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| Chapter: | 221 | CRIMINAL PROCEDURE ORDINANCE | Gazette Number | Version Date |
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| | | Long title | | 30/06/1997 |
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To consolidate and amend the laws relating to criminal procedure, evidence and practice.

(Replaced 24 of 1950 Schedule)

[7 July 1899]

(Originally 13 of 1899; 14 of 1906; 31 of 1911; 17 of 1919; 14 of 1929 (Cap 221 of 1950))

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| Section: | 1 | Short title | | 30/06/1997 |
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This Ordinance may be cited as the Criminal Procedure Ordinance.

(Amended 5 of 1924 s. 6)

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| Section: | 2 | Interpretation | 10 of 2005 | 08/07/2005 |
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In this Ordinance, unless the context otherwise requires-

"appellant" (上訴人) includes a person who has given notice of application for leave to appeal; (Added 34 of 1972 s. 2)

"bailiff" (執達主任) means the bailiff of the court and includes any deputy of the bailiff;

"Correctional Services Department Psychiatric Centre" (懲教署精神病治療中心) means the Correctional Services Department Psychiatric Centre set apart as a prison under section 4 of the Prisons Ordinance (Cap 234); (Added 37 of 1973 s. 7)

"court" (法院、法庭) means the Court of First Instance acting in the exercise of its criminal jurisdiction; (Amended 25 of 1998 s. 2)

"court of trial" (主審法院、主審法庭) in relation to an appeal means the court from which the appeal lies; (Added 34 of 1972 s. 2)

"hospital order" (入院令) means an order made under section 45, 54 or 54A of the Mental Health Ordinance (Cap 136); (Added 34 of 1972 s. 2. Amended 37 of 1973 s. 7; 46 of 1988 s. 33; 81 of 1997 s. 59)

"indictment" (公訴書、公訴程序) includes any criminal information triable by a jury;

"medical superintendent" (院長) means the medical superintendent or an assistant medical superintendent of a mental hospital appointed under section 4 of the Mental Health Ordinance (Cap 136); (Added 34 of 1972 s. 2)

"mental hospital" (精神病院) means any place declared to be a mental hospital under section 3 of the Mental Health Ordinance (Cap 136); (Added 34 of 1972 s. 2)

"property" (財產) includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with reference to which any offence may be committed;

"Registrar" (司法常務官) means the Registrar of the High Court; (Amended 10 of 2005 s. 178)

"Rules Committee" (規則委員會) means the Criminal Procedure Rules Committee constituted under section 9; (Added 13 of 1995 s. 22)

"specified form" (指明的表格) means a form specified by the Rules Committee under section 9(4); (Added 13 of 1995 s. 22)

"under disability" (無行為能力), in relation to an accused person, means under any disability such that apart from this Ordinance it would amount to a bar to his being tried; (Added 34 of 1972 s. 2)

"witness order" (證人令) means an order made under section 84(1) of the Magistrates Ordinance (Cap 227) and "conditional witness order" (附有條件的證人令) shall be construed accordingly; (Added 59 of 1981 s. 3)

"witness summons" (證人傳票) means a summons issued under section 34. (Added 59 of 1981 s. 3)

(Amended 50 of 1911 s. 4; 1 of 1912 Schedule; 21 of 1912 s. 2; 5 of 1924 s. 12 & Schedule)

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| Part: | I | BUSINESS OF THE COURT | | 30/06/1997 |
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| Section: | 3 | (Repealed 39 of 1999 s. 3) | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

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| Section: | 4 | (Repealed 63 of 1971 s. 11) | | 30/06/1997 |
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| Section: | 5 | Bringing of prisoners before the court | | 30/06/1997 |
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The Commissioner of Correctional Services shall, by himself or his deputy, bring each prisoner awaiting trial before the court when his case is called for trial, and during the continuance of the trial shall have him under his charge and custody, and remand him to prison, by permission or order of the court, during the progress of the trial or on any adjournment thereof.

(Amended 1 of 1912 Schedule; 5 of 1924 s. 12; 25 of 1937 s. 3; G.N. 678 of 1938; 63 of 1971 s. 2)

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| Section: | 6 | (Repealed 63 of 1971 s. 11) | | 30/06/1997 |
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| Section: | 7 | Assistance by police | | 30/06/1997 |
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The police shall afford such assistance as may be necessary to enable the Commissioner of Correctional Services to comply with the requirements of section 5.

(Amended 50 of 1911 s. 4; 5 of 1924 ss. 8 & 12; 25 of 1937 s. 3; G.N. 678 of 1938; 63 of 1971 s. 3)

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| Section: | 8 | (Repealed 63 of 1971 s. 11) | | 30/06/1997 |
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| Section: | 9 | Rules and orders as to practice and procedure | 10 of 2005 | 08/07/2005 |
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(1) Rules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules Committee, which shall consist of-

- (a) the Chief Judge, who shall be chairman; (Amended 10 of 2005 s. 9)
- (b) a Justice of Appeal appointed by the Chief Judge; (Amended 10 of 2005 s. 9)
- (c) a judge of the Court of First Instance appointed by the Chief Judge; (Amended 25 of 1998 s. 2; 10 of 2005 s. 9)
- (d) the Secretary for Justice or a legal officer nominated by him; (Amended L.N. 362 of 1997)
- (e) the Director of Legal Aid or a legal aid officer nominated by him;
- (f) a barrister nominated by the Hong Kong Bar Association;
- (g) a solicitor nominated by The Law Society of Hong Kong;
- (h) the Registrar, or a Senior Deputy Registrar or Deputy Registrar of the High Court appointed by the Chief Judge, who shall be secretary. (Replaced 13 of 1995 s. 23. Amended 10 of 2005 ss. 9 & 179)

(1A) Rules and orders made by the Rules Committee shall not have effect until approved by the Legislative Council and published in the Gazette. (Added 13 of 1995 s. 23)

(2) Such rules and orders may provide for the times for or within which documents must be filed or notices given, the duties of the various officers of the court, the manner in which cases and arguments are to be presented, and generally for the better carrying out of the provisions of this Ordinance. (Amended 24 of 1950 Schedule; 15 of 1969)

s. 2; 13 of 1995 s. 23)

(3) Subject to the provisions of this Ordinance and to such rules and orders and any other enactment (including any enactment relating to juries) applicable thereto, the practice and procedure in all criminal causes and matters (including trials for treason or misprision of treason) shall be, as nearly as possible, the same as the practice and procedure from time to time and for the time being in force for similar cases in England.

(4) The Rules Committee may, by notice in the Gazette, specify forms for use under this Ordinance, and such forms shall be adhered to with such variations and additions as may be necessary. (Added 13 of 1995 s. 23)

(Replaced 5 of 1933 s. 2)

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| Section: | 9A | Legal aid in criminal cases | 30/06/1997 |
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(1) Subject to subsection (1A), the Rules Committee may, with the approval of the Legislative Council, make rules providing for the granting of legal aid in criminal cases to persons of limited means which rules, in particular, may- (Amended 13 of 1995 s. 24; 37 of 1996 s. 2)

- (a) make provision as to the information to be given by a person seeking or receiving legal aid;
- (b) make provision as to the manner in which the rate of a person's disposable income and the amount of his disposable capital are to be computed for the purpose of the rules and the person or authority by whom such computation shall be made;
- (c) determine whether any resources are to be treated as disposable income or disposable capital and for taking into account fluctuations of income;
- (d) determine the contribution towards costs and expenses to be made by a person receiving legal aid;
- (e) determine the extent to which any resources of a person's husband or wife shall be treated as that person's resources for the purpose of the rules;
- (f) provide, in relation to infants and in other special cases, for taking into account the resources of other persons;
- (g) prescribe the scale of fees and costs which shall be paid to solicitor or counsel acting for an aided person (or submitting any opinion for the purpose of the rules);
- (h) prescribe any forms to be used for the purpose of the rules.

(1A) Rules may be made under subsection (1) for the granting of legal aid to accused persons who are not represented by counsel or solicitor (and whether or not such persons are of limited means) for the purposes of assisting the court, within the meaning of section 75(6), in its consideration of the question of fitness to be tried of such persons. (Added 37 of 1996 s. 2)

(2) The expenses of legal aid granted under such rules shall be met from moneys provided by the Legislative Council.

(Added 15 of 1969 s. 3)(See also Cap 91 s. 28(2))

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| Section: | 9B | Rules for payment of allowance to witnesses | 30/06/1997 |
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(1) The Rules Committee may, with the approval of the Legislative Council, make rules providing for the payment of an allowance to witnesses in criminal proceedings before any court, and such rules may, in particular, provide for- (Amended 13 of 1995 s. 25)

- (a) the classification of witnesses;
- (b) the payment of different rates of allowance to different classes of witnesses; and
- (c) the rate of allowance which may be paid to witnesses in a particular class.

(2) The expenses of the allowances paid under such rules shall be met from moneys provided by the Legislative Council.

(3) In this section-

- (a) "court" (法庭) includes the District Court and a magistrate;
- (b) "witness" (證人) means any person properly attending a court to give evidence, whether or not called to give evidence at the instance of the court, and whether or not he gives evidence, and includes-
 - (i) a person who conducts a prosecution under section 14 of the Magistrates Ordinance (Cap 227) and obtains an order for costs under section 69 of that Ordinance; and
 - (ii) a defendant who obtains an order for costs under section 73A, or section 69 of the Magistrates Ordinance (Cap 227),

but does not include a person who is-

- (A) a police officer attending court in the course of his duties;
- (B) an officer of the Correctional Services Department attending court in the course of his duties; or
- (C) a prisoner in respect of any occasion on which he is conveyed to court in custody. (Replaced 6 of 1990 s. 2)

(Added 56 of 1971 s. 2)

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| Part: | IA | BAIL | | 30/06/1997 |
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(Part IA added 56 of 1994 s. 2)

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| Section: | 9C | Interpretation | 25 of 1998 | 01/07/1997 |
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

In this Part-

"admitted to bail" (獲准保釋、准予保釋) means the release by a court of a person from detention on his undertaking that he shall surrender to custody on the day that the court may appoint;

"court" (法院、法庭) includes the District Court and a magistrate;

"judge" (法官) means a Justice of Appeal, a judge of the Court of First Instance and a deputy judge of the Court of First Instance; (Replaced 25 of 1998 s. 2)

"surrender to custody" (歸押) means appearing before the court on being called on the day as shall have been appointed by the court.

(Added 56 of 1994 s. 2)

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| Section: | 9D | Right of accused person to be admitted to bail | | 30/06/1997 |
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(1) Subject to this section and section 9G, a court shall order an accused person to be admitted to bail, whether he has been committed for trial or not, when-

- (a) he appears or is brought before a court in the course of or in connection with proceedings for the offence of which he is accused; or
- (b) he applies to the court before which he is accused to be admitted to bail; or
- (c) he applies to a judge under section 9J to be admitted to bail.

(2) An order under subsection (1) may be subject to such conditions as appear to the court to be necessary to secure that the person admitted to bail will not-

- (a) fail to surrender to custody as the court may appoint; or
- (b) commit an offence while on bail; or
- (c) interfere with a witness or pervert or obstruct the course of justice.

(3) Without affecting the generality of subsection (2), the court-

- (a) may not make it a condition of admission to bail that a recognizance of bail be taken from the person so admitted but may make it a condition, for the purpose only of securing the surrender of that person to custody as the court may appoint, that a recognizance of bail be taken from a surety;
- (b) may make it a condition of admission to bail that the person so admitted-
 - (i) shall surrender to the court any passport or travel document;
 - (ii) shall not leave Hong Kong;
 - (iii) shall report to a police station or the offices of the Independent Commission Against Corruption as the court may specify;
 - (iv) shall reside at a specified address and be present therein between such times as the court may specify;
 - (v) shall not enter any place or premises as the court may specify;
 - (vi) shall not go within such distance of any place or premises as the court may specify;
 - (vii) shall not contact directly or indirectly such person as the court may specify;
 - (viii) or any person on his behalf or he and any such person shall, for the purpose only of securing the

surrender to custody of the person admitted to bail as the court may appoint, deposit with the court such reasonable sum of money as the court may require.

(4) In considering the suitability of a surety for a proposed recognizance of bail under subsection (3)(a), the court shall have regard to-

- (a) the surety's financial resources;
- (b) any other matter that appears to the court to be relevant,

and any recognizance of bail taken from a surety under that subsection may, if an order under subsection (1) so directs, be taken before any magistrate or before the Commissioner of Correctional Services, the Deputy Commissioner of Correctional Services or a Senior Superintendent or Superintendent of Correctional Services.

(Added 56 of 1994 s. 2)

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| Section: | 9E | Relief from obligation as surety | | 30/06/1997 |
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(1) If on application made to it by a surety from whom a recognizance of bail has been taken a court is satisfied that the surety has reasonable cause to believe that the person for whom he is surety will not surrender to custody as shall have been appointed by the court, the court may order that he be relieved of his obligations as a surety.

(2) On the making of an order under subsection (1), the court shall issue a warrant for the arrest of the person for whom the surety was provided.

(Added 56 of 1994 s. 2)

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| Section: | 9F | Prohibition against agreements to indemnify surety | | 30/06/1997 |
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(1) Any agreement indemnifying or purporting to indemnify any person against any liability which he may incur as a surety to secure the surrender to custody of a person admitted to bail shall be void.

(2) Any person who enters into an agreement of the description mentioned in subsection (1) commits an offence.

(3) An offence under subsection (2) is committed whether the agreement is entered into before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or money's worth.

(4) Any person who commits an offence under subsection (2) is liable on summary conviction to a fine of \$75000 and to imprisonment for 6 months, and on conviction upon indictment to a fine of any amount and to imprisonment for 12 months.

(Added 56 of 1994 s. 2)

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| Section: | 9G | An accused person may be refused bail in particular circumstances | | 30/06/1997 |
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(1) The court need not admit an accused person to bail if it appears to the court that there are substantial grounds for believing, whether or not an admission were to be subject to conditions under section 9D(2), that the accused person would-

- (a) fail to surrender to custody as the court may appoint; or
- (b) commit an offence while on bail; or
- (c) interfere with a witness or pervert or obstruct the course of justice.

(2) The court in forming an opinion under subsection (1) may have regard to-

- (a) the nature and seriousness of the alleged offence and, in the event of conviction, the manner in which the accused person is likely to be dealt with;
- (b) the behaviour, demeanour and conduct of the accused person;
- (c) the background, associations, employment, occupation, home environment, community ties and financial position of the accused person;
- (d) the health, physical and mental condition and age of the accused person;
- (e) the history of any previous admissions to bail of the accused person;
- (f) the character, antecedents and previous convictions, if any, of the accused person;
- (g) the nature and weight of the evidence of the commission of the alleged offence by the accused person;
- (h) any other thing that appears to the court to be relevant.

(3) An accused person need not be admitted to bail if it appears to the court that he should be detained in

custody for-

- (a) if he has attained the age of 18 years, his own protection; or
- (b) if he has not attained the age of 18 years, his own protection, safety or welfare; or
- (c) the purpose of further inquiry relating to the determining of the question of whether he should be admitted to bail.

(4) An accused person need not be admitted to bail if-

- (a) he is detained in custody-
 - (i) under a sentence of any court; or
 - (ii) for or in connection with a charge of failing to surrender to custody under section 9L; or
- (b) the court is satisfied that-
 - (i) he has previously failed to comply with any condition of bail imposed under section 9D; or
 - (ii) any other court dealing with him in the same proceedings is or has been so satisfied.

(5) An accused person need not be admitted to bail if he is the subject of a hospital order for the time being in force.

(6) An accused person need not be admitted to bail if he is the subject of an order made under section 109B (suspended sentence) for the time being in force and he is before the court under section 109D or 109E.

(7) An accused person need not be admitted to bail if he is the subject of a deportation order for the time being in force made under section 20 of the Immigration Ordinance (Cap 115).

(8) An accused person need not be admitted to bail if he is before the court under section 5 or 6 of the Probation of Offenders Ordinance (Cap 298) (breach of probation order; or commission of further offence).

(9) An accused person need not be admitted to bail if he is before the court under section 8 or 9 of the Community Service Orders Ordinance (Cap 378) (breach of community service order; or commission of further offence).

(10) An accused person charged with-

- (a) murder; or
- (b) treason under section 2 of the Crimes Ordinance (Cap 200),

shall be admitted to bail only upon the order of a judge.

(11) If at any hearing the court refuses to admit an accused person to bail the court shall, at each subsequent hearing while the accused remains in custody, consider the question of whether or not he ought to be admitted to bail and-

- (a) on the first occasion after that upon which the court first refused to so admit, the court shall hear any argument as to fact or law put to it in support of his admission to bail, whether or not it has previously heard that argument;
- (b) on the second or any subsequent occasion after that upon which the court first refused to so admit, the court need not hear any argument as to fact or law put to it in support of his admission to bail, if it has previously heard that argument.

(Added 56 of 1994 s. 2)

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| Section: | 9H | Application by Secretary for Justice for review of admission to bail by a District Judge or magistrate | L.N. 362 of 1997 | 01/07/1997 |
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(1) Where a District Judge or magistrate has admitted any person to bail the Secretary for Justice may apply to a judge to review the decision of the District Judge or magistrate. (Amended L.N. 362 of 1997)

(2) Subject to section 9I(3), an application under subsection (1) shall be made by summons before a judge in chambers and supported by affidavit.

(3) The summons may be served on the person admitted to bail at any time before the time appointed therein for the hearing.

(4) On the hearing of the application the Secretary for Justice shall be entitled to put before the judge such relevant argument and such relevant matter as he thinks proper, whether or not the same was before the District Judge or magistrate who made the decision, and the person admitted to bail shall also be entitled to be heard. (Amended L.N. 362 of 1997)

(5) Notwithstanding subsection (4), if the person admitted to bail fails to appear a judge may hear and determine the application in the absence of the person if he is satisfied that the person has been served with the summons or has refused to accept service of the summons or that all reasonable attempts have been made to serve the summons.

(6) Where a judge has heard an application under this section in the absence of the person admitted to bail, he may rehear the application if he is satisfied that it is just to do so.

(7) Upon hearing the application, a judge may by order confirm, revoke or vary the decision of the District Judge or magistrate, and may make such other order in the matter including an order as to costs as he thinks just.

