of which an alleged offender could competently be tried before a district court, but shall not include a fixed penalty offence within the meaning of section 51 of the Road Traffic Offenders Act 1988 nor any other offence in respect of which a conditional offer within the meaning of sections 75 to 77 of that Act may be sent; and

(b) "the appropriate fixed penalty" means such fixed penalty on the scale prescribed under subsection (7) above as the procurator fiscal thinks fit having regard to the circumstances of the case.

303 Fixed penalty: enforcement

(1) Subject to subsection (2) below, where an alleged offender accepts a conditional offer by paying the first instalment of the appropriate fixed penalty, any amount of the penalty which is outstanding at any time shall be treated as if the penalty were a fine imposed by the court, the clerk of which is specified in the conditional offer.

(2) In the enforcement of a penalty which is to be treated as a fine in pursuance of subsection (1) above—

(a) any reference, howsoever expressed, in any enactment whether passed or made before or after the coming into force of this section to—

(i) the imposition of imprisonment or detention in default of payment of a fine shall be construed as a reference to enforcement by means of civil diligence;

(ii) the finding or order of the court imposing the fine shall be construed as a reference to a certificate given in pursuance of subsection (3) below;

(iii) the offender shall be construed as a reference to the alleged offender;

(iv) the conviction of the offender shall be construed as a reference to the acceptance of the conditional offer by the alleged offender;

(b) the following sections of this Act shall not apply—

section 211(7)
section 213(2);
section 214(1) to (6);
section 216(7);
section 219, except subsection (1)(b);
section 220;
section 221(2) to (4);
section 222(8); and
section 224.

(3) For the purposes of any proceedings in connection with, or steps taken for, the enforcement of any amount of a fixed penalty which is outstanding, a document purporting to be a certificate signed by the clerk of court for the time being responsible

for the collection or enforcement of the penalty as to any mater relating to the penalty shall be conclusive of the matter so certified.

(4) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty, treated in pursuance of subsection (1) above as a fine, which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.

PART XIV

GENERAL

304 Criminal Courts Rules Council

(1) There shall be established a body, to be known as the Criminal Courts Rules Council (in this section referred to as "the Council") which shall have the functions conferred on it by subsection (9) below.

(2) The Council shall consist of—

(a) the Lord Justice General, the Lord Justice Clerk and the Clerk of Justiciary;

(b) a further Lord Commissioner of Justiciary appointed by the Lord Justice General;

(c) the following persons appointed by the Lord Justice General after such consultation as he considers appropriate—

(i) two sheriffs;

(ii) two members of the Faculty of Advocates;

(iii) two solicitors;

(iv) one sheriff clerk; and

(v) one person appearing to him to have a knowledge of the procedures and practices of the district court;

(d) two persons appointed by the Lord Justice General after consultation with the Lord Advocate, at least one of whom must be a procurator fiscal;

(e) two persons appointed by the Lord Justice General after consultation with the Secretary of State, at least one of whom must be a person appearing to the Lord Justice General to have—

(i) a knowledge of the procedures and practices of the courts exercising criminal jurisdiction in Scotland; and

(ii) an awareness of the interests of victims of crime and of witnesses in criminal proceedings; and

(f) any persons appointed under subsection (3) below.

(3) The Lord Justice General may appoint not more than two further persons, and the Secretary of State may appoint one person, to membership of the Council.

(4) The chairman of the Council shall be the Lord Justice General or such other member of the Council, being a Lord Commissioner of Justiciary, as the Lord Justice General may nominate.

(5) The members of the Council appointed under paragraphs (b) to (f) of subsection (2) above shall, so long as they retain the respective qualifications mentioned in those paragraphs, hold office for three years and be eligible for reappointment.

(6) Any vacancy in the membership of the Council by reason of the death or demission of office, prior to the expiry of the period for which he was appointed, of a member appointed under any of paragraphs (b) to (f) of subsection (2) above shall be filled by the appointment by the Lord Justice General or, as the case may be, the Secretary of State, after such consultation as is required by the paragraph in question, of another person having the qualifications required by that paragraph, and a person so appointed shall hold office only until the expiry of that period.

(7) The Council shall meet—

(a) at intervals of not more than 12 months; and

(b) at any time when summoned by the chairman or by three members of the Council,

but shall, subject to the foregoing, have power to regulate the summoning of its meetings and the procedure at such meetings.

(8) At any meeting of the Council six members shall be a quorum.

(9) The functions of the Council shall be—

(a) to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices); and

(b) to consider and comment on any draft Act of Adjournal submitted to it by the High Court, which shall, in making the Act of Adjournal, take account to such extent as it considers appropriate of any comments made by the Council under this paragraph.

(10) In the discharge of its functions under subsection (9) above the Council may invite representations on any aspect of the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices) and shall consider any such representations received by it, whether or not submitted in response to such an invitation.