(8) On the revocation or variation of a decision of the District Judge or magistrate under subsection (7), a judge may issue a warrant for the arrest of the person admitted to bail.

(9) No appeal shall lie from the decision of a judge on an application under this section.

(Added 56 of 1994 s. 2)

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| Section: | 9I | Custody pending review | L.N. 362 of 1997 | 01/07/1997 |
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(1) Where a District Judge or magistrate has made an order admitting any person to bail but the Secretary for Justice states that he wishes to apply for a review of his decision under section 9H, he shall upon application by the Secretary for Justice if the person so admitted is present, order that the person be detained in custody and be brought before a judge at such time and place as the Registrar may appoint. (Amended L.N. 362 of 1997)

(2) Where a District Judge or magistrate makes an order under subsection (1) he shall immediately notify the Registrar who shall cause the person so detained to be brought before a judge as soon as practicable, and in any event within 48 hours, and inform the Secretary for Justice of the time and place at which that will be done. (Amended L.N. 362 of 1997)

(3) When the person so detained is brought before him under this section, a judge may, if he thinks fit, dispense with the requirements of section 9H(2) and (3) and proceed to hear an application under section 9H(1).

(4) If the judge declines to dispense with the requirements of section 9H(2) and (3), he shall order the person so detained to be kept in custody for such time as he deems sufficient to enable section 9H(2) and (3) to be complied with, and may make such other order as he thinks just.

(Added 56 of 1994 s. 2)

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| Section: | 9J | Review of refusal of bail or conditions of bail | | 30/06/1997 |
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(1) Where a District Judge or magistrate has refused to admit a person to bail or has so admitted a person subject to any condition, that person may in the case of a refusal, apply to a judge to be admitted to bail or in the case of an admission to bail subject to any condition, apply to a judge to be admitted to bail without bail being subject to that condition.

(2) On the hearing of an application under subsection (1), a judge may by order confirm, revoke or vary the decision of the District Judge or magistrate, and may make such other order in the matter including an order as to costs as he thinks just.

(Added 56 of 1994 s. 2)

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| Section: | 9K | Arrest of persons admitted to bail | | 30/06/1997 |
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(1) A police officer may without warrant arrest and detain any person admitted to bail if-

- (a) the police officer has reasonable grounds for believing that any condition on or subject to which such person was admitted to bail has been or is likely to be broken; or
- (b) any police officer has been notified in writing by any surety from whom a recognizance of bail has been taken for that person that the surety believes that that person is likely to fail to surrender to custody as shall have been appointed by a court and for that reason the surety wishes to be relieved of his obligations as surety.

(2) Any person arrested under subsection (1) shall be brought within 24 hours after his arrest or as soon as practicable thereafter before a magistrate except where he was so arrested within the period of 24 hours immediately preceding an occasion on which he is required by virtue of his bail to surrender to custody at any court, in which case he shall be brought before that court.

(3) If it appears to the court before which a person is brought under subsection (2) that any condition of admission to bail has been or is likely to be broken, the court may-

- (a) order that that person be detained in custody; or
- (b) admit that person to bail on the same conditions or on such other conditions as it thinks fit,

but if it does not so appear to that court, the court shall release that person from custody and admit him to bail on the

same conditions.

(Added 56 of 1994 s. 2)

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| Section: | 9L | Offence of failing to surrender to custody as shall have been appointed | | 30/06/1997 |
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(1) A person admitted to bail who, without reasonable cause, fails to surrender to custody as shall have been appointed by a court, commits an offence.

(2) A person admitted to bail who, having reasonable cause therefor, has failed to surrender to custody at such time as shall have been appointed by a court, fails to so surrender as soon after that time as is reasonably practicable, commits an offence.

(3) Any person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine of \$75000 and to imprisonment for 6 months, and on conviction upon indictment to a fine of any amount and to imprisonment for 12 months.

(4) Where an offence under subsection (1) or (2) is alleged to have been committed, a court, in the exercise of jurisdiction under this section, may deal with an accused person summarily without a jury and may deal with the case without a charge having been transferred under Part IV of the Magistrates Ordinance (Cap 227) or the case having been committed for trial under Part III of that Ordinance.

(Added 56 of 1994 s. 2)

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| Section: | 9M | Forfeiture on failure to surrender to custody as shall have been appointed | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

(1) If a person admitted to bail fails, without reasonable cause, to surrender to custody as shall have been appointed by a court, a court may, whether or not that person has been convicted of an offence under section 9L(1), order that the whole of part of any-

(a) recognizance of bail taken from a surety under section 9D(3)(a); or

(b) sum of money deposited with the court under section 9D(3)(b)(viii),

for the purpose of securing his surrender to custody shall be forfeited to the Government. (Amended 39 of 1999 s. 3)

(2) Where a court makes an order under subsection (1), the payment of any sum due as security for a recognizance of bail taken from a surety under section 9D(3)(a) may be enforced as if it were a security to which section 64 of the Magistrates Ordinance (Cap 227) applies.

(Added 56 of 1994 s. 2)

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| Section: | 9N | Procedure in bail proceedings | | 30/06/1997 |
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In any bail proceedings-

(a) the court may, subject to paragraph (b), make such inquiries of and concerning the person being the subject of those proceedings as the court considers desirable;

(b) the person being the subject of those proceedings shall not be examined or cross-examined by the court or by any other person as to the alleged offence with which he is charged and no inquiry shall be made of him as to that offence alleged;

(c) the informant or prosecutor or any person appearing on behalf of the prosecution may, in addition to any other relevant evidence, submit evidence, whether by affidavit or otherwise-

(i) to prove that the person being the subject of those proceedings has previously been convicted of a criminal offence;

(ii) to prove that the person being the subject of those proceedings has been charged with and is awaiting trial on another criminal offence;

(iii) to prove that the person being the subject of those proceedings has previously failed to surrender to custody;

(iv) to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the person being the subject of those proceedings;

- (d) the court may take into consideration any relevant matters agreed upon by the informant or prosecutor and the person being the subject of those proceedings or his counsel; and
- (e) the court may receive and take into account any other material or representations which it considers credible or trustworthy in the circumstances.

(Added 56 of 1994 s. 2)

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| Section: | 9O | Aids in proof | | 30/06/1997 |
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For the purpose of bail proceedings, a certificate purporting to be certified by a clerk of the court which has admitted a person to bail and stating-

- (a) that the person named in the certificate has been admitted to bail;
- (b) the day and time, if any, that the person named in the certificate has undertaken to surrender to custody;
- (c) where admission to bail is subject to conditions under section 9D(2), what those conditions are;
- (d) that the person named in the certificate has been given notice of such conditions, if any,

shall be evidence of the facts so stated and shall be received in evidence without further proof.

(Added 56 of 1994 s. 2)

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| Section: | 9P | Restriction on reports of bail proceedings | L.N. 362 of 1997 | 01/07/1997 |
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(1) Unless it appears to the court that the interests of public justice otherwise require, no person shall publish in Hong Kong a written report, or broadcast in Hong Kong a report, of any bail proceedings containing any matter other than that permitted under subsection (2).

(2) A report of bail proceedings may contain-

- (a) the name of the person being the subject of those proceedings;
- (b) the offence with which the person being the subject of those proceedings is charged;
- (c) the identity of the court and the name of the magistrate, District Judge or judge, as the case may be;
- (d) the names of counsel and solicitors, if any, engaged in the bail proceedings;
- (e) the result of the bail proceedings and where the person being the subject of those proceedings is admitted to bail subject to any condition under section 9D(2), the details of any such condition;
- (f) where the bail proceedings are adjourned, the date and place to which they are adjourned.

(3) If a report is published or broadcast in contravention of this section, the following persons-

- (a) in the case of publication of a written report as part of a newspaper or periodical publication, any proprietor, editor, publisher or distributor thereof;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical publication, the person who publishes or distributes it;
- (c) in the case of a broadcast of a report, any person who transmits or provides the programme in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,

shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 6 months.

(4) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)

(5) In this section-

"broadcast" (廣播) means sounds or visual images broadcast by wireless telegraphy or by means of a high frequency distribution system over wires, or other paths provided by a material substance and intended for general reception;

"publish" (發布), in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical publication, for distribution to the public.

(Added 56 of 1994 s. 2)

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| Section: | 9Q | Record of bail proceedings | | 30/06/1997 |
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A record of all bail proceedings shall be maintained in such manner and form as may be prescribed by rules and orders made for the purposes of this section under section 9 and shall be made available to an accused person and to

counsel and solicitors to such extent and on such terms as may be prescribed.

(Added 56 of 1994 s. 2)

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| Part: | II | PROCEEDINGS PRELIMINARY TO TRIAL | | 30/06/1997 |
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| Section: | 10 | Power to refer back to be dealt with summarily | L.N. 362 of 1997 | 01/07/1997 |
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Referring back of case

If after receipt of the documents referred to in section 86(1) of the Magistrates Ordinance (Cap 227) the Secretary for Justice is of opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily, the Secretary for Justice may, at any time after such receipt, but before an indictment is preferred, refer back the case to the magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper.

(Amended 1 of 1912 Schedule; 6 of 1954 s. 4; 59 of 1992 s. 2; L.N. 362 of 1997)

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| Section: | 10A | Service of documents in transferred proceedings | L.N. 362 of 1997 | 01/07/1997 |
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(1) Where pursuant to an order for transfer made under section 77A of the District Court Ordinance (Cap 336) (in this section referred to as an "order of transfer") any proceedings stand transferred to the court for trial under subsection (6) of that section and where the Secretary for Justice has instituted proceedings pursuant to section 14(1)(aa), he shall, not more than 21 days after an indictment is preferred against the accused person, but subject to subsection (2), deliver to the Registrar and, unless they have already been served, serve on the accused person- (Amended L.N. 362 of 1997)

- (a) a copy of the indictment;
- (b) copies of the statements of those witnesses whom the prosecution intends to call at the trial;
- (c) copies of all documentary exhibits; and
- (d) a list of the exhibits.

(2) Where the Secretary for Justice considers that it will not be practicable to comply with the requirements in subsection (1) within the period specified in that subsection, he may apply- (Amended L.N. 362 of 1997)

- (a) upon the making of the order of transfer, to the District Court judge who makes the order; or
- (b) at least 21 days before the date fixed for trial, to a judge,

for an extension of that period, and the District Court judge or the judge, as the case may be, may, if he is satisfied that the accused person is not prejudiced thereby, grant such extension as he considers reasonable.

(3) A statement of a witness referred to in subsection (1)(b) shall-

- (a) be signed by the person making it;
- (b) contain a declaration by the witness to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that wilfully making a statement which he knows to be false or does not believe to be true may render him liable for a criminal prosecution;
- (c) if in a language other than English, be accompanied by an English translation and, if in a language other than Chinese, by a Chinese translation;
- (d) if made by a person under 21, give his age; and
- (e) purport to have been read over to the person who made the statement in the language used by that person in making the statement or to have been read by that person.

(4) A documentary exhibit referred to in subsection (1)(c) shall, if written in a language other than English, be accompanied by an English translation certified under section 27 of the Evidence Ordinance (Cap 8) and, if written in a language other than Chinese, be accompanied by a Chinese translation, unless on an application made in the District Court the District Judge or, on an application made in the court, the judge, directs otherwise on cause shown.

(5) An exhibit which is mentioned in a list of exhibits referred to in subsection (1)(d) shall be clearly identified in a statement of a witness referred to in subsection (1)(b) and the accused person or his counsel or solicitor shall be given reasonable opportunity to examine such exhibit.

(6) Failure to comply with any requirement in subsection (3), (4) or (5) shall not render the service of any documents under subsection (1) or (2) ineffective unless the judge is satisfied that the accused person is prejudiced by such failure.

(Added 59 of 1992 s. 3)

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| Section: | 10B | Discharge of the accused | L.N. 362 of 1997 | 01/07/1997 |
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(1) Where the Secretary for Justice fails to comply with the requirements of section 10A(1) within the period specified in that section or where an extension has been granted under section 10A(2), within such extended period- (Amended L.N. 362 of 1997)

- (a) on the date appointed for the commencement of the trial or where that date is adjourned, on such later date, the court shall, on its own motion; or
- (b) where, before the day appointed for the commencement of the trial or if that date is adjourned, before such later date, the accused person applies to a judge for his discharge on the ground of such failure, the judge shall,

direct that the accused person be discharged in respect of the charges to which the transferred proceedings relate.

- (2) A discharge under subsection (1) shall be deemed to be an acquittal.

(Added 59 of 1992 s. 3)

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| Section: | 11 | Power to refer back for further inquiry | L.N. 362 of 1997 | 01/07/1997 |
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(1) At any time after the receipt of the documents relating to the case and before the trial of the accused person, the Secretary for Justice may refer back the case to the magistrate with directions to reopen the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with such other directions as he may think proper. (Amended 1 of 1912 Schedule; 6 of 1954 s. 5)

(2) Subject to any express directions which may be given by the Secretary for Justice, the effect of any such reference back to the magistrate shall be that the inquiry shall be reopened and dealt with in all respects as if the accused person had not been committed for trial.

(Amended L.N. 362 of 1997)

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| Section: | 12 | Further provisions as to referring back | L.N. 362 of 1997 | 01/07/1997 |
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(1) Any direction given by the Secretary for Justice under section 10 or 11 shall be in writing, signed by him, and shall be complied with by the magistrate.

- (2) The Secretary for Justice may at any time add to, alter, or revoke any such direction.

(3) The Secretary for Justice shall transmit forthwith copies of any such direction to the Registrar and to the Commissioner of Correctional Services, and on receipt of a copy of any such direction, the Registrar shall transmit to the committing magistrate all documents in the case that are in his possession or control. (Replaced 6 of 1954 s. 6)

(4) When the Secretary for Justice directs that a case shall be dealt with summarily under section 10 or that an inquiry shall be reopened under section 11, the following provisions shall have effect-

- (a) where the accused person is in custody, the magistrate may, by an order in writing under his hand, direct the Commissioner of Correctional Services to convey him or cause him to be conveyed to the place where such proceedings are to be held, for the purpose of being dealt with as the magistrate may direct;
- (b) where the accused person is on bail, the magistrate shall issue a summons for his attendance at the time and place when and where such proceedings are to be held; and
- (c) thereafter the proceedings shall be continued under the provisions of Part III or of Part V of the Magistrates Ordinance (Cap 227), as the case may be.

(Amended 50 of 1911 s. 4; 5 of 1924 s. 8; L.N. 362 of 1997)

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| Section: | 12A | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 12B | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 12C | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 13 | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 13A | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 13AA | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 13B | (Repealed 56 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 14 | Institution of proceedings by Secretary for Justice | L.N. 362 of 1997 | 01/07/1997 |
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Institution of proceedings

(1) The Secretary for Justice, if he sees fit to institute criminal proceedings, shall institute such proceedings in the court against the accused person as to him may seem legal and proper- (Amended L.N. 362 of 1997)

(a) in the case of a committal for trial under section 80C(4) of the Magistrates Ordinance (Cap 227), within 7 days of such committal;

(aa) in any case where pursuant to an order of transfer made under section 77A of the District Court Ordinance (Cap 336), proceedings stand transferred to the court for trial under subsection (6) of that section, within 21 days of the order; and (Added 59 of 1992 s. 4)

(b) in any other case, on receipt of the documents relating to the case.

(2) Subject to section 16, no court shall inquire into whether or not proceedings have been instituted within the period specified in subsection (1)(a) or (aa).

(Replaced 48 of 1983 s. 4. Amended 59 of 1992 s. 4)

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| Section: | 14A | Trial of offences | | 30/06/1997 |
|----------|-----|--------------------------|--|------------|

(1) Where any provision in any Ordinance creates, or results in the creation of, an offence, the offence shall be triable summarily only, unless-

(a) the offence is declared to be treason;

(b) the words "upon indictment" or "on indictment" appear; or (Amended L.N. 54 of 1989)

(c) (Repealed 50 of 1991 s. 4(1))

(d) the offence is transferred to the District Court in accordance with Part IV of the Magistrates Ordinance (Cap 227). (Added 16 of 1970 Schedule)

(2) Where any provision in any Ordinance creates, or results in the creation of, an offence and-

(a) the offence is declared to be treason; or

(b) subject to subsection (4), the words "upon indictment" or "on indictment" appear,

the offence shall be triable only upon indictment.

(3) (Repealed 50 of 1991 s. 4(1))

(4) Where any provision in any Ordinance creates, or results in the creation of, an offence and the offence is declared to be triable either summarily or upon indictment or to be punishable on summary conviction or on indictment, the offence shall be triable either on indictment or summarily.

(5) Nothing in this section shall affect-

(a) the powers conferred upon a magistrate by the Magistrates Ordinance (Cap 227) or by any other law to try an indictable offence summarily; or

(b) the powers conferred upon the District Court by any law to try indictable offences.

(Amended 50 of 1991 s. 4(1))

Note:

This provision previously appeared in s. 89 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 14A of this Ordinance.

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| Section: | 14B | Prosecution of offences | L.N. 362 of 1997 | 01/07/1997 |
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Where any Ordinance provides that no prosecution for an offence shall be commenced without the consent of some person other than the Secretary for Justice, such a provision shall not derogate from the powers of the Secretary for Justice in respect of the prosecution of that offence.

(Added 54 of 1969 s. 7. Amended L.N. 362 of 1997)

Note:

This provision previously appeared in s. 91A of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 14B of this Ordinance.

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| Section: | 15 | Right of Secretary for Justice not to prosecute | L.N. 362 of 1997 | 01/07/1997 |
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(1) The Secretary for Justice shall not be bound to prosecute an accused person in any case in which he may be of opinion that the interests of public justice do not require his interference.

(2) Whenever the Secretary for Justice declines to file an indictment against any person committed to prison for trial for any indictable offence he may issue a warrant in Form 1 in Schedule 1 to the Registrar, who shall thereupon, unless the person in question has been admitted to bail, by order under his hand and the seal of the court, in Form 2 in Schedule 1, direct the person in whose custody the prisoner may be immediately to discharge him without any fee from imprisonment in respect of the offence mentioned in such order. (5 of 1904 s. 2 incorporated. Amended 50 of 1911 s. 4; 51 of 1911; 1 of 1912 Schedule; 2 of 1912 Schedule; 17 of 1930 s. 4; 58 of 1994 s. 4)

(Amended 8 of 1912 s. 52; L.N. 362 of 1997)

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| Section: | 16 | Discharge of accused after committal without a hearing | L.N. 362 of 1997 | 01/07/1997 |
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Discharge of accused

(1) Where the accused was committed for trial under section 80C(4) of the Magistrates Ordinance (Cap 227) or proceedings stand transferred to the court for trial under section 77A(6) of the District Court Ordinance (Cap 336), the accused may at any time-

- (a) if the Secretary for Justice does not institute proceedings within the period specified in section 14(1)(a) or (aa), as the case may be, after the expiration of that period; or
- (b) after the filing of the indictment and prior to his arraignment thereon, (Amended L.N. 395 of 1983)

apply to a judge for his discharge on the grounds that the evidence disclosed in the documents handed to the court under section 80C(1) of the Magistrates Ordinance (Cap 227) or, as the case may be, delivered to the Registrar under section 10A, as read with any further evidence the Secretary for Justice has notified the accused he will seek to have admitted at the trial, is insufficient to establish a prima facie case against him for the offence with which he is charged or for any other offence for which he might be convicted upon that charge. (Amended 59 of 1992 s. 5; L.N. 362 of 1997)

(2) If an application is made under subsection (1) in the circumstances specified in paragraph (a) thereof-

- (a) the judge may, of his own motion or on the application of the accused, require the Secretary for Justice to file indictment within such time, and on such terms (if any) as to costs as may be specified in the order;
- (b) subject to any order under paragraph (a), the Secretary for Justice may at any time after an application is made under subsection (1), and before the final determination thereof, file an indictment, but the judge may award costs against him if the applicant has incurred any costs by reason of the late filing of the indictment. (Amended L.N. 362 of 1997)

(3) The judge may after perusal of the documents and after hearing any representations which the accused and the Secretary for Justice may wish to make, direct that the accused shall not be arraigned on the charge, and direct that he be discharged. (Amended L.N. 362 of 1997)

(4) Subject to section 81E(3), a discharge under this section shall be deemed to be an acquittal.

(5) An accused who has made an application under subsection (1) and thereafter abandons or does not proceed with his application, may not make a further application or have the application previously made by him reinstated.

(6) Where an indictment has been filed references in this section to the charge shall be construed as references to the charge as set out in the indictment.

(7) Without derogation from the generality of its powers under section 9 the Rules Committee may make rules under that section for regulating and restricting written or broadcast reports of proceedings under this section or section 79G or 81E. (Amended 13 of 1995 s. 26; 69 of 1995 s. 2)

(8) Section 87A(8) and (9) of the Magistrates Ordinance (Cap 227) shall apply to a contravention of rules under section 9 as read with subsection (7) of this section as they do to a report published or broadcast in contravention of section 87A.

(Added 48 of 1983 s. 4)

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| Section: | 17 | Signing of indictments | L.N. 362 of 1997 | 01/07/1997 |
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Indictment

(1) Every indictment shall be signed by the Secretary for Justice, and shall bear date on the day when it is signed. (Amended L.N. 362 of 1997)

(2) (Repealed 35 of 1976 s. 6)

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| Section: | 18 | Joinder of charges in the same indictment | | 30/06/1997 |
|----------|----|--------------------------------------------------|--|------------|

(1) Subject to the provisions of the rules under this Ordinance, charges for more than one offence may be joined in the same indictment. (Replaced 50 of 1991 s. 4)

(2) If one sentence is passed upon any verdict of guilty on an indictment containing more counts than one, the sentence shall be good if any of the counts upon which such verdict has been returned would have justified such sentence.

(17 of 1919 s. 5 incorporated)
[cf. 1915 c. 90 s. 4 U.K.]

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| Section: | 19 | Offence committed on high seas or in any place outside Hong Kong | 23 of 1998; 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 23 of 1998 s. 2; 39 of 1999 s. 3

In any indictment for an offence committed on the high seas or in any place outside Hong Kong, an allegation that the person injured was, at the time of the offence charged, within the jurisdiction of the Hong Kong courts shall be a sufficient allegation of the jurisdiction of the court to hear and determine the case.

(Amended 23 of 1998 s. 2; 39 of 1999 s. 3)

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| Section: | 20 | Averment as to money or bank note | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

In any indictment in which it is necessary to make an averment as to any money or any bank note, it shall be sufficient to describe such money or bank note simply as money without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, is not proved.

(Amended 34 of 1972 s. 4; 39 of 1999 s. 3)

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| Section: | 21 | Charge of previous conviction | | 30/06/1997 |
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In any court charging the accused person with having been previously convicted, it shall be sufficient to state that the accused person was, at a certain time and place, convicted of an offence punishable on summary conviction or on indictment, as the case may be, without further describing the offence.

(Amended 50 of 1991 s. 4)

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| Section: | 22 | General provision as to matters not necessary to be alleged, etc. | | 30/06/1997 |
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No indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, or for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name, or for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, or for stating the time imperfectly, or for stating the offence to have been committed on a day subsequent to that of the indictment, or on an impossible day, or on a day that never happened, or for want of any statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

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| Section: | 23 | Orders for amendment of indictment, separate trial and postponement of trial | | 30/06/1997 |
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(1) Where, before trial or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) Where an indictment is so amended a note of the order for amendment shall be endorsed on the indictment.

(3) Where, before trial or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.

(4) Where, before trial or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Ordinance to amend an indictment or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for the postponement of a trial-

(a) if such an order is made during a trial the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged) as if the trial had not commenced; and

(c) the court may make such order as to admitting the accused person to bail and as to the enlargement of recognizances and otherwise as the court thinks fit.

(6) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

(17 of 1919 s. 6 incorporated)

[cf. 1915 c. 90 s. 5 U.K.]

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| Section: | 24 | (Repealed 35 of 1976 s. 7) | | 30/06/1997 |
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| Section: | 24A | When indictment shall be preferred | | 30/06/1997 |
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(1) Subject to subsection (2) no indictment charging any person with an indictable offence shall be preferred unless-

- (a) the person charged has been committed for trial for the offence; or
- (aa) the proceedings have been transferred to the court pursuant to an order made under section 4 of the Complex Commercial Crimes Ordinance (Cap 394); or (Added 57 of 1988 s. 29)
- (ab) pursuant to an order made under section 77A of the District Court Ordinance (Cap 336) proceedings stand transferred to the court for trial under subsection (6) of that section; or (Added 59 of 1992 s. 6)
- (b) the indictment is preferred by the direction or with the consent of a judge; or
- (c) the indictment is preferred pursuant to an order made under section 41 of the Crimes Ordinance (Cap 200).

(2) Where a person charged with an indictable offence has been committed for trial, the indictment against him may include, either in substitution for or in addition to counts charging the offence for which he was committed, any counts founded on facts or evidence disclosed in any depositions, any documents served on the accused under section 80B of the Magistrates Ordinance (Cap 227) or any written statements admitted in evidence under section 81A of that Ordinance, being counts which may lawfully be joined in the same indictment. (Amended 34 of 1972 s. 5; 6 of 1990 s. 3)

(Added 5 of 1971 s. 4)
[cf. 1933 c. 36 s. 2 (2) U.K.]

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| Section: | 24B | Joint trial of indictments | L.N. 362 of 1997 | 01/07/1997 |
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Where 2 or more indictments each contain any one count alleging the same particulars, other than the names of the persons concerned in the commission of the offence, the court may, on the application of the Secretary for Justice, order that such indictments be tried together.

(Added 61 of 1971 s. 2. Amended L.N. 362 of 1997)

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| Section: | 25 | Savings and interpretation | | 30/06/1997 |
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(1) Nothing in sections 18 and 23 or the rules made under section 9 shall affect the law or practice relating to the jurisdiction of a court or the place where an accused person can be tried, nor prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged, nor otherwise affect the laws of evidence in criminal cases. (Amended 35 of 1976 s. 8)

(2) In section 23 and this section "the court" (法院、法庭) means the court before which any indictable offence is tried or prosecuted.

(17 of 1919 s. 7 incorporated. Amended 20 of 1948 s. 4)
[cf. 1915 c. 90 s. 8 U.K.]

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| Section: | 26 | Filing of indictment | | 30/06/1997 |
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Filing and service of indictment

Every indictment, when so signed as aforesaid, shall be brought to the Registrar's office and shall be filed by him in the court.

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| Section: | 27 | Endorsement of notice of trial | | 30/06/1997 |
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(1) The Registrar shall endorse on or annex to every indictment and every copy thereof delivered for service a notice of trial, and such notice shall specify the date on which the accused person shall attend before the court to answer to the indictment. (Amended 63 of 1971 s. 4)

(2) The notice may be in Form 4 in Schedule 1 or as near thereto as circumstances will admit. (Amended 50 of 1911 s. 4; 8 of 1912 s. 52; 58 of 1994 s. 4)

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| Section: | 28 | Delivery of copies of the indictment for service and for information | | 30/06/1997 |
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The Registrar shall deliver or cause to be delivered to the bailiff, for service on the accused person, a copy of the indictment, with the notice of trial endorsed on the same or annexed thereto; and, if there are more accused persons than one, then as many copies as there are persons. The Registrar shall also deliver or cause to be delivered to the bailiff another copy for the information of the Commissioner of Correctional Services.

(Replaced 17 of 1930 s. 5)

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| Section: | 29 | Service | | 30/06/1997 |
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(1) The bailiff shall, as soon as may be after having received the same, deliver to a gaoler the copy and notice for the information of the Commissioner of Correctional Services and to the accused himself the copy and notice for service on the accused. (Replaced 17 of 1930 s. 6)

(2) In any case where the accused person cannot be found, the bailiff shall leave the said copy and notice with some one of his household for him at his dwelling-house, or with some one of his clerks for him at his place of business, and, if none such can be found, shall affix the said copy and notice to the outer or principal door of his dwelling-house. (Amended 13 of 1995 s. 2)

(3) The bailiff shall, at the time of service, explain to the accused person, or to the person, if any, with whom the said copy and notice are left, the nature and exigency thereof.

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| Section: | 30 | Return of service | | 30/06/1997 |
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The bailiff shall forthwith transmit to the Registrar a return in writing, signed by him, of the time and mode of service of the said copy and notice.

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| Section: | 31 | Plea of autrefois convict or autrefois acquit | | 30/06/1997 |
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Plea

(1) In criminal proceedings in any court on a plea of autrefois convict or autrefois acquit the accused person may state that he has been previously convicted or acquitted, as the case may be, of the offence charged.

(2) In this section, "court" (法院) includes the District Court and a magistrate.

(Replaced 34 of 1972 s. 6)
[cf. 1851 c. 100 s. 28 U.K.]

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| Section: | 32 | Inspection of property by party or witnesses | | 30/06/1997 |
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Inspection of property, etc.

(1) Either party shall be at liberty to apply to the court or a judge for a rule or order for the inspection, by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the issue; and it shall be lawful for the court or judge, if it or he thinks fit, to make such rule or order, on such terms as to costs and otherwise as the court or judge may direct.

(2) In this section, "court" (法庭) includes the District Court and a magistrate. (Added 34 of 1972 s. 7)

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| Section: | 33 | Rule or order for attendance of jury | | 30/06/1997 |
|----------|----|---------------------------------------------|--|------------|

It shall be lawful for the court or a judge to make such rules or orders as may be necessary to procure the attendance of a jury for the trial of any case depending in the court, at such time and place and in such manner as the court or judge may think fit.

(Amended 13 of 1995 s. 19)

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| Section: | 34 | Summons to witness to attend Court of First Instance or District Court | 25 of 1998 | 01/07/1997 |
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

Witnesses

(1) For the purpose of any criminal proceedings before the court a summons requiring the person to whom it is directed to attend before the court and give evidence or produce any document or thing specified in the summons may be issued out of the court.

(2) If any person in respect of whom a witness summons has been issued applies to the court out of which the summons was issued and satisfied it that he cannot give any material evidence or, as the case may be, produce any document or thing likely to be of material evidence the court may direct that the summons shall be of no effect.

(3) Where on any such application a direction is given that a witness summons shall be of no effect, the person at whose instance the summons was issued may be ordered to pay the whole or any part of the costs of the application.

(4) Any costs payable under such an order shall be taxed by the proper officer of the court and payment of those costs shall be enforceable in the same manner as an order for payment of costs made by the court in a civil case.

(5) A witness summons shall continue to have effect until the conclusion of the proceedings at which the attendance of the witness is required.

(6) In this section "court" (法院、法庭) includes the District Court.

(Replaced 59 of 1981 s. 3)
[cf. 1965 c. 69 s. 2 U.K.]

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| Section: | 35 | Witness to be notified of date of hearing in Court of First Instance | 25 of 1998 | 01/07/1997 |
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

Witness to be notified of date of hearing in Court of First Instance

(Amended 25 of 1998 s. 2)

Where a person is the subject of a witness order and a date is set for the trial at which his attendance is required, the Registrar shall cause to be served upon him notice in writing of the date and time, and of the place, at which that person's attendance is required under the witness order.

(Replaced 59 of 1981 s. 3)

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| Section: | 36 | Punishment for disobedience to witness order or summons | | 30/06/1997 |
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(1) Any person who-

- (a) without just excuse disobeys a witness order or a witness summons requiring him to attend before a court; or
- (b) refuses to be sworn or to give evidence when duly required to do so, whether or not he is the subject of a witness order or a witness summons,

shall be guilty of a contempt of that court which shall be punishable by that court summarily as a contempt committed in the face of the court.

(2) No person shall by reason of such disobedience or refusal be liable to imprisonment for a period exceeding 2 years.

(3) In this section "court" (法庭) includes the District Court.

(Replaced 59 of 1981 s. 3)
[cf. 1965 c. 69 s. 3 U.K.]

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| Section: | 37 | Further process to secure attendance of witness | 30/06/1997 |
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(1) If the court is satisfied by evidence on oath that a witness in respect of whom a witness order or witness summons is in force is unlikely to comply with the order or summons, the court may issue a warrant to arrest the witness and bring him before it:

Provided that a warrant shall not be issued under this subsection in the case of a witness subject to a conditional witness order unless notice has been given requiring him to attend the trial, nor in the case of a witness subject to a witness summons unless the judge is satisfied by such evidence as aforesaid that the witness is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings.

(2) Where a witness who is required to attend before a court by virtue of a witness order or a witness summons fails to attend in compliance with the order or summons the court may-

- (a) in any case, cause to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice;
- (b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just excuse, or if he has failed to comply with a notice under paragraph (a), issue a warrant to arrest him and bring him before the court.

(3) A witness brought before the court in pursuance of a warrant under this section may be remanded by the court in custody or on bail (with or without sureties) until such time as the court may appoint for receiving his evidence or dealing with him under section 36 and where a witness attends a court in pursuance of a notice under this section the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence or dealing with him as aforesaid.

(4) In this section "court" (法庭) includes the District Court.

(Replaced 59 of 1981 s. 3)
[cf. 1965 c. 69 s. 4 U.K.]

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| Section: | 38 | Provisions supplementary to section 37 | 30/06/1997 |
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(1) If the court issuing a warrant in respect of any witness under section 37 is of the opinion that it is appropriate to do so, the court may endorse the warrant for bail, and in any such case-

- (a) on the arrest of the witness under the warrant he shall, unless he can forthwith be brought before the court specified in the warrant, be taken to a police station; and
- (b) the officer in charge of the station shall release him from custody if the witness, and any sureties required by the endorsement and approved by the officer, enter into recognizances of such amount as may be fixed by the endorsement, conditioned for the appearance of the witness before the court specified in the warrant.

(2) If a court issuing a warrant in respect of any witness under section 37 is of the opinion that the evidence of the witness can be dispensed with but that consideration should be given to dealing with him under section 36 it may endorse the warrant as issued for the purpose of section 36.

(3) Where a witness appears before a court in pursuance of a recognizance entered into under section 37 or this section, the court may enlarge his recognizance and those of his sureties, if any, to any later time appointed by the court for receiving the evidence of that person or dealing with him under section 36.

(4) Without prejudice to the enforcement of any recognizance entered into as aforesaid, section 37 shall apply to any witness who fails to attend before a court in compliance with such a recognizance as it applies to a witness who fails to attend in obedience to a witness summons.

(5) In this section "court" (法庭) includes the District Court.

(Replaced 59 of 1981 s. 3)
[cf. 1965 c. 69 s. 5 (2), (3), (4) & (5) U.K.]

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| Section: | 38A | Abolition of subpoenas in certain proceedings | 30/06/1997 |
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No subpoena ad testificandum or subpoena duces tecum shall issue after the commencement* of the Criminal Procedure (Miscellaneous Provisions) Ordinance 1981 (59 of 1981) in respect of any criminal proceedings for the purpose of which a witness summons may be issued.

(Added 59 of 1981 s. 3)

Note:* **Commencement date: 1 January 1982.**

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| Section: | 39 | (Repealed 63 of 1971 s. 11) | | 30/06/1997 |
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| Section: | 40 | (Repealed 63 of 1971 s. 11) | | 30/06/1997 |
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| Part: | III | PROCEEDINGS AT TRIAL | | 30/06/1997 |
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| Section: | 41 | General mode of trial | | 30/06/1997 |
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Mode of trial

(1) Every person to be tried before the court shall be tried on an indictment.

(2) Subject to the provisions of section 42 such trial shall be had by and before a judge and a jury. (Amended 50 of 1911 s. 4; 1 of 1912 Schedule; 5 of 1924 s. 8)

(3) Notwithstanding subsection (2), but without prejudice to section 59, where any issue arises in the trial as to the admissibility of any evidence such issue may be determined before the jury is empanelled. (Added 63 of 1984 s. 2)

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| Section: | 42 | Trial at bar | L.N. 362 of 1997 | 01/07/1997 |
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On motion made by the Secretary for Justice, a judge shall order that the trial of any indictment shall be had at bar, that is to say, by and before 2 judges and a jury, and such trial shall be had accordingly.