305 Acts of Adjournal

(1) The High Court may by Act of Adjournal—

(a) regulate the practice and procedure in relation to criminal procedure;

(b) make such rules and regulations as may be necessary or expedient to carry out the purposes and accomplish the objects of any enactment (including an enactment in this Act) in so far as it relates to criminal procedure;

(c) subject to subsection (5) below, to fix and regulate the fees payable in connection with summary criminal proceedings; and

(d) to make provision for the application of sums paid under section 220 of this Act and for any matter incidental thereto.

(2) The High Court may by Act of Adjournal modify, amend or repeal any enactment (including an enactment in this Act) in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.

(3) No rule, regulation or provision which affects the governor or any other officer of a prison shall be made by Act of Adjournal except with the consent of the Secretary of State.

(4) The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal made under subsection (1) above or any other Act whether passed before or after this Act from time to time as may be found necessary for giving effect to the provisions of this Act relating to solemn procedure.

(5) Nothing in paragraph (c) of subsection (1) above shall empower the High Court to make any regulation which the Secretary of State is empowered to make by the Courts of Law Fees (Scotland) Act 1895.

306 Information for financial and other purposes

(1) The Secretary of State shall in each year publish such information as he considers expedient for the purpose of—

(a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or

(b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.

(2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

307 Interpretation

(1) In this Act, unless the context otherwise requires—

"appropriate court" means a court named as such in pursuance of section 228(4) of this Act or of Schedule 6 to this Act in a probation order or in an amendment of any such order made on a change of residence of a probationer;

"bail" means release of an accused or an appellant on conditions, or conditions imposed on bail, as the context requires;

"chartered psychologist" means a person for the time being listed in the British Psychological Society's Register of Chartered Psychologists;

"child", except in section 46(3) of and Schedule 1 to this Act, has the meaning assigned to that expression for the purposes of Chapters 2 and 3 of Part II of the Children (Scotland) Act 1995;

"children's hearing" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

"Clerk of Justiciary" shall include assistant clerk of justiciary and shall extend and apply to any person duly authorised to execute the duties of Clerk of Justiciary or assistant clerk of justiciary;

"commit for trial" means commit until liberation in due course of law;

"community service order" means an order made under section 238 of this Act;

"complaint" includes a copy of the complaint laid before the court;

"constable" has the same meaning as in the Police (Scotland) Act 1967;

"court of summary jurisdiction" means a court of summary criminal jurisdiction;

"court of summary criminal jurisdiction" includes the sheriff court and district court;

"crime" means any crime or offence at common law or under any Act of Parliament whether passed before or after this Act, and includes an attempt to commit any crime or offence;

"diet" includes any continuation of a diet;

"enactment" includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

"examination of facts" means an examination of facts held under section 55 of this Act;

"existing" means existing immediately before the commencement of this Act;

"extract conviction" and "extract of previous conviction" include certified copy conviction, certificate of conviction, and any other document lawfully issued from any court of justice of the United Kingdom as evidence of a conviction;

"fine" includes—

(a) any pecuniary penalty, (but not a pecuniary forfeiture or pecuniary compensation); and

(b) an instalment of a fine;

"governor" means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, the director of the prison;

"guardian", in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child;

"guardianship order" has the meaning assigned to it by section 58 of this Act;

"High Court" and "Court of Justiciary" shall mean "High Court of Justiciary" and shall include any court held by the Lords Commissioners of Justiciary, or any of them;

"hospital" means—

(a) any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978;

(b) any private hospital registered under Part IV of the Mental Health (Scotland) Act 1984; and

(c) any State hospital;

"hospital order" has the meaning assigned to it by section 58 of this Act;

"impose detention" or "impose imprisonment" means pass a sentence of detention or imprisonment, as the case may be, or make an order for committal in default of payment of any sum of money or for contempt of court;

"indictment" includes any indictment whether in the sheriff court or the High Court framed in the form set out an Act of Adjournal or as nearly as may be in such form;

"judge", in relation to solemn procedure, means a judge of a court of solemn criminal jurisdiction and, in relation to summary procedure, means any sheriff or any judge of a district court;

"justice" includes the sheriff and any stipendiary magistrate or justice of the peace;

"justice of the peace" means any of Her Majesty's justices of the peace for any commission area in Scotland within such commission area;

"legalised police cells" has the like meaning as in the Prisons (Scotland) Act 1989;

"local authority" has the meaning assigned to it by section 1(2) of the Social Work (Scotland) Act 1968;

"Lord Commissioner of Justiciary" includes Lord Justice General and Lord Justice Clerk;

"offence" means any act, attempt or omission punishable by law;

"officer of law" includes, in relation to the service and execution of any warrant, citation, petition, indictment, complaint, list of witnesses, order, notice, or other proceeding or document—