(Amended 50 of 1911; 1 of 1912 Schedule; L.N. 362 of 1997)

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| Section: | 43 | (Repealed 5 of 1971 s. 12) | | 30/06/1997 |
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| Section: | 44 | (Repealed 63 of 1971 s. 11) | | 30/06/1997 |
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Default of appearance

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| Section: | 45 | Proceedings on non-appearance of accused person | | 30/06/1997 |
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(1) Where it appears by the return made by the bailiff that the copy of the indictment and notice of trial has been duly served, and the accused person, on being thrice called on the day appointed for trial, does not appear, a motion may be made on behalf of the prosecution, if the accused person has been admitted to bail, that his sureties, if any, may be called on their recognizances, and, in default of his appearance, that the same may be estreated. (Amended 56 of 1994 s. 5)

(2) On any such application the court shall make such order as it may think just.

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| Section: | 46 | Apprehension of accused person not appearing | | 30/06/1997 |
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Where any person against whom an indictment has been duly preferred, and who is then at large, does not appear to plead to such indictment, whether he is a person admitted to bail or not, the court may issue a warrant for his apprehension.

(Amended 56 of 1994 s. 6)

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| Section: | 47 | Abolition of outlawry | 30/06/1997 |
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Outlawry in criminal cases shall be abolished.

(Amended 50 of 1911 s. 4)

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| Section: | 48 | (Repealed 46 of 1967 s. 4) | 30/06/1997 |
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| Section: | 49 | Arraignment of accused person | 30/06/1997 |
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Arraignment

(1) The accused person shall be placed at the bar unfettered and not in prison clothes, unless the court sees cause to direct otherwise.

(2) The indictment shall then be read over to him by the Registrar, and explained, if necessary, by the Registrar or the interpreter of the court; and he shall be required to plead instantly thereto, unless he objects to the want of due service of the indictment and notice of trial, and the court finds that he has not been duly served therewith.

(3) Where the accused person is a corporation, a plea in writing may be entered by its representative, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty. (Added 11 of 1962 s. 2)

(4) In this section and in section 87 of the Magistrates Ordinance (Cap 227), the expression "representative" (代表) in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section or by section 87 of the Magistrates Ordinance (Cap 227) authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose. A representative for the purposes of this section and section 87 of the Magistrates Ordinance (Cap 227) need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section or of section 87 of the Magistrates Ordinance (Cap 227) shall be admissible without further proof as prima facie evidence that that person has been so appointed. (Added 11 of 1962 s. 2)

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| Section: | 50 | Effect of plea of not guilty | 30/06/1997 |
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The accused person, on being arraigned, by pleading generally the plea of not guilty, shall, by such plea, without further form, be deemed to have put himself upon the country for trial.

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| Section: | 51 | Trial of offences | 30/06/1997 |
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(1) If a person is arraigned on an indictment-

- (a) he shall in all cases be entitled to make a plea of not guilty in addition to any special plea;
 - (b) he may plead not guilty to the offence specifically charged in the indictment but guilty to another offence of which he might be found guilty on that indictment;
 - (c) if he stands mute of malice, or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on his behalf, and he shall then be treated as having pleaded not guilty.
- (Amended 24 of 1993 s. 8)

(2) If on the trial of any information, charge or indictment for any offence other than treason it is proved that the accused is not guilty of that offence but the allegations in the information, charge or indictment amount to or include, whether expressly or by implication, an allegation of another offence falling within the jurisdiction of the court of trial, he may be found guilty of that other offence or of an offence of which he could be found guilty on an information, charge or indictment specifically charging that other offence.

(3) For the purposes of subsection (2) any allegation of an offence shall be taken as including an allegation of

attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence but not with the completed offence, then he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(4) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence of which he might be found guilty on that charge, and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty then, whether or not the 2 offences are separately charged in distinct counts, his conviction of the one offence shall be an acquittal of the other.

(5) Any power to bring proceedings for an offence by criminal information is abolished.

(6) Subsections (1) and (2) shall apply to an indictment containing more than one count as if each count were a separate indictment.

(7) In subsection (2), "court of trial" (主審法院) includes the District Court and a magistrate. (Added 34 of 1972 s. 8)

(Replaced 5 of 1971 s. 5)

[cf. 1967 c. 58 s. 6 U.K.]

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| Section: | 51A | Entry of verdict of not guilty by order of judge | | 30/06/1997 |
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Where an accused person arraigned on an indictment pleads not guilty and the prosecutor proposes to offer no evidence against him, the court before which the accused person is arraigned may, if it thinks fit, order that a verdict of not guilty shall be recorded without the accused person being given in charge to a jury, and the verdict shall have the same effect as if the accused person had been tried and acquitted.

(Added 5 of 1971 s. 5)

[cf. 1967 c. 80 s. 17 U.K.]

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| Section: | 52 | (Repealed 50 of 1991 s. 4) | | 30/06/1997 |
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| Section: | 53 | Objection of substance to indictment | | 30/06/1997 |
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(1) No objection to an indictment shall be taken by way of demurrer, but if an indictment does not state in substance an indictable offence or states an offence not triable by the court, the accused person may move the court to quash it or in arrest of judgment. (Amended 50 of 1911 s. 4)

(2) If such motion is made before the accused person pleads, the court shall either quash the indictment or amend it. (Amended 50 of 1911; 1 of 1912 Schedule)

(3) If the defect in the indictment appears to the court during the trial, and the court does not think fit to amend the indictment, it may either quash the indictment or leave the objection to be taken in arrest of judgment. (Amended 50 of 1911; 1 of 1912 Schedule)

(4) If the indictment is quashed, the court may direct the accused person to be detained in custody until such time or for such period as the court may order or to be released on bail, and may order him to plead to another indictment when called on at the same time or during that period, as the case may be. (Amended 50 of 1911; 1 of 1912 Schedule; 6 of 1990 s. 4)

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| Section: | 54 | Competence of person charged in criminal cases | 23 of 2003 | 04/07/2003 |
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Evidence

(1) Every person charged with an offence, whether charged solely or jointly with any other person, shall be a competent witness for the defence at every stage of the proceedings: (Amended 23 of 2003 s. 3)

Provided as follows-

(a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;

(b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution; (Amended 23 of 2003 s. 3)

(c)-(d) (Repealed 23 of 2003 s. 3)

- (e) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;
- (f) a person charged and called as a witness 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 wherewith he is then charged, or is of bad character, unless-
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
 - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
 - (iii) he has given evidence against any other person charged in the same proceedings; (Amended 50 of 1981 s. 2)
- (g) a person charged and 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. (14 of 1906 s. 2 incorporated. Amended 20 of 1948 s. 4; 23 of 2003 s. 3)

(2) Notwithstanding any rule of law, the right of a person charged to make a statement without being sworn is hereby abolished. (Added 34 of 1972 s. 9)

[cf. 1898 c. 36 s. 1 U.K.]

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| Section: | 55 | Evidence of person charged | | 30/06/1997 |
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Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

(14 of 1906 s. 3 incorporated)

[cf. 1898 c. 36 s. 2 U.K.]

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| Section: | 56 | Right of reply | L.N. 362 of 1997; 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

(1) The fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply. (14 of 1906 s. 4 incorporated. Amended 34 of 1972 s. 10)

(2) Upon the trial of any person charged with an offence-

- (a) the prosecution shall not be entitled to the right of reply on the ground only that the Secretary for Justice or the Solicitor General appears for the HKSAR at the trial; and (Amended L.N. 362 of 1997; 39 of 1999 s. 3)
- (b) the time at which the prosecution is entitled to exercise the right shall, notwithstanding any rule of law, be after the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the person charged. (Added 34 of 1972 s. 10) [cf. 1964 c. 34 s. 1(1) U.K.]

[cf. 1898 c. 36 s. 3 U.K.]

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| Section: | 57 | Competence and compellability of accused's spouse or former spouse | 23 of 2003 | 04/07/2003 |
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(1) The husband or wife of an accused shall be competent to give evidence on behalf of the accused or a co-accused and, subject to subsection (5), shall be competent to give evidence for the prosecution.

(2) Subject to subsection (5), the husband or wife of an accused shall be compellable to give evidence on behalf of the accused.

(3) Subject to subsection (5), the husband or wife of an accused shall be compellable-

- (a) to give evidence for the prosecution but only in respect of any specified offence with which the

accused or a co-accused is charged; or

(b) to give evidence on behalf of a co-accused but only in respect of any specified offence with which the co-accused is charged.

(4) An offence is a specified offence for the purposes of subsection (3) if-

(a) it involves an assault on, or an injury or threat of injury to, the husband or wife of the accused;

(b) it involves causing the death of, an assault on, or an injury or threat of injury to, a child of the family who-

(i) at the material time was under the age of 16 years or was a mentally incapacitated person; or

(ii) at the time when the evidence is given is a mentally incapacitated person;

(c) it is a sexual offence alleged to have been committed in respect of a child of the family who-

(i) at the material time was under the age of 16 years or was a mentally incapacitated person; or

(ii) at the time when the evidence is given is a mentally incapacitated person; or

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

(5) Subject to subsection (6), where an accused and the husband or wife of the accused are standing trial together, neither spouse shall at the trial be competent to give evidence for the prosecution under subsection (1), or be compellable to give evidence under subsection (2) or (3).

(6) Subsection (5) shall not apply to either spouse who is no longer liable to be convicted of any offence in the trial (whether as a result of pleading guilty or for any other reason).

(7) Section 7 of the Evidence Ordinance (Cap 8) (privilege of husband and wife) and section 8(2) of that Ordinance (evidence of access) shall not apply to the husband or wife of an accused, where the husband or wife is giving evidence for the prosecution, or on behalf of the accused or a co-accused, in circumstances in which he or she is compellable to do so under subsection (2) or (3), as the case may be.

(8) Section 65A of the Evidence Ordinance (Cap 8) (privilege against incrimination of self or spouse in criminal proceedings) shall not apply to the husband or wife of an accused, where the husband or wife is giving evidence for the prosecution, or on behalf of a co-accused, in circumstances in which he or she is compellable to do so under subsection (3).

(9) Subject to subsection (10), a former husband or wife of an accused shall be competent and compellable to give evidence as if he or she had never been married to the accused.

(10) A former husband or wife of an accused shall not, as regards matters that occurred during his or her marriage to the accused, be compellable to give evidence for the prosecution, or on behalf of a co-accused, unless the former husband or wife would be so compellable under subsection (3) if he or she were still married to the accused.

(11) The failure to call the husband or wife of an accused to give evidence on behalf of the accused or a co-accused shall not be made the subject of any question or comment by the prosecution.

(12) In this section-

"accused" (被控人) means a person charged with an offence;

"child of the family" (家庭子女) means-

(a) a natural or adopted child of the accused or the husband or wife of the accused; or

(b) a person to whom the accused or the husband or wife of the accused stands in loco parentis;

"co-accused" (同案被控人), in relation to an accused, means a person standing trial together with the accused;

"mentally incapacitated person" (精神上無行為能力的人) means a mentally disordered person within the meaning of section 2(1) of the Mental Health Ordinance (Cap 136) or a mentally handicapped person within the meaning of that section;

"sexual offence" (性罪行) means an offence under Part VI or XII of the Crimes Ordinance (Cap 200).

(13) For the purposes of subsection (3), the age of a child of the family at the material time shall be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(Replaced 23 of 2003 s. 4)

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| Section: | 57A | Right to apply for exemption from obligation to give evidence | 23 of 2003 | 04/07/2003 |
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(1) Where the husband or wife of an accused is called to give evidence for the prosecution, or on behalf of a co-accused, in circumstances in which he or she is compellable to give evidence under section 57(3), the husband or wife may at any time apply to the court for an exemption from the obligation to give evidence.

- (2) Where an application for an exemption is made to a court under subsection (1) and the court is satisfied-
- (a) that, if the husband or wife were to give evidence for the prosecution or on behalf of the co-accused, as the case may be, there would be a substantial risk of-
 - (i) serious harm being caused to the relationship between the husband or wife and the accused; or
 - (ii) serious emotional, psychological or economic consequences for the husband or wife; and
 - (b) that, having regard to the nature and gravity of the offence charged and the importance at the trial of the evidence that the husband or wife is in a position to give, there is insufficient justification for exposing the husband or wife to that risk,

the court may exempt the husband or wife, wholly or in part, from the obligation to give evidence.

(3) Where a court is constituted by a judge and jury, an application for an exemption made under subsection (1) shall be heard and determined by the judge in the absence of the jury.

(4) The fact that the husband or wife of an accused has applied for, or been granted or refused, an exemption under this section shall not be made the subject of any question or comment by the prosecution.

(5) Where the husband or wife of an accused is called to give evidence for the prosecution, or on behalf of a co-accused, in circumstances in which he or she is compellable to give evidence under section 57(3), the court must be satisfied that the husband or wife is aware of his or her right to apply for an exemption under subsection (1).

(6) In this section, the terms "accused" (被控人) and "co-accused" (同案被控人) have the same meaning as in section 57.

(Added 23 of 2003 s. 4)

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| Section: | 58 | Application | 23 of 2003 | 04/07/2003 |
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Expanded Cross Reference:

54, 55, 56, 57, 57A

Sections 54 to 57A shall apply to all criminal proceedings, notwithstanding any other provision in force at the time of their enactment, and in sections 54 to 57A, "court" (法庭) includes the District Court and a magistrate. <* Note - Exp. X-Ref.: Sections 54, 55, 56, 57, 57A *>

(14 of 1906 s. 6 incorporated. Amended 20 of 1948 s. 4; 23 of 2003 s. 5)
[cf. 1898 c. 36 s. 6 U.K.]

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| Section: | 59 | Statements of accused persons | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

If on a trial by jury of a person accused of an offence, a statement alleged to have been made by such accused person is admitted in evidence, all evidence relating to the circumstances in which the alleged statement was made shall be admissible for the purpose of enabling the jury to decide upon the weight (if any) to be given to the statement; and, if any such evidence has been taken in the absence of the jury before the admission of the statement, the HKSAR and such accused person shall have the right to have any such evidence retaken in the presence of the jury.

(Added 45 of 1949 s. 2. Amended 20 of 1948 s. 4; 39 of 1999 s. 3)

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| Section: | 60 | Abolition of corroboration rule in respect of alleged accomplices | | 30/06/1997 |
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(1) Any requirement whereby at a trial by and before a judge and jury it is obligatory for the judge to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is an alleged accomplice of the accused is hereby abrogated.

(2) Any requirement that is applicable at a trial by a judge or magistrate and corresponds to the requirement mentioned in subsection (1) is hereby abrogated.

(Added 83 of 1994 s. 2)

Note:

The application of this section is affected by section 1(2) of the Criminal Procedure (Amendment) (No. 3) Ordinance 1994 (83 of 1994).

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| Section: | 61 | (Repealed 5 of 1971 s. 12) | | 30/06/1997 |
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| Section: | 62 | (Repealed 5 of 1971 s. 12) | | 30/06/1997 |
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| Section: | 63 | Proof of previous convictions | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

Proof of certain matters

(1) In any criminal proceedings a previous conviction against any person may be proved in the manner prescribed in this section in addition to any other method of proving such conviction.

(2) There shall be produced to the court or magistrate the following-

- (a) a certificate in Form 6 in Schedule 1 signed by a police officer authorized in that behalf by the Commissioner of Police certifying the particulars of any previous convictions extracted from the criminal records kept by him, and certifying that copies of the finger-prints exhibited to the certificate are copies of the finger-prints appearing from such records;
- (b) a certificate in Form 7 in Schedule 1 signed by the police officer present at the taking of the finger-prints from the person before the court or magistrate in exercise of the powers conferred by section 59 of the Police Force Ordinance (Cap 232), or by order of the court or magistrate under this section, certifying that the finger-prints exhibited to the certificate are those of such person;
- (c) a certificate in Form 8 in Schedule 1 signed by a police officer authorized in that behalf by the Commissioner of Police certifying that the copies of the finger-prints exhibited to Form 6 and the finger-prints exhibited to Form 7 are those of the same person. (Amended 58 of 1994 s. 4)

(3) Any certificate issued under this section and purporting to be signed by a police officer shall until the contrary is proved be deemed to have been signed by such police officer and shall be evidence of the facts stated therein.

(4) Where no certificate in Form 7 is available the court or magistrate may order that the person before the court shall have his finger-prints taken and that such a certificate shall be prepared.

(5) Where it is desired to prove a conviction in any part of the Commonwealth, the court or magistrate may accept a certificate in Form 6 purporting to be signed by the person stated therein to be the person having control of the relevant criminal records, and such certificate shall be evidence of the facts stated therein. (Amended 39 of 1999 s. 3)

(Replaced 31 of 1958 s. 2)

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| Section: | 64 | Proof on trial of plea of autrefois convict or acquit | L.N. 362 of 1997 | 01/07/1997 |
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On the trial of an issue on a plea of autrefois convict or autrefois acquit, the depositions transmitted to the Registrar or Secretary for Justice on the former trial, together with the judge's notes, if available, and the depositions transmitted to the Registrar on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charges.

(Amended 6 of 1954 s. 7; L.N. 362 of 1997)

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| Section: | 65 | (Repealed 5 of 1971 s. 12) | | 30/06/1997 |
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| Section: | 65A | Proof of criminal intent | | 30/06/1997 |
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(1) A court or jury, in determining whether a person has committed an offence-

- (a) shall not be bound in law to infer that he intended or foresaw a result of his acts or omissions by reason only of its being a natural and probable consequence of those acts or omissions; but
- (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

(2) In this section, "court" (法庭) includes the District Court and a magistrate. (Amended 35 of 1976 s. 9)

(Added 5 of 1971 s. 6)

[cf. 1967 c. 80 s. 8 U.K.]

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| Section: | 65B | Proof by written statement | 30/06/1997 |
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(1) In any criminal proceedings, other than committal proceedings, a written statement by any person shall, subject to the conditions contained in subsection (2), be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) A statement may be tendered in evidence under subsection (1) if-

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief;
- (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and
- (d) none of the other parties or their solicitors, within 14 days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section:

Provided that paragraphs (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) If a statement tendered in evidence under subsection (1)-

- (a) is made by a person under the age of 21, it shall give his age;
- (b) is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read;
- (c) subject to any directions of the court, is made in a language other than an official language, it shall be accompanied by a translation in an official language and, unless otherwise agreed by or on behalf of the prosecutor and defendant (or, if more than one, all the defendants), the translation shall be certified by the court translator; (Amended 20 of 1988 s. 2; 51 of 1995 s. 13)
- (d) refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (2)(c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section-

- (a) the party by whom or on whose behalf a copy of the statement was served may call the person making the statement to give evidence; and
- (b) the court may, of its own motion or on the application of any party to the proceedings either before or during the hearing, require the person making the statement to attend before the court and give evidence.

(5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(6) Any document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(7) A document required by this section to be served on any person may be served-

- (a) by delivering it to him or to his solicitor; or
- (b) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or by sending it by registered post addressed to the secretary or clerk of that body at that office.

(8) In this section, "court" (法庭) includes the District Court and a magistrate. (Added 34 of 1972 s. 11)

(Added 5 of 1971 s. 6)
[cf. 1967 c. 80 s. 9 U.K.]

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| Section: | 65C | Proof by formal admission | | 30/06/1997 |
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(1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section-

- (a) may be made before or during the proceedings;
- (b) if made otherwise than in court, shall be in writing;
- (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;
- (d) if made on behalf of a defendant who is an individual, shall be made by his counsel or solicitor;
- (e) if made at any stage before the trial by a defendant who is an individual, must be approved by his counsel or solicitor (whether at the time it was made or subsequently) before or during the proceedings in question;
- (f) may be made in either official language. (Added 51 of 1995 s. 14)

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

(5) In this section, "court" (法庭) includes the District Court and a magistrate. (Added 34 of 1972 s. 12)

(Added 5 of 1971 s. 6)
[cf. 1967 c. 80 s. 10 U.K.]

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| Section: | 65D | Notice of alibi | 35 of 1998 | 18/09/1998 |
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(1) On a trial on indictment the defendant shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the defendant shall not without the leave of the court call any other person to give evidence in support of an alibi unless-

- (a) the notice under subsection (1) includes the name and address of the witness or, if the name and address is not known to the defendant at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;
- (b) if the name or the address is not included in that notice, the court is satisfied that the defendant, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (c) if the name or the address is not included in that notice, but the defendant subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be;
- (d) if the defendant is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the defendant was not informed in accordance with the provisions of section 85A of the Magistrates Ordinance (Cap 227), section 77B of the District Court Ordinance (Cap 336) or section 4 of the Complex Commercial Crimes Ordinance (Cap 394), as the case may be, of the requirements of this section. (Amended 57 of 1988 s. 30; 59 of 1992 s. 7)

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the defendant by his solicitor shall, unless

the contrary is proved, be deemed to be given with the authority of the defendant.

(6) A notice under subsection (1) shall either be given in court during, or at the end of, the committal proceedings or upon the making of an order of transfer under section 4 of the Complex Commercial Crimes Ordinance (Cap 394) or where proceedings stand transferred to the court under section 77A(6) of the District Court Ordinance (Cap 336), as the case may be, or be given in writing to the prosecutor, and a notice under subsection (2)(c) or (d) shall be given in writing to the prosecutor. (Amended 57 of 1988 s. 30; 59 of 1992 s. 7)

(7) A notice required by this section to be given to the prosecutor may be given by delivering it to the Secretary for Justice or by leaving it at the Secretary for Justice's office, or by sending it by registered post addressed to the Secretary for Justice at his office. (Amended L.N. 362 of 1997)

(8) In this section-
"evidence in support of an alibi" (證明不在犯罪現場的證據) means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

"the prescribed period" (訂明期間) means the period expiring not less than 10 days prior to the commencement of the trial or in relation to proceedings transferred to the court under section 4 of the Complex Commercial Crimes Ordinance (Cap 394), such period as may be prescribed by the judge at the trial. (Amended 57 of 1988 s. 30)

(9) In computing the prescribed period there shall be disregarded any day which is a general holiday under the General Holidays Ordinance (Cap 149). (Amended 35 of 1998 s. 5)

(Added 5 of 1971 s. 6)
[cf. 1967 c. 80 s. 11 U.K.]

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| Section: | 65DA | Notice of expert evidence | 30/06/1997 |
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(1) Following the committal of any person or the transfer of any charge or proceedings or action or matter for trial in the court, or the making of an order for the retrial of any person in the court, if any party to the proceedings proposes to adduce expert evidence (whether of fact or opinion) in the proceedings (otherwise than in relation to sentence) he shall as soon as practicable, unless in relation to the evidence in question he has already done so-

- (a) furnish the other party or parties with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) where a request in writing is made to him in that behalf by any other party, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure had been carried out.

(2) A party may by notice in writing waive his right to be furnished with any of the matters mentioned in subsection (1) and, in particular, may agree that the statement mentioned in subsection (1)(a) may be furnished to him orally and not in writing.

(3) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with the requirements imposed by subsection (1) might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that evidence.

(4) Where, in accordance with subsection (3), a party considers that he is not obliged to comply with the requirements imposed by subsection (1) with regard to any evidence in relation to any other party, he shall give notice in writing to that party to the effect that the evidence is being withheld and the grounds therefor.

(5) A party who seeks to adduce expert evidence in any proceedings and who fails to comply with subsection (1) shall not adduce that evidence in those proceedings without the leave of the court.

(6) This section shall not have effect in relation to any proceedings in which a person has been committed for trial or ordered to be retried, or in which any charge or proceedings or action or matter has been transferred, before the date on which this section comes into force.

[cf. S.I. 1987/716 U.K.]

(7) In subsection (1), "document" (文件) 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 embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film (including microfilm), negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

[cf. 1968 c. 64 s. 10(1) U.K.]

(8) In this section, "court" (法院、法庭) includes the District Court.

(Added 68 of 1995 s. 8)

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| Section: | 65E | Proof of sexual intercourse | | 30/06/1997 |
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Where in any criminal proceedings it is necessary to prove sexual intercourse, buggery or bestiality, it shall not be necessary to prove the completion of the intercourse by the emission of seed, but intercourse shall be deemed complete upon proof of penetration only.

(Added 1 of 1978 s. 8. Amended 90 of 1991 s. 27)

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| Section: | 65F | Transfer of proceedings | L.N. 362 of 1997 | 01/07/1997 |
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Transfer of proceedings

(1) Where an indictment is preferred against an accused person and before he is arraigned, the Secretary for Justice may apply to the court for an order that the proceedings against the accused person be transferred before a magistrate to be dealt with summarily or to be transferred to the District Court. (Amended L.N. 440 of 1993; L.N. 362 of 1997)

(2) Any application under subsection (1) shall be made to a judge by way of motion, notice of which shall be supported by an affidavit showing the grounds on which the application is made.

(3) A copy of the notice of motion and the affidavit shall be served on the accused person not less than 21 days before the date named in the notice for hearing the motion, unless the judge otherwise directs.

(4) On an application being made under subsection (1), the judge may, if he considers it fit having regard to the interests of justice, make an order allowing the application (in this section and section 65G referred to as an "order of transfer"), or refuse the application and may in either case make such order as to costs as he considers appropriate.

(5) Where an order of transfer is made the judge shall appoint a date on which the accused person is required to appear or be brought before a magistrate or the District Court as may be applicable.

(6) The date appointed under subsection (5) shall not be earlier than 21 days from the date of the order of transfer.

(7) (a) Upon making an order of transfer to the District Court, the judge shall say to the accused person-
 "I must warn you that at your trial you may not be permitted to give evidence of an alibi or call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the prosecutor not less than 10 days prior to the commencement of your trial.",
 or words to that effect and if it appears to the judge that the accused person may not understand the meaning of the word "alibi", he shall explain it to him. (Amended 13 of 1995 s. 49)

(b) If the accused person is not present in court upon the making of an order to transfer to the District Court the clerk of the court shall forward to the accused person by registered post written notice, in the English and Chinese languages, of the warning required by paragraph (a). (Added 13 of 1995 s. 49)

(8) Where the judge has given the warning required by subsection (7)(a) or the clerk of the court has forwarded to the accused person written notice under subsection (7)(b), the clerk of the court shall give the accused person written notice of the provisions of section 75A of the District Court Ordinance (Cap 336). (Amended 13 of 1995 s. 49)

(8A) The written notices required by subsections (7) and (8) shall be sent to the accused person not less than 28 days before the date set for trial. (Added 13 of 1995 s. 49)

(9) Where an application is made under subsection (1), the entire proceedings before the court shall be stayed until the application is disposed of unless the judge otherwise orders in respect of any matter.

(10) At the time of making an order of transfer, the judge may remand the accused person in custody or on bail as he may consider appropriate.

(11) Unless the judge otherwise orders in respect of any matter, an order of transfer shall operate to terminate the proceedings before the court.

(12) An order of transfer shall not be subject to appeal.

(13) This section shall not apply in relation to any proceedings which stand transferred to the court pursuant to section 77A of the District Court Ordinance (Cap 336).

(14) Where apart from this subsection the court does not have jurisdiction to hear and determine an application made under subsection (1), this subsection shall confer such jurisdiction.

(Added 59 of 1992 s. 8)

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| Section: | 65G | Delivery of the order of transfer | | 30/06/1997 |
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Within 21 days after an order of transfer is made, a sealed copy of the order of transfer shall be delivered by the Registrar-

- (a) if the proceedings are transferred to be dealt with by a magistrate, to the first clerk of the magistracy at which the accused person is required to appear;
- (b) if the proceedings are transferred to the District Court, to the Registrar of the District Court.

(Added 59 of 1992 s. 8)

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| Section: | 65H | Application may be made in a multi-defendant or multi-count situation | | 30/06/1997 |
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(1) An application for an order under section 65F(4) may be made in relation to one or more accused persons in any proceedings or one or more counts in an indictment.

(2) Any reference to proceedings in sections 10A, 14(1)(aa), 16(1), 24A(1), 65F (other than in subsection (9) thereof) and 65G shall be construed as being a reference to proceedings as respects the accused person to whom the order referred to in subsection (1) relates or, when appropriate, the count to which it relates.

(Added 59 of 1992 s. 8)

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| Section: | 66 | (Repealed 59 of 1992 s. 9) | | 30/06/1997 |
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Case punishable on summary conviction

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| Section: | 66A | (Repealed 49 of 1996 s. 3) | | 30/06/1997 |
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Verdict and judgment

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| Section: | 67 | (Repealed 6 of 1990 s. 5) | | 30/06/1997 |
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| Section: | 67A | Computation of sentences of imprisonment | | 30/06/1997 |
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(1) The length of any sentence of imprisonment imposed on a person by a court shall be treated as reduced by any period during which he was in custody by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to the sentence or the offence for which it was passed, or with any proceedings from which those proceedings arose, but where the person was, in respect of the offence for which the sentence of imprisonment was imposed, subject to an earlier order made under-

- (a) section 3 of the Probation of Offenders Ordinance (Cap 298);
- (b) section 36 of the Magistrates Ordinance (Cap 227); or
- (c) section 109B of this Ordinance,

any such period of custody falling before the earlier order was made shall be disregarded for the purposes of this section.

(1A) The length of any sentence of imprisonment imposed on a person by a court shall also be treated as reduced by any period during which he was, immediately prior to his first appearance in court in connection with any proceeding relating to the offence for which the sentence of imprisonment was imposed, in custody-

- (a) of the police, Customs and Excise Department or Independent Commission Against Corruption in connection with that offence; or
- (b) under Part VII of the Immigration Ordinance (Cap 115) in connection with that offence. (Added 13 of 1995 s. 54)

(2) For the purposes of this section a suspended sentence shall be treated as a sentence of imprisonment when it takes effect under section 109C and as being imposed by the order under which it takes effect.

(3) No period of custody, other than a period which would have been taken into account immediately before the commencement of the Criminal Procedure (Amendment) Ordinance 1983 (46 of 1983) for the purpose of reducing a term of imprisonment, shall be taken into account for the like purpose under this section unless it falls after the commencement of the Criminal Procedure (Amendment) Ordinance 1983 (46 of 1983).

(3A) No period of custody, other than a period which would have been taken into account immediately before the commencement of the amendment to this section effected by the Administration of Justice (Miscellaneous Provisions) Ordinance 1995 (13 of 1995) for the purpose of reducing a term of imprisonment, shall be taken into account for the like purpose under this section unless it falls after that commencement. (Added 13 of 1995 s. 54)

(4) Any reference in this or any other Ordinance to the length of any sentence of imprisonment shall, unless the context otherwise requires, be construed as a reference to the sentence pronounced by the court and not the sentence as reduced by this section.

(5) In this section "court" (法庭) includes the District Court and a magistrate.

(Replaced 46 of 1983 s. 2)
[cf. 1967 c. 80 s. 67 U.K.]

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| Section: | 67B | Minimum term to be specified in respect of person sentenced to life imprisonment | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

(1) When imposing a discretionary life sentence on a person for an offence, the judge must specify as part of the sentence a minimum term that the person must serve for the offence.

(2) If, when imposing an indeterminate sentence of imprisonment on a person for an offence, the judge is of the opinion that there are matters relating to the person or the offence which should be recorded for the purpose of reviewing the sentence in the future, the judge must make a report in writing to the Chief Executive specifying those matters. (Amended 39 of 1999 s. 3)

(Added 86 of 1997 s. 44)

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| Section: | 67C | Determinations in respect of certain existing prisoners | 22 of 2004 | 16/07/2004 |
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(1) As soon as practicable after the commencement* of this section and in any event within 6 months after such commencement, the Secretary for Justice must, in respect of each prescribed prisoner, apply to the court for a determination by a judge under this section.

(2) If, within 6 months after the commencement* of this section, the Secretary for Justice does not make any application in respect of any prescribed prisoner under subsection (1), the prescribed prisoner may also apply to the court for a determination by a judge under this section.

(3) Subject to subsection (4), the judge hearing an application under subsection (1) or (2) must determine the minimum term that the prescribed prisoner must serve for the relevant offence.

(4) Where the prescribed prisoner is serving the relevant sentence in respect of the conviction of murder committed when he was under 18 years of age, then, subject to the consent of the prescribed prisoner to the application of this subsection to him, the judge has the discretion as to whether-

- (a) to make a determination under subsection (3); or
- (b) to determine instead that the relevant sentence be quashed, and be substituted by a sentence of imprisonment for a fixed term of such duration as the judge considers appropriate.

(5) In making a determination under this section-

- (a) subject to paragraph (b), the judge may take into account any material submitted to him by the Secretary for Justice or the prescribed prisoner that is, in his opinion, relevant to the determination; and
- (b) the judge must not take into account the previous recommendation or the previous determination.

(6) Notwithstanding subsections (3) and (5), if the term determined under subsection (3) (whether or not also by application of subsection (4)(a)) as the minimum term that the prescribed prisoner must serve for the relevant offence is longer than the term specified as the minimum term to be served by the prescribed prisoner for the relevant offence under the previous recommendation, the term so determined is, for all purposes, to be treated as equal to the term so specified.

(7) If, when making a determination under subsection (3) (whether or not also by application of subsection (4)(a)), the judge is of the opinion that there are any special considerations or circumstances relating to the prescribed prisoner or the relevant offence which should be taken into account in any future review of the relevant sentence, the judge must make a report in writing to the Chief Executive specifying details of those special considerations or circumstances.

(Replaced 22 of 2004 s. 2)

Note:

* **Commencement date: 16 July 2004.**

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| Section: | 67D | Further provisions relating to applications under section 67C and related procedural matters | 22 of 2004 | 16/07/2004 |
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- (1) An application by the Secretary for Justice or a prescribed prisoner under section 67C(1) or (2) is to be-
 - (a) in writing; and
 - (b) signed-
 - (i) in the case of an application under section 67C(1), by the Secretary for Justice or any person holding one of the offices in the Department of Justice mentioned in Schedule 1 to the Legal Officers Ordinance (Cap 87); or
 - (ii) in the case of an application under section 67C(2), by the prescribed prisoner.
- (2) No charge is to be payable for any application under section 67C(1) or (2).
- (3) As soon as practicable after the Secretary for Justice has made an application in respect of a prescribed prisoner under section 67C(1), the Secretary for Justice must serve a copy of the application on the prescribed prisoner.
- (4) For the purposes of an application in respect of a prescribed prisoner under section 67C(1) or (2), the Registrar must, as soon as practicable after a request in writing has been made to him by the Secretary for Justice or the prescribed prisoner, as the case may be, as the person by whom the application is to be made, deliver to the Secretary for Justice or the prescribed prisoner, as the case may be-
 - (a) a copy of the record, if available, of the proceedings relating to the relevant sentence; and
 - (b) a copy of any report concerning the prescribed prisoner which was before the court which passed the relevant sentence.
- (5) Where an application has been made in respect of a prescribed prisoner under section 67C(1) or (2), the Secretary for Justice or the prescribed prisoner may apply to a judge for-
 - (a) a copy of the record, if available, of the proceedings concerning the prescribed prisoner (whether relating to the relevant offence or the relevant sentence) or any part or parts of the record; and
 - (b) a copy of any document in the possession of the Registrar,
 and if the judge is satisfied that it is necessary and practicable to do so, the judge must direct the Registrar to deliver the copy to both the Secretary for Justice and the prescribed prisoner.
- (6) Without prejudice to section 123, all proceedings conducted before a judge for the purposes of an application under section 67C(1) or (2) (other than any proceedings conducted before a judge for the purposes of an application under subsection (5)) must be held in open court.

(Replaced 22 of 2004 s. 2)

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| Section: | 67E | Sections 67C and 67D no longer to apply if prescribed prisoners cease to serve relevant sentence | 22 of 2004 | 16/07/2004 |
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Where a prescribed prisoner ceases to serve the relevant sentence at any time after the commencement* of

section 67C but before any determination is made in respect of the prescribed prisoner under that section-

- (a) sections 67C and 67D then cease to apply to the prescribed prisoner; and
- (b) without limiting the generality of paragraph (a), any proceedings relating to the prescribed prisoner under section 67C and any appeal or other proceedings arising from or preliminary or incidental to such proceedings are, to the extent that they have not been completed, then to be treated as having been discontinued.

(Replaced 22 of 2004 s. 2)

Note:

* **Commencement date: 16 July 2004.**

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| Section: | 67F | Effect of section 67C determinations on previous orders under section 15(1)(b) of Long-term Prison Sentences Review Ordinance | 22 of 2004 | 16/07/2004 |
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(1) Where, before any determination is made under section 67C(3) (whether or not also by application of section 67C(4)(a)) in respect of a prescribed prisoner, any order has been made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap 524) in respect of the prescribed prisoner (whether or not any such order has been renewed under section 15(4) of that Ordinance)-

- (a) the determination does not affect the validity or effect of the order or the order as renewed from time to time under section 15(4) of that Ordinance; and
- (b) sections 12(2) and 15(3) of that Ordinance are, for all purposes, not to be regarded as having application to and in relation to the order or the order as renewed from time to time under section 15(4) of that Ordinance.