(a) any macer, messenger-at-arms, sheriff officer or other person having authority to execute a warrant of the court;

(b) any constable;

(c) any person who is employed under section 9 of the Police (Scotland) Act 1967 for the assistance of the constables of a police force and who is authorised by the chief constable of that police force in relation to service and execution as mentioned above;

(d) where the person upon whom service or execution is effected is in prison at the time of service on him, any prison officer; and

(e) any person or class or persons authorised in that regard for the time being by the Lord Advocate or by the Secretary of State;

"order" means any order, byelaw, rule or regulation having statutory authority;

"patient" means a person suffering or appearing to be suffering from mental disorder;

"place of safety", in relation to a person not being a child, means any police station, prison or remand centre, or any hospital the board of management of which are willing temporarily to receive him, and in relation to a child means a place of safety within the meaning of Part II of the Children (Scotland) Act 1995;

"the prescribed sum" has the meaning given by section 225(8) of this Act;

"prison" does not include a naval, military or air force prison;

"prison officer" and "officer of a prison" means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, a prisoner custody officer within the meaning of section 114(1) of that Act;

"probationer" means a person who is under supervision by virtue of a probation order or who was under such supervision at the time of the commission of any relevant offence or failure to comply with such order;

"probation order" has the meaning assigned to it by section 228 of this Act;

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

"procurator fiscal" means the procurator fiscal for a sheriff court district, and includes assistant procurator fiscal and procurator fiscal depute and any person duly authorised to execute the duties of the procurator fiscal;

"prosecutor"—

(a) for the purposes of proceedings other than summary proceedings, includes Crown Counsel, procurator fiscal, any other person prosecuting in the public interest and any private prosecutor; and

(b) for the purposes of summary proceedings, includes procurator fiscal, and any other person prosecuting in the public interest and complainer and any person duly authorised to represent or act for any public prosecutor;

"remand" means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly;

"remand centre" has the like meaning as in the Prisons (Scotland) Act 1989;

"residential establishment" means an establishment within the meaning of that expression for the purposes of the Social Work (Scotland) Act 1968 or, as the case may be, of Part II of the Children (Scotland) Act 1995;

"responsible medical officer" has the meaning assigned to it by section 59 of the Mental Health (Scotland) Act 1984;

"restriction order" has the meaning assigned to it by section 59 of this Act;

"sentence", whether of detention or of imprisonment, means a sentence passed in respect of a crime or offence and does not include an order for committal in default of payment of any sum of money or for contempt of court;

"sheriff clerk" includes sheriff clerk depute, and extends and applies to any person duly authorised to execute the duties of sheriff clerk;

"sheriff court district" extends to the limits within which the sheriff has jurisdiction in criminal matters whether by statute or at common law;

"State hospital" has the meaning assigned to it in Part VIII of the Mental Health (Scotland) Act 1984;

"statute" means any Act of Parliament, public general, local, or private, and any Provisional Order confirmed by Act of Parliament;

"supervision requirement" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

"training school order" has the same meaning as in the Social Work (Scotland) Act 1968;

"witness" includes haver;

"young offenders institution" has the like meaning as in the Prisons (Scotland) Act 1989.

(2) References in this Act to a court do not include references to a court-martial; and nothing in this Act shall be construed as affecting the punishment which may be awarded by a court-martial under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955 for a civil offence within the meaning of those Acts.

(3) For the purposes of this Act, except section 228(6), where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.

(4) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference

to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence of detention in a Borstal institution.

(5) Any reference in this Act to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of the United Kingdom and to a previous sentence passed by any such court.

(6) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under any enactment, including this Act, upon the imprisonment of offenders of his age.

(7) Without prejudice to section 46 of this Act, where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.

(8) References in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

308 Construction of enactments referring to detention etc

In any enactment—

(a) any reference to a sentence of imprisonment as including a reference to a sentence of any other form of detention shall be construed as including a reference to a sentence of detention under section 207 of this Act; and

(b) any reference to imprisonment as including any other form of detention shall be construed as including a reference to detention under that section.

309 Short title, commencement and extent

(1) This Act may be cited as the Criminal Procedure (Scotland) Act 1995.

(2) This Act shall come into force on 1 April 1996.

(3) Subject to subsections (4) and (5) below, this Act extends to Scotland only.

(4) The following provisions of this Act and this section extend to England and Wales—

section 44;
section 47;
section 209(3) and (7);
section 234(4) to (11);
section 244;
section 252 for the purposes of the construction mentioned in subsection (1) of that subsection;
section 303(4).

(5) The following provisions of this Act and this section extend to Northern Ireland—

section 44;
section 47;
section 244;

section 252 for the purposes of the construction mentioned in subsection (1) of that subsection;
section 303(4).

(6) Section 297(3) and (4) of this Act and this section also extend to the Isle of Man.