(2) Where, before any determination is made under section 67C(4)(b) in respect of a prescribed prisoner, any order has been made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap 524) in respect of the prescribed prisoner (whether or not any such order has been renewed under section 15(4) of that Ordinance), upon the making of the determination-

- (a) without prejudice to section 27 of that Ordinance, the order ceases to have effect; and
- (b) for the purpose of requiring the prescribed prisoner to serve the remainder (if any) of the sentence of imprisonment by which the relevant sentence is substituted under the determination-
 - (i) the Commissioner of Correctional Services must recall the prescribed prisoner to prison; and
 - (ii) section 26 of that Ordinance applies to and in relation to the prescribed prisoner as it applies to and in relation to a prisoner referred to in subsection (1) of that section.

(Added 22 of 2004 s. 2)

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| Section: | 67G | Interpretation | 22 of 2004 | 16/07/2004 |
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(1) In sections 67B, 67C, 67D, 67E and 67F and this section-

"discretionary life sentence" (酌情性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524);

"Executive discretion" (行政酌情決定) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524);

"mandatory life sentence" (強制性終身監禁刑罰) has the same meaning as in the Long-term Prison Sentences Review Ordinance (Cap 524);

"prescribed prisoner" (訂明囚犯) means any prisoner-

- (a) to whom any of the relevant provisions applied at their commencement; and
- (b) who at all times between such commencement and the commencement of section 67C has been, and at the commencement of section 67C is still-
 - (i) serving a discretionary life sentence in respect of the conviction of any offence;
 - (ii) serving a mandatory life sentence in respect of the conviction of murder committed when the prisoner was under 18 years of age; or
 - (iii) detained at Executive discretion in respect of the conviction of any offence;

"previous determination" (原先裁定), in relation to a prescribed prisoner, means the determination of the Chief

Executive specifying the minimum term to be served by the prescribed prisoner for the relevant offence and notified to the prescribed prisoner by letter dated 2 April 1998, 9 April 1998, 30 April 1998, 11 June 1998 or 16 July 1999, as the case may be;

"previous recommendation" (原先建議), in relation to a prescribed prisoner, means the recommendation of the Chief Justice to the Chief Executive specifying the minimum term to be served by the prescribed prisoner for the relevant offence and dated 15 December 1997, 28 August 1998 or 9 April 1999, as the case may be;

"relevant offence" (有關罪行), in relation to a prescribed prisoner, means-

- (a) where the prescribed prisoner is within the description of paragraph (b)(i) of the definition of "prescribed prisoner", the offence described in that paragraph;
- (b) where the prescribed prisoner is within the description of paragraph (b)(ii) of the definition of "prescribed prisoner", the offence of murder described in that paragraph; or
- (c) where the prescribed prisoner is within the description of paragraph (b)(iii) of the definition of "prescribed prisoner", the offence described in that paragraph;

"relevant provisions" (有關條文) means-

- (a) section 67C as originally enacted by the Long-term Prison Sentences Review Ordinance (Cap 524); and
- (b) section 67D as originally enacted by the Criminal Procedure (Amendment) Ordinance 1998 (6 of 1998);

"relevant sentence" (有關刑罰), in relation to a prescribed prisoner, means-

- (a) where the prescribed prisoner is within the description of paragraph (b)(i) of the definition of "prescribed prisoner", the discretionary life sentence described in that paragraph;
- (b) where the prescribed prisoner is within the description of paragraph (b)(ii) of the definition of "prescribed prisoner", the mandatory life sentence described in that paragraph; or
- (c) where the prescribed prisoner is within the description of paragraph (b)(iii) of the definition of "prescribed prisoner", the detention at Executive discretion described in that paragraph.

(2) In sections 67C and 67D, any reference to judge is a reference to a judge of the court, a recorder of the court or a deputy judge of the court.

(Added 22 of 2004 s. 2)

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| Section: | 68 | Cumulative sentences | 30/06/1997 |
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Where the court sentences any person to undergo a term of imprisonment for an offence, and such person is already undergoing, or is at the same time of the court sentenced to undergo, imprisonment for another offence, it shall be lawful for the court to direct that such imprisonment shall commence at any time during or at the expiration of the term of imprisonment which such person is then undergoing or has been so previously sentenced to undergo, as aforesaid.

(Amended 46 of 1983 s. 3; 6 of 1990 s. 6)
[cf. 1827 c. 28 s. 10 U.K.]

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| Section: | 69 | Abolition of certain forms of punishment | 30/06/1997 |
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There is abolished so much of the punishment for any offence as consists in any general forfeiture of lands or of goods and chattels or in being removed from Hong Kong or otherwise incapacitated to sue or be sued.

(Replaced 50 of 1991 s. 4)

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| Section: | 70 | (Repealed 24 of 1993 s. 9) | 30/06/1997 |
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| Section: | 71 | (Repealed 50 of 1991 s. 4) | 30/06/1997 |
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| Section: | 72 | (Repealed 39 of 1996 s. 23) | | 30/06/1997 |
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Compensation

(Amended 23 of 2002 s. 6)

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| Section: | 73 | Power to award compensation | | 30/06/1997 |
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(1) Where a person is convicted of an offence, the court may, in addition to passing such sentence as may otherwise by law be passed or making an order under section 107(1), order the person so convicted to pay to any aggrieved person such compensation for-

- (a) personal injury;
- (b) loss of or damage to property; or
- (c) both such injury and loss or damage,

as it thinks reasonable.

(2) The amount ordered as compensation under subsection (1) shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted. (Amended 23 of 2002 s. 7)

(3) If before an order for compensation is made, any money-

- (a) was taken from the person so convicted on his apprehension, arrest, being taken into custody or his surrender to custody; or
- (b) was paid into court by the person so convicted,

the court may, on making the order, order that the compensation be paid out of any money so taken or paid. (Added 23 of 2002 s. 7)

(4) Subsection (3) shall not apply to any money that is a first charge for the benefit of the Director of Legal Aid within the meaning of section 18A(1) of the Legal Aid Ordinance (Cap 91). (Added 23 of 2002 s. 7)

(5) Payment of the compensation may be enforced at the instance of any person entitled thereto in the same way as a judgment debt. (Added 23 of 2002 s. 7)

(Replaced 48 of 1972 s. 4)

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| Section: | 73A | (Repealed 39 of 1996 s. 23) | | 30/06/1997 |
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| Section: | 74 | Acquittal on grounds of insanity | 81 of 1997 | 15/08/1997 |
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Arraignment and trial of insane person

(1) Where any act or omission is charged against any person as an offence, and it is given in evidence on trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done or the omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused person is not guilty by reason of insanity. (Amended 81 of 1997 s. 59)

(2) Section 75(7) shall apply to this section as it applies to section 75. (Added 81 of 1997 s. 59)

(Replaced 34 of 1972 s. 13)

[cf. 1964 c. 84 s. 1; 1883 c. 38 s. 2 U.K.]

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| Section: | 75 | Fitness to be tried | 32 of 2000 | 09/06/2000 |
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(1) This section applies where on the trial of a person the question arises (at the instigation of the defence or otherwise) whether the accused is under a disability, that is to say, under any disability such that apart from this Ordinance it would constitute a bar to his being tried. (Replaced 37 of 1996 s. 3)

(2) The court, if having regard to the nature of the supposed disability is of opinion that it is expedient so to do and in the interests of the accused person, may postpone consideration of the said question (hereinafter referred to as "the question of fitness to be tried") until any time up to the opening of the case for the defence, and if before the question of fitness to be tried falls to be determined the jury return a verdict of acquittal on the count or each of the

counts on which the accused person is being tried that question shall not be determined.

(3) Subject to subsection (2), the question of fitness to be tried shall be determined as soon as it arises.

(4) The question of fitness to be tried shall be determined by a jury, and-

(a) where it falls to be determined on the arraignment of the accused person, then if the trial proceeds the accused person shall be tried by-

(i) where paragraph (a) of the definition of "court" is applicable, a jury other than the jury which determined that question;

(ii) in any other case, the same jury which determined that question;

(b) where it falls to be determined at any later time, it shall be determined by-

(i) where paragraph (a) of the definition of "court" is applicable, a separate jury or the jury by whom the accused person is being tried, as the court may direct;

(ii) in any other case, the same jury by whom the accused person is being tried. (Replaced 37 of 1996 s. 3)

(5) A jury shall not make a determination under subsection (4) except on the written or oral evidence of 2 or more registered medical practitioners (of whom not less than 2 shall be psychiatrists on the Specialist Register established under section 6(3) of the Medical Registration Ordinance (Cap 161)). (Replaced 37 of 1996 s. 3. Amended 32 of 2000 s. 11)

(6) In this section-

"court" (法庭) means-

(a) the Court of First Instance acting in the exercise of its criminal jurisdiction; (Amended 25 of 1998 s. 2)

(b) the District Court acting in the exercise of its criminal jurisdiction; or

(c) a magistrate;

"verdict of acquittal" (無罪的裁決) does not include a special verdict that the accused person is not guilty by reason of insanity. (Replaced 37 of 1996 s. 3)

(7) In this section, any reference to a jury shall, where the trial concerned takes place in the District Court or before a magistrate, be read as a reference to a District Judge or the magistrate, as the case may be. (Added 37 of 1996 s. 3)

(Replaced 34 of 1972 s. 13)

[cf. 1964 c. 84 s. 4 U.K.]

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| Section: | 75A | Determination as to whether accused person under disability did the act or made the omission charged | | 30/06/1997 |
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(1) Where in accordance with section 75 it is determined by a jury that an accused person is under disability, then-

(a) without prejudice to any proceedings for the purposes of paragraph (b)(ii), the trial shall not proceed or further proceed;

(b) the jury shall determine-

(i) on the evidence (if any) already given in the trial; and

(ii) on such evidence as may be adduced or further adduced by the prosecution or adduced by a person appointed by the court for the purpose of this section to put the case for the defence,

whether they are satisfied, as respects the count or each of the counts on which the accused person was to be or was being tried, that he did the act or made the omission charged against him as the offence;

(c) if the jury are so satisfied as respects that count or any of those counts, they shall make a finding that the accused person did that act or made that omission;

(d) if the jury are not so satisfied as respects that count or any of those counts, they shall return a verdict of acquittal as if on the count concerned the trial had proceeded to a conclusion.

(2) Section 75(6) and (7) shall apply to this section as it applies to section 75.

(3) For the avoidance of doubt it is hereby declared that-

(a) evidence that may be adduced under subsection (1)(b)(ii) includes the testimony of witnesses;

(b) the law applicable in criminal proceedings shall be the law applicable in any proceedings arising under subsection (1)(b).

(Added 37 of 1996 s. 4)

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| Section: | 76 | Orders to be made | 32 of 2000 | 09/06/2000 |
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- (1) This section applies where-
- (a) under section 74 a special verdict is returned that an accused person is not guilty by reason of insanity; or
 - (b) under sections 75 and 75A a finding is recorded that an accused person is under disability and that he did the act or made the omission charged against him.
- (2) Subject to subsection (3), the court shall-
- (a) if it is satisfied, on the written or oral evidence of 2 or more registered medical practitioners (of whom not less than 2 shall be psychiatrists on the Specialist Register established under section 6(3) of the Medical Registration Ordinance (Cap 161)), that it is necessary in the interests or the welfare of the accused person or for the protection of other persons that the accused person be admitted to the Correctional Services Department Psychiatric Centre or a mental hospital, make an order that the accused person be admitted- (Amended 32 of 2000 s. 12)
 - (i) in accordance with the provisions of Schedule 4, to that Centre; or
 - (ii) to such mental hospital as may be specified by the Chief Executive, (Amended 39 of 1999 s. 3) as the case may be; or
 - (b) make in respect of the accused person such one of the following orders as it thinks most suitable in all the circumstances of the case, namely-
 - (i) a guardianship order under Part IIIA of the Mental Health Ordinance (Cap 136);
 - (ii) a supervision and treatment order under Part IIIB of that Ordinance;
 - (iii) an order for his absolute discharge.
- (3) Subsection (2)(b) shall not apply where the offence to which the special verdict or the finding relates is an offence the sentence for which is fixed by law.
- (4) For the avoidance of doubt, it is hereby declared that-
- (a) the court may not make an order referred to in subsection (2)(b)(i) or (ii) where it is prohibited from so doing by virtue of the provisions of Part IIIA or IIIB, as the case may be, of the Mental Health Ordinance (Cap 136);
 - (b) the fact that the court makes an order referred to in subsection (2)(b)(i) or (ii) in any case where subsection (1)(b) is applicable shall not of itself prevent the accused person from being tried in respect of the act or omission charged against him should he subsequently cease either to be subject to that order or to be under disability (but without prejudice to the operation again of sections 75 and 75A in respect of the accused person).
- (5) Section 75(6) and (7) shall apply to this section as it applies to section 75.

(Replaced 37 of 1996 s. 4)

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| Section: | 76A | Evidence by prosecution of insanity or diminished responsibility | | 30/06/1997 |
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- Where on a trial for murder the accused person contends-
- (a) that at the time of the alleged offence he was insane so as not to be responsible according to law for his actions; or
 - (b) that at that time he was suffering from such abnormality of mind as is specified in section 3(1) of the Homicide Ordinance (Cap 339) (diminished responsibility),
- the court shall allow the prosecution to adduce or elicit evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.

(Added 34 of 1972 s. 13)
[cf. 1964 c. 84 s. 6 U.K.]

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| Section: | 77 | (Repealed 24 of 1993 s. 10) | | 30/06/1997 |
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Pregnancy

(Amended 13 of 1981 s. 7)

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| Section: | 78 | (Repealed 13 of 1981 s. 7) | | 30/06/1997 |
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| Section: | 79 | Record of proceedings and inspection thereof | L.N. 362 of 1997 | 01/07/1997 |
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Record of proceedings

(1) A record (whether made by means of shorthand notes, by mechanical means or otherwise) kept in accordance with rules made under section 9, or such other record as the trial judge may direct, shall be taken of the proceedings at the trial of any person on indictment who, if convicted, is entitled or may be authorized to appeal to the Court of Appeal.

(2) A record taken under subsection (1) shall be open for inspection without fee or reward by-

- (a) a judge;
- (b) the Registrar;
- (c) the Secretary for Justice; (Amended L.N. 362 of 1997)
- (d) a judge or deputy judge of the District Court;
- (e) the registrar of the District Court;
- (f) a party interested or his legal representative;
- (g) any person, or his legal representative, who satisfies the Registrar that such inspection is reasonably required in connection with actual or potential civil or criminal proceedings by or against that person;
- (h) any person who satisfies the Registrar that there is good and sufficient reason for that inspection.

(3) A decision by the Registrar to refuse permission to inspect shall be final.

(4) The right to inspect under subsection (2) shall include the right to a copy of the record subject, in the case of applicants under subsection (2)(g) and (h), to payment of the prescribed fee.

(5) Disclosure of the contents of a record under subsection (2) shall not amount to a breach of the Rehabilitation of Offenders Ordinance (Cap 297).

(6) For the purposes of subsection (2) "a party interested" (有利害關係的一方) means the prosecutor or the person convicted or any person named in, or immediately affected by, any order made by the trial judge or any other person authorized to act on behalf of any such person.

(Replaced 13 of 1995 s. 43)

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| Part: | IIIA | Special Procedures for Vulnerable Witnesses | E.R. 1 of 2015 | 29/01/2015 |
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(Part IIIA added 69 of 1995 s. 3)
(*Format changes—E.R. 1 of 2015)

Note:

* The format of Part IIIA has been updated to the current legislative styles.

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| Section: | 79A | Interpretation | E.R. 1 of 2015 | 29/01/2015 |
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In this Part, unless the context otherwise requires-

child (兒童) means a person who-

- (a) in the case of an offence of sexual abuse-
 - (i) is under 17 years of age; or
 - (ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 18 years of age; or
- (b) in the case of an offence to which this Part applies, other than an offence of sexual abuse-
 - (i) is under 14 years of age; or
 - (ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 15 years of age;

court (法院、法庭) includes the District Court and a magistrate;

live television link (電視直播聯繫) means a system—

- (a) in which a courtroom and another room located in the same premises as the courtroom are equipped with,

and linked by, audio-visual facilities that are capable of allowing—

- (i) persons in the courtroom to see and hear persons in the other room; and
 - (ii) persons in the other room to hear, or see and hear, persons in the courtroom; and
- (b) installed for allowing persons in the other room to give evidence in the proceedings taking place in the courtroom,

and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition; (Replaced 20 of 2014 s. 3)

mentally incapacitated person (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped, as the case may be, within the meaning of the Mental Health Ordinance (Cap 136); (Replaced 81 of 1997 s. 59)

notice of transfer (移交通知) means a notice served under section 79F;

offence of cruelty (殘暴罪行) means an offence against section 26 or 27 of the Offences against the Person Ordinance (Cap 212);

offence of sexual abuse (性虐待罪行) means-

- (a) an offence against Part VI or Part XII, other than sections 126, 147A and 147F, of the Crimes Ordinance (Cap 200); or
- (b) an offence against section 3 of the Prevention of Child Pornography Ordinance (Cap 579); (Replaced 31 of 2003 s. 19)

statement (陳述) includes any representation of fact, whether made in words or otherwise;

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

(Added 69 of 1995 s. 3)

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| Section: | 79B | Evidence by live television link | E.R. 1 of 2015 | 29/01/2015 |
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(1) In this section-

witness in fear (在恐懼中的證人) means a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence.

- (2) Where a child, other than the defendant, is to give evidence, or be examined on video recorded evidence given under section 79C, in proceedings in respect of-
- (a) an offence of sexual abuse;
 - (b) an offence of cruelty; or
 - (c) an offence which involves an assault on, or injury or a threat of injury to, a person and the offence is triable-
 - (i) on indictment; or
 - (ii) either summarily or on indictment,

the court may, on application or on its own motion, permit the child to give evidence or be examined by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances.

- (3) Where a mentally incapacitated person, including one who is a defendant, is to give evidence, or be examined on video recorded evidence given under section 79C, in proceedings in respect of an offence that is triable- (Amended 81 of 1997 s. 59)

- (a) on indictment; or
- (b) either summarily or on indictment,

the court may, on application or on its own motion, permit the person to give evidence or be examined by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances.

- (4) Where a witness in fear is to give evidence in proceedings in respect of any offence, the court may, on application or on its own motion, permit the person to give evidence by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances.

- (5) Where a person is giving evidence in proceedings or being examined by way of a live television link, the place from which he is giving the evidence shall, for all purposes in connection with such proceedings, be deemed to be part of the courtroom in which such proceedings are taking place.

- (6) The audio-visual facilities used in a live television link must be approved by the Chief Justice. (Added 20 of 2014 s. 4)

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| Section: | 79C | Video recorded evidence | E.R. 1 of 2015 | 29/01/2015 |
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- (1) In this section-
adult (成年人) means-
- (a) a police officer;
 - (b) a social worker or clinical psychologist who is employed by the Government.
- (2) Where in proceedings in respect of-
- (a) an offence of sexual abuse;
 - (b) an offence of cruelty; or
 - (c) an offence which involves an assault on, or injury or a threat of injury to, a person and the offence is triable-
 - (i) on indictment; or
 - (ii) either summarily or on indictment,
 a video recording has been made of an interview between an adult and a child who is not a defendant and the interview relates to any matter in issue in the proceedings, the video recording may, with leave of the court, be given in evidence.
- (3) Where in proceedings in respect of an offence that is triable-
- (a) on indictment; or
 - (b) either summarily or on indictment,
- a video recording has been made of an interview between an adult and a mentally incapacitated person, including a mentally incapacitated person who is a defendant where such a defendant and his counsel so request, and the interview relates to any matter in issue in the proceedings, the video recording may, with leave of the court, be given in evidence.
- (4) Where a video recording is tendered in evidence under this section, the court shall grant leave to admit the recording unless-
- (a) it appears that the child or mentally incapacitated person will not be available for cross-examination;
 - (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
 - (c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted,
- and where the court grants such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.
- (5) In considering whether any part of a video recording ought to be excluded, the court shall consider whether any prejudice to the defendant, or one of the defendants, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (6) Where a video recording is admitted-
- (a) the child or mentally incapacitated person shall be called by the party who tendered the recording in evidence;
 - (b) the child or mentally incapacitated person shall not be examined in chief, save with leave of the court, on any matter which, in the opinion of the court, has been dealt with in his recorded testimony.
- (7) Where a video recording is given in evidence, any statement made by the child or mentally incapacitated person which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony and accordingly-
- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
 - (b) no such statement shall be capable of corroborating any other evidence given by him, and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.
- (8) A magistrate inquiring into an indictable offence at committal proceedings may consider any video recording in respect of which leave for its production as evidence is to be sought at the trial, notwithstanding that the child witness or the mentally incapacitated witness is not called at the committal proceedings.
- (9) Nothing in this section shall prejudice the admissibility of any video recording which would be admissible apart from this section.

(Added 69 of 1995 s. 3. Amended 81 of 1997 s. 59)

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| Section: | 79D | Chief Judge to make rules | E.R. 1 of 2015 | 29/01/2015 |
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The Chief Judge may make rules or give directions respecting- (Amended 10 of 2005 s. 16)

- (a) the giving of evidence by way of a live television link; and
- (b) the admission and use of video recorded interviews as evidence in proceedings to which this Part applies.

(Added 69 of 1995 s. 3)

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| Section: | 79E | Depositions | E.R. 1 of 2015 | 29/01/2015 |
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- (1) Where a child, other than one who is the defendant, is to give evidence in proceedings in respect of-
 - (a) an offence of sexual abuse;
 - (b) an offence of cruelty; or
 - (c) an offence which involves an assault on, or injury or a threat of injury to, a person and the offence is triable-
 - (i) on indictment; or
 - (ii) either summarily or on indictment,
 and in respect of such proceedings-
 - (i) for good reason it is unavoidable that a trial cannot be heard without delay; or
 - (ii) exposure to a full trial would endanger the physical or mental health of the child,
 a party to the proceedings may apply for leave for a deposition in writing to be taken from the child by a magistrate.
- (2) Where a mentally incapacitated person is to give evidence in proceedings in respect of an offence that is triable-
 - (a) on indictment; or
 - (b) either summarily or on indictment,
 and in respect of such proceedings-
 - (i) for good reason it is unavoidable that a trial cannot be heard without delay; or
 - (ii) exposure to a full trial would endanger the physical or mental health of the mentally incapacitated person,
 a party to the proceedings may apply for leave for a deposition in writing to be taken from the mentally incapacitated person, including a mentally incapacitated person who is a defendant where such a defendant and his counsel so request, by a magistrate. (Amended 81 of 1997 s. 59)
- (3) The court shall not grant leave to take a deposition under this section unless-
 - (a) in the case of-
 - (i) an unavoidable delay, the application is supported by, where the proceedings are in-
 - (A) the High Court, a certificate of the Registrar of the High Court; (Amended 25 of 1998 s. 2)
 - (B) the District Court, a certificate of the Chief District Judge; or
 - (C) a magistrate's court, a certificate of the Chief Magistrate, stating the reason why an early and speedy trial is not possible; or
 - (ii) danger to physical or mental health, the application is supported by an affidavit or written affirmation of a registered medical practitioner setting forth the reasons for his belief that there is such danger;
 - (b) the applying party has given the other party reasonable notice of his intention to take the deposition; and
 - (c) in the case of an unavoidable delay, it is satisfied that the delay is so great that it is in the interests of justice to have a deposition taken.
- (4) Where the application is based on danger to physical or mental health, the court hearing the application may summon the medical practitioner who made the affidavit or affirmation to appear to answer questions or be cross-examined.
- (5) Where leave has been granted, a magistrate may take the deposition at any time before the trial of the offence commences.
- (6) A deposition shall be accompanied by a certificate signed by the magistrate stating-
 - (a) the grounds on which leave was granted for taking the deposition;
 - (b) the date and place it was taken;
 - (c) the names of those present while it was taken;
 - (d) that the deposition was taken in the presence of the other party and that he or his counsel or solicitor was given a full opportunity to cross-examine the child or mentally incapacitated person, as the case may be; (Amended 81 of 1997 s. 59)
 - (e) that, except in the case of a child giving unsworn evidence, the usual oath was administered to the person

- prior to the deposition being taken;
- (f) that the evidence so taken was reduced into writing and read over to the child or mentally incapacitated person, as the case may be, and was signed by- (Amended 81 of 1997 s. 59)
- (i) him, unless by reason of his tender age or mental incapacity he is incapable of signing his name; and
 - (ii) the magistrate who took the deposition.
- (7) A deposition taken in accordance with this section is admissible as evidence without further proof at the trial of the offence to which the deposition relates.
- (8) Except with leave of the court, a witness in respect of whom a deposition has been taken under this section shall not be examined or cross-examined in any subsequent hearing on any matter which in the court's opinion has been dealt with in the deposition.
- (9) In taking a deposition the magistrate may, on application or on his own motion, allow testimony to be given by way of a live television link, subject to such conditions as the magistrate considers appropriate in the circumstances.

(Added 69 of 1995 s. 3)

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| Section: | 79F | Notice of transfer | E.R. 1 of 2015 | 29/01/2015 |
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- (1) Where-
- (a) a person has been charged with-
 - (i) an offence of sexual abuse;
 - (ii) an offence of cruelty; or
 - (iii) an offence which involves an assault on, or injury or a threat of injury to, a person and the offence is triable-
 - (A) on indictment; or
 - (B) either summarily or on indictment;
 - (b) a child was the victim of the offence with which the person has been charged, and the Director of Public Prosecutions is of the opinion-
 - (i) that the evidence of the offence would be sufficient for the person charged to be committed for trial; and
 - (ii) that it is necessary for the purpose of avoiding any prejudice to the welfare of the child that the case should be taken over and proceeded with without delay by the Court of First Instance, (Amended 25 of 1998 s. 2) the Director of Public Prosecutions may serve a notice of transfer on the relevant magistrate certifying his opinion, together with an affidavit setting out the reasons for such opinion. (Amended L.N. 362 of 1997)
- (2) Where-
- (a) a person has been charged with any offence that is triable-
 - (i) on indictment; or
 - (ii) either summarily or on indictment;
 - (b) a mentally incapacitated person was the victim of the offence with which the person has been charged, (Amended 81 of 1997 s. 59) and the Director of Public Prosecutions is of the opinion-
 - (i) that the evidence of the offence would be sufficient for the person charged to be committed for trial; and
 - (ii) that it is necessary for the purpose of avoiding any prejudice to the welfare of the mentally incapacitated person that the case should be taken over and proceeded with without delay by the Court of First Instance, (Amended 81 of 1997 s. 59; 25 of 1998 s. 2) the Director of Public Prosecutions may serve a notice of transfer on the relevant magistrate certifying his opinion, together with an affidavit setting out the reasons for such opinion. (Amended L.N. 362 of 1997)
- (3) A notice of transfer shall be served on the magistrate before the person charged elects to have the charge heard at a preliminary inquiry under section 80C(1)(b) of the Magistrates Ordinance (Cap 227).
- (4) On or before the day the notice of transfer is served on the magistrate, copies of the documents referred to in section 80B(1) of the Magistrates Ordinance (Cap 227) shall be served on the defendant and the originals filed with the magistrate, and that section 80B applies to those documents to the extent possible.
- (5) On the service of the notice of transfer, the magistrate shall, without further examination or inquiry, forthwith order that the defendant stand committed for trial in the Court of First Instance on the charge specified in the notice of transfer and shall so inform the defendant or cause him to be so informed. (Amended 25 of 1998 s. 2)
- (6) Sections 85A and 86 of the Magistrates Ordinance (Cap 227) apply to a committal under this section subject to the following-

- (a) the defendant may, at any time before he is arraigned, apply to the Court of First Instance to have the charge specified in the notice of transfer dismissed; (Amended 25 of 1998 s. 2)
- (b) the reference in section 86(1)(b) of that Ordinance to documents handed in by the prosecutor shall be read as referring to the originals of the documents filed under subsection (4) of this section.
- (7) A person committed under this section shall be deemed to have been committed for the purposes of section 24A(1)(a) and (2).

(Added 69 of 1995 s. 3)

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| Section: | 79G | Application for dismissal of charges contained in a notice of transfer | E.R. 1 of 2015 | 29/01/2015 |
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- (1) Where a notice of transfer has been served, any person to whom the notice relates may, at any time before he is arraigned (and whether or not an indictment has been preferred against him), apply orally or in writing to the Court of First Instance to be discharged. (Amended 25 of 1998 s. 2)
- (2) The court shall, if it appears to it that the evidence against the applicant would not be sufficient for a jury properly to convict him, direct that he not be arraigned on the charge and direct that he be discharged.
- (3) No oral application may be made under subsection (1) unless the applicant has given the court written notice of his intention to make the application.
- (4) Oral evidence may be given on such an application only with the leave of the court or by its order; and the court shall grant leave or make an order only if it appears to it, having regard to any matters stated in the application for leave, that the interests of justice require it to do so.
- (5) No leave or order under subsection (4) shall be granted or made in relation to oral evidence from a child or mentally incapacitated person who is alleged-
- (a) to be a person against whom an offence to which the notice of transfer relates was committed; or
- (b) to have witnessed the commission of such an offence.
- (6) If the court grants leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the court may disregard any document indicating the evidence that he might have given.
- (7) Subject to section 81E(3), a discharge under this section shall be deemed to be an acquittal.
- (8) The Chief Judge may make rules or give directions for the purposes of this section and, without prejudice to the generality of this subsection, the rules or directions may make provision-
- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.
- (9) Rules or directions made under subsection (8) shall not have effect until approved by the Legislative Council and published in the Gazette.

(Part IIIA added 69 of 1995 s. 3)

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| Part: | IV | APPEALS, QUESTIONS OF LAW RESERVED AND REFERRED AND REVIEW* | | 30/06/1997 |
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Note:

* (Amended 20 of 1979 s. 2)

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| Section: | 80 | Meaning of sentence | | 30/06/1997 |
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Interpretation

- (1) In this Part-
"sentence" (刑罰), in relation to an offence, includes any order made by a court in dealing with an offender, including a hospital order. (Amended 20 of 1979 s. 3)
- (2) Any power of the Court of Appeal to pass a sentence includes a power to make a recommendation for deportation under section 21 of the Immigration Ordinance (Cap 115).

(Replaced 34 of 1972 s. 15)
[cf. 1968 c. 19 s. 50 U.K.]

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| Section: | 81 | Power to reserve question of law for consideration of Court of Appeal | L.N. 362 of 1997 | 01/07/1997 |
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Reservation of question of law

(1) The judge of the court of trial may reserve for the consideration of the Court of Appeal any question of law which may arise on the trial of any indictment.

(2) In exercising his power under subsection (1), the judge may act either of his own motion or on the application of the Secretary for Justice or the defence. (Amended L.N. 362 of 1997)

(3) A judge may, if he reserves a question of law under subsection (1) and the accused person has been convicted-

- (a) postpone judgment until the question has been considered and decided; and
- (b) commit the person convicted to prison or admit him to bail, with or without one or more sufficient sureties, and in such sum as he may think fit, conditioned to appear at such time or times as the judge may direct and receive judgment.

(4) Upon consideration of a question reserved under subsection (1), the Court of Appeal may-

- (a) affirm or quash the conviction or order a new trial; and
- (b) make such other orders as may be necessary to give effect to its decision:

Provided that the Court of Appeal may, notwithstanding that it is of opinion that the question so reserved might be decided in favour of the convicted person, affirm the conviction if it considers that no miscarriage of justice has actually occurred.

(Replaced 34 of 1972 s. 15)

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| Section: | 81A | Application by Secretary for Justice for review of sentence | L.N. 362 of 1997; 25 of 1998 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Review of sentence on the application of the Secretary for Justice

(1) The Secretary for Justice may, with the leave of the Court of Appeal, apply to the Court of Appeal for the review of any sentence (other than a sentence which is fixed by law) passed by any court, other than the Court of Appeal, on the grounds that the sentence is not authorized by law, is wrong in principle or is manifestly excessive or manifestly inadequate. (Amended L.N. 362 of 1997)

(2) An application under subsection (1) shall-

- (a) be in writing signed by the Secretary for Justice; (Amended L.N. 362 of 1997)
- (b) be accompanied by the documents, or copies of the documents, specified in subsection (2A);
- (c) be filed with the Registrar within 21 days, or within such further time as the Court of Appeal may allow, after the date on which the sentence was passed or any proceedings for the review, under section 104 of the Magistrates Ordinance (Cap 227), of the sentence or of the conviction on which the sentence was passed, were withdrawn or disposed of. (Amended 20 of 1979 s. 4)

(2A) The following documents are specified for the purpose of subsection (2)(b)-

- (a) in the case of a sentence passed by a magistrate, a statement of the facts found by him or admitted before him and of the reasons for the sentence;
- (b) in the case of a sentence passed by a District Judge, the statement of the reasons for the verdict placed on record in accordance with section 80 of the District Court Ordinance (Cap 336) and a statement of the reasons for the sentence;
- (c) in the case of a sentence passed by a judge of the High Court, the record of the whole of the proceedings before him other than the evidence given in any trial that took place in those proceedings; (Amended 25 of 1998 s. 2)
- (d) in any case, any report concerning the respondent which was before the court which passed the

sentence. (Added 20 of 1979 s. 4)

(2B) The documents, or copies of the documents, specified in subsection (2A) shall be delivered to the Secretary for Justice within 7 days of a request therefor being made in writing to the magistrate or District Judge who passed the sentence or, if the sentence was passed by a judge of the High Court, to the Registrar. (Added 20 of 1979 s. 4. Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(3) The Court of Appeal may order a respondent to be detained in custody until an order has been made under section 81B(1).

(4) The Court of Appeal may, if it seems fit, on the application of a respondent, admit the respondent to bail pending the hearing of the application.

(5) The Court of Appeal may, if it refuses an application, award against the Secretary for Justice such amount of costs as it may determine, save that the amount shall not, if the respondent is legally aided, exceed the total of the contributions which he is liable to make. (Amended L.N. 362 of 1997)

(6) In this section and sections 81B and 81C-
"respondent" (答辯人) means a person on whom a sentence has been passed.

(Added 18 of 1972 s. 2. Amended 20 of 1979 s. 4)
[cf. N.Z. Crimes Act 1961 s. 383]

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| Section: | 81B | Review of sentence by Court of Appeal | L.N. 362 of 1997 | 01/07/1997 |
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(1) Upon the hearing of the application the Court of Appeal may, by order-

- (a) if it thinks that the sentence was not authorized by law, was wrong in principle or was manifestly excessive or manifestly inadequate, quash the sentence passed by the court and pass such other sentence (whether more or less severe) warranted in law in substitution therefor as it thinks ought to have been passed;
- (b) in any other case, refuse to alter the sentence.

(2) The Secretary for Justice and the respondent shall have the right to be heard on the hearing of the review of a sentence. (Amended L.N. 362 of 1997)

(2A) The Court of Appeal may hear and determine an application for the review of a sentence notwithstanding that the respondent is not present, if the respondent has been served with an application or notice of it. (Added 20 of 1979 s. 5)

(3) For the purposes of this section the Court of Appeal may exercise any of the powers conferred by section 83V.

(Added 18 of 1972 s. 2. Amended 34 of 1972 s. 16)

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| Section: | 81C | Limitation on review of sentence by Court of Appeal under section 81B | | 30/06/1997 |
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(1) The Court of Appeal shall not review a sentence under section 81B if the respondent has-

- (a) appealed against the conviction in respect of which the sentence was passed, unless the appeal has been withdrawn or disposed of; (Replaced 20 of 1979 s. 6)
- (b) applied under section 104 of the Magistrates Ordinance (Cap 227) to a magistrate to review his decision, unless the application has been withdrawn or disposed of; or
- (c) applied under section 105 of the Magistrates Ordinance (Cap 227) to a magistrate to state a case, unless the application has been withdrawn or disposed of.

(2) Nothing in section 81B shall prejudice the exercise of a right of appeal conferred on a convicted person by this or any other Ordinance, but the Court of Appeal may hear together an application for the review of a sentence and an appeal by the respondent under this Part against the sentence. (Amended 20 of 1979 s. 6)

(Added 18 of 1972 s. 2. Amended 34 of 1972 s. 17; 40 of 1978 s. 2)

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| Section: | 81D | Reference to Court of Appeal of question of law following acquittal | L.N. 362 of 1997 | 01/07/1997 |
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Reference of question of law

(1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Secretary for Justice may, if he desires the opinion of the Court of Appeal on a question of law which has arisen in the case, refer that question to the Court of Appeal which shall, in accordance with this section, consider the point and give its opinion on it. (Amended L.N. 362 of 1997)

(2) For the purpose of its consideration of a question referred to them under this section the Court of Appeal shall hear argument-

- (a) by, or by counsel on behalf of, the Secretary for Justice; (Amended L.N. 362 of 1997)
- (b) if the acquitted person desires to present any argument, by counsel on his behalf or, with the leave of the Court of Appeal, by the acquitted person himself; and
- (c) if the Court of Appeal so directs, by counsel appointed as amicus curiae by the Registrar.

(3) Where, on a question being referred to the Court of Appeal under this section, the acquitted person appears by counsel for the purpose of presenting any argument to the Court of Appeal, he shall be entitled to his costs, that is to say to the payment out of the general revenue of such sums as are reasonably sufficient to compensate him for any expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this subsection shall be ascertained as soon as practicable by the Registrar.

(4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

(Added 20 of 1979 s. 7)
[cf. 1972 c. 71 s. 36 U.K.]

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| Section: | 81E | Appeal to Court of Appeal following discharge | L.N. 362 of 1997 | 01/07/1997 |
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Appeal against a discharge

(Amended 57 of 1988 s. 31)

(1) Where any person has been discharged under section 16 or 79G or under section 22 of the Complex Commercial Crimes Ordinance (Cap 394), the Secretary for Justice may appeal to the Court of Appeal against that person's discharge. (Amended 57 of 1988 s. 32; 69 of 1995 s. 4; L.N. 362 of 1997)

(2) The appeal may be-

- (a) on any ground which involves a question of law;
- (b) on the ground that the documents and evidence before the court were sufficient to establish a prima facie case against the accused for the offence set out in the charge or for any other offence for which he might be convicted upon that charge.

(3) The Court of Appeal may, if it allows an appeal under this section, quash the acquittal of the accused and order him to be tried.

(4) The Court of Appeal may, in ordering a trial, make such orders as appear to it to be necessary for the custody, or admission to bail, of the person ordered to be tried.

(5) The provisions of section 81D(2) and (3) shall apply to an appeal under this section as they do to an appeal under section 81D(1).

(Added 48 of 1983 s. 4)

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| Section: | 81F | Appeal to Court of Appeal against order quashing indictment | L.N. 362 of 1997 | 01/07/1997 |
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(1) Where the court quashes an indictment, the Secretary for Justice may appeal to the Court of Appeal against the order quashing the indictment. (Amended L.N. 362 of 1997)

(2) The appeal may be made only on a ground which involves a question of law.

(3) The Court of Appeal may, if it allows an appeal under this section, set aside the order and order the accused to be tried.

(4) The Court of Appeal may, in ordering a trial, make such orders as appear to it to be necessary for the detention, or admission to bail, of the person ordered to be tried for so long as the trial is pending.

(5) The provisions of section 81D(2) shall apply to an appeal under this section as they do to an appeal under section 81D(1).

(6) (a) In an appeal under this section, the Court of Appeal may order the payment out of the public revenue of-

- (i) the costs of the accused; or
- (ii) any part of the costs of the accused as the Court of Appeal may think fit.
- (b) The costs of the accused payable under paragraph (a)(i) shall be such sums as appear to the Court of Appeal reasonably sufficient to compensate the accused for any expenses properly incurred by him in the appeal, including any proceedings preliminary or incidental thereto or in the court of trial or before a magistrate.
- (c) The amount of the costs of the accused payable under paragraph (a)(i) shall, except where the amount is fixed by the Court of Appeal, be ascertained by the Registrar.

(Added 68 of 1995 s. 9)

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| Section: | 82 | Right of appeal | | 30/06/1997 |
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Appeal against conviction on indictment

- (1) A person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.
- (2) The appeal may be-
 - (a) on any ground which involves a question of law alone; and
 - (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

(Replaced 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 1 U.K.]

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| Section: | 83 | Grounds for allowing appeal under s. 82 | | 30/06/1997 |
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- (1) Except as provided by this Ordinance, the Court of Appeal shall allow an appeal against conviction if it thinks-
 - (a) that the conviction should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or (Amended 50 of 1981 s. 3)
 - (b) that the judgment of the court of trial should be set aside on the ground of a wrong decision on any question of law; or
 - (c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal:

Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(2) In the case of an appeal against conviction the Court of Appeal shall, if it allows the appeal, quash the conviction.

(3) An order of the Court of Appeal quashing a conviction shall, except when under section 83E the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

(Replaced 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 2 U.K.]

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| Section: | 83A | Power to substitute conviction of alternative offence | | 30/06/1997 |
|----------|-----|--------------------------------------------------------------|--|------------|

(1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence.

(2) The Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the

trial as may be authorized by law for the other offence, not being a sentence of greater severity.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 3 U.K.]

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|----------|-----|---------------------------------------------------------------|--|------------|
| Section: | 83B | Sentence where appeal allowed on part of an indictment | | 30/06/1997 |
|----------|-----|---------------------------------------------------------------|--|------------|

(1) This section applies where on an appeal against conviction on an indictment containing 2 or more counts, the Court of Appeal allows the appeal in respect of part of the indictment.

(2) The Court of Appeal may in respect of any count on which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as it thinks proper and is authorized by law for the offence of which he remains convicted on that count.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 4 (1) & (2) U.K.]

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|----------|-----|-----------------------------------------------------------------|--|------------|
| Section: | 83C | Disposal of appeal against conviction on special verdict | | 30/06/1997 |
|----------|-----|-----------------------------------------------------------------|--|------------|

(1) This section applies on an appeal against conviction by a person in whose case the jury has found a special verdict.

(2) If the Court of Appeal considers that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict it may, instead of allowing the appeal, order such conclusion to be recorded as appears to it to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorized by law.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 5 U.K.]

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|----------|-----|-----------------------------------------------------------------|------------|------------|
| Section: | 83D | Substitution of finding of insanity or unfitnes to plead | 39 of 1999 | 01/07/1997 |
|----------|-----|-----------------------------------------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

- (1) Where, on an appeal against conviction, the Court of Appeal is of opinion-
 - (a) that the proper verdict would have been one of not guilty by reason of insanity; or
 - (b) that the case is not one where there should have been a verdict of acquittal, but that there should have been a finding that the accused person was under disability,

the Court of Appeal shall make an order that the appellant be admitted to the Correctional Services Department Psychiatric Centre or such mental hospital as may be specified by the Chief Executive. (Amended 37 of 1973 s. 7; 39 of 1999 s. 3)

(2) Schedule 5 shall apply with respect to the consequences and effect of an order made by the Court of Appeal under this section. (Amended 58 of 1994 s. 4)

(3) On making an order under this section in the case of any person, the Court of Appeal may give such directions as it thinks fit for his conveyance to a place of safety and his detention there pending his admission to the Correctional Services Department Psychiatric Centre or the mental hospital within the relevant period specified by Schedule 5. (Amended 37 of 1973 s. 7; 58 of 1994 s. 4)

(4) In section 52 of the Mental Health Ordinance (Cap 136) (which relates to the removal to a mental hospital of persons serving sentences of imprisonment and is applied by subsection (5) of the section to other forms of detention) references to a person serving a sentence of imprisonment shall be construed as not including references to a person subject to an order of the Court of Appeal under this section.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 6 U.K.]

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|----------|-----|-------------------------------|--|------------|
| Section: | 83E | Power to order retrial | | 30/06/1997 |
|----------|-----|-------------------------------|--|------------|

Retrial

- (1) Where the Court of Appeal allows an appeal against conviction and it appears to the Court of Appeal that

the interests of justice so require, it may order the appellant to be retried.

- (2) A person shall not under this section be ordered to be retried for any offence other than-
- (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1);
 - (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
 - (c) an offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of convicting him of the first-mentioned offence.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 7 U.K.]

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|----------|-----|-----------------------------------------------|------------|------------|
| Section: | 83F | Supplementary provisions as to retrial | 25 of 1998 | 01/07/1997 |
|----------|-----|-----------------------------------------------|------------|------------|

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) A person who is to be retried for an offence in pursuance of an order under section 83E shall be tried on a fresh indictment preferred by direction of the Court of Appeal, and shall be tried before such court as the Court of Appeal may direct (being the Court of First Instance or, if the offence is within the jurisdiction of the District Court, the District Court) or, if no such direction is given, before the court by which he was originally tried. (Amended 25 of 1998 s. 2)

(2) The Court of Appeal may, on ordering a retrial, make such orders as appear to it to be necessary or expedient-

- (a) for the custody or admission to bail of the person ordered to be retried pending his retrial; or
- (b) for the retention pending retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

(3) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order under Part IV of the Mental Health Ordinance (Cap 136)-

- (a) that order shall continue in force pending the retrial as if the appeal had not been allowed; and
- (b) any order made by the Court of Appeal under this section for his custody or admission to bail shall have effect subject to the said order.

(4) Schedule 6 shall have effect with respect to the procedure in the case of a person ordered to be retried and the sentence which may be passed if the retrial results in his conviction. (Amended 58 of 1994 s. 4)

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 8 U.K.]

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|----------|-----|-------------------------------------------------------------------|--|------------|
| Section: | 83G | Appeal against sentence following conviction on indictment | | 30/06/1997 |
|----------|-----|-------------------------------------------------------------------|--|------------|

Appeal against sentence

A person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 9 U.K.]

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|----------|-----|-----------------------------------------------------------------------------------------|----------------|------------|
| Section: | 83H | Appeal against sentence in other cases dealt with at the Court of First Instance | E.R. 2 of 2012 | 02/08/2012 |
|----------|-----|-----------------------------------------------------------------------------------------|----------------|------------|

(1) This section has effect for providing rights of appeal against sentence when a person is dealt with by the Court of First Instance (otherwise than on appeal from a magistrate) for an offence of which he was not convicted on indictment. (Amended 25 of 1998 s. 2)

- (2) The proceedings from which an appeal against sentence lies under this section are those where an offender-
- (a) is committed by a magistrate under section 81B(3) of the Magistrates Ordinance (Cap 227); or
 - (b) having been made the subject of a probation order or an order for conditional discharge or given a

suspended sentence, appears or is brought before the court to be further dealt with for his offence.

(3) An offender dealt with for an offence in the Court of First Instance in a proceeding to which subsection (2) applies may appeal to the Court of Appeal in any of the following cases- (Amended 25 of 1998 s. 2)

- (a) where either for that offence alone or for that offence and other offences for which sentence is passed in the same proceeding, he is sentenced to imprisonment for a term of 6 months or more; or
- (b) where the sentence is one which the court convicting him had not power to pass; or
- (c) where the court in dealing with him for the offence makes in respect of him-
 - (i) a recommendation for deportation; or
 - (ii) an order disqualifying him from holding or obtaining a driving licence to drive a motor vehicle under Part 8 of the Road Traffic Ordinance (Cap 374); or (Amended 75 of 1982 s. 114)
 - (iii) an order under section 109C.

(4) For the purposes of subsection (3)(a), any 2 or more sentences are to be treated as passed in the same proceeding if-

- (a) they are passed on the same day; or
- (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence,

and consecutive terms of imprisonment and terms which are wholly or partly concurrent are to be treated as a single term.

(Added 34 of 1972 s. 18. Amended E.R. 2 of 2012)
[cf. 1968 c. 19 s. 10 U.K.]

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|----------|-----|---------------------------------------------------------------|------------|
| Section: | 83I | Supplementary provisions as to appeal against sentence | 30/06/1997 |
|----------|-----|---------------------------------------------------------------|------------|

(1) An appeal against sentence, whether under section 83G or 83H, lies only with the leave of the Court of Appeal.

(2) Where the court, in dealing with an offender on his conviction on indictment, or in a proceeding to which section 83H(2) applies, has passed on him 2 or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 83H), being sentences against which an appeal lies under section 83G or 83H, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.

(3) On an appeal against sentence the Court of Appeal, if it considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below, may-

- (a) quash any sentence or order which is the subject of the appeal; and
- (b) in place of it pass such sentence or make such order as it thinks appropriate for the case (whether more or less severe) and as the court below had power to pass or make when dealing with him for the offence.

(4) The power of the Court of Appeal under subsection (3) to pass a sentence which the court below had power to pass for an offence shall, notwithstanding that the court below made no order under section 109C(1) in respect of a suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that suspended sentence where the court below-

- (a) could have so dealt with him if it had not passed on him a sentence of detention in a training centre quashed by the Court of Appeal under subsection (3)(a); or
- (b) did so deal with him in accordance with section 109C(1)(d) by making no order in respect of the suspended sentence.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 11 U.K.]

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|----------|-----|-------------------------------------------------------------------|------------|
| Section: | 83J | Appeal against verdict of not guilty by reason of insanity | 30/06/1997 |
|----------|-----|-------------------------------------------------------------------|------------|

Appeal in cases of insanity

A person in whose case there is returned a verdict of not guilty by reason of insanity may appeal to the Court of Appeal against the verdict-

- (a) on any ground of appeal which involves a question of law alone; and

- (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal,

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 12 U.K.]

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|----------|-----|----------------------------------------|--|------------|
| Section: | 83K | Disposal of appeal under s. 83J | | 30/06/1997 |
|----------|-----|----------------------------------------|--|------------|

(1) Subject to the provisions of this section, the Court of Appeal shall allow an appeal under section 83J if it is of opinion-

- (a) that the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
 (b) that the order of the court giving effect to the verdict should be set aside on the ground of a wrong decision of any question of law; or
 (c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal.

(2) The Court of Appeal may dismiss an appeal under section 83J if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

(3) Where apart from this subsection-

- (a) an appeal under section 83J would fall to be allowed; and
 (b) none of the grounds for allowing it relates to the question of the insanity of the accused person,

the Court of Appeal may dismiss the appeal if it is of opinion that, but for the insanity of the accused person, the proper verdict would have been that he was guilty of an offence other than the offence charged.

(4) Where an appeal under section 83J is allowed, the following provisions apply-

- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused person ought not to stand and the Court of Appeal is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court of Appeal-
 (i) shall substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and
 (ii) shall have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if the jury had come to the substituted verdict; and
 (b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal.

(5) An order of the Court of Appeal allowing an appeal in accordance with this section shall operate as a direction to the court of trial to amend the record to conform with the order.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 13 U.K.]

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|----------|-----|---------------------------------------------|------------|------------|
| Section: | 83L | Hospital order on disposal of appeal | 39 of 1999 | 01/07/1997 |
|----------|-----|---------------------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

(1) Where, on an appeal under section 83J, the Court of Appeal is of opinion that the case is not one where there should have been a verdict of acquittal but that there should have been a finding that the accused person was under disability, the Court of Appeal shall make an order that the appellant be admitted to the Correctional Services Department Psychiatric Centre or such mental hospital as may be specified by the Chief Executive. (Amended 37 of 1973 s. 7; 39 of 1999 s. 3)

(2) Where in accordance with section 83K(4)(b) the Court of Appeal substitutes a verdict of acquittal, and it is of opinion-

- (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a mental hospital under observation (with or without medical treatment) for at least a limited period;

and

- (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons,

the Court of Appeal shall make an order that the appellant be admitted for observation to such mental hospital as may be specified by the Chief Executive. (Amended 39 of 1999 s. 3)

(3) Schedule 5 shall apply with respect to the consequences and effect of an order made by the Court of Appeal under this section. (Amended 58 of 1994 s. 4)

(4) On making an order under this section in the case of any person, the Court of Appeal may give such directions as it thinks fit for his conveyance to a place of safety and his detention there pending his admission to the Correctional Services Department Psychiatric Centre or a mental hospital within the relevant period specified in Schedule 5. (Amended 37 of 1973 s. 7; 58 of 1994 s. 4)

(5) In section 52 of the Mental Health Ordinance (Cap 136) (which relates to the removal to a mental hospital of persons serving sentences of imprisonment and is applied by subsection (5) of that section also to persons in other forms of detention) references to a person serving a sentence of imprisonment shall be construed as not including references to a person subject to an order of the Court of Appeal under subsection (1).

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 14 U.K.]

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|----------|-----|------------------------------------------------------|--|------------|
| Section: | 83M | Right of appeal against finding of disability | | 30/06/1997 |
|----------|-----|------------------------------------------------------|--|------------|

Unfitness to stand trial

(1) Where there has been a determination under section 75 of the question of a person's fitness to be tried, and the jury has returned a finding that he is under disability, the person may appeal to the Court of Appeal against the finding.

(2) An appeal under this section may be-

- (a) on any ground of appeal which involves a question of law alone; and
(b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal,

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

(3) Subject to subsection (4), section 75(6) and (7) shall apply to this section as it applies to section 75. (Added 37 of 1996 s. 6)

(4) Without prejudice to the operation of sections 105 and 113 of the Magistrates Ordinance (Cap 227), this section shall not apply to a determination under section 75 made by a magistrate. (Added 37 of 1996 s. 6)

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 15 U.K.]

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| Section: | 83N | Disposal of appeal under s. 83M | | 30/06/1997 |
|----------|-----|----------------------------------------|--|------------|

(1) The Court of Appeal shall allow an appeal under section 83M if it is of opinion-

- (a) that the finding of the court of trial should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
(b) that the order of the court giving effect to the finding should be set aside on the ground of a wrong decision of any question of law; or
(c) that there was a material irregularity in the course of the determination of the question of fitness to be tried,

and in any other case (except one to which subsection (2) of this section applies) shall dismiss the appeal; but it may dismiss the appeal if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

(2) An appeal under section 83M may, in a case where the question of fitness to be tried was determined later than on arraignment, be allowed by the Court of Appeal (notwithstanding that the finding was properly come to) if the Court of Appeal is of opinion that the case is one in which the accused person should have been acquitted before the

question of fitness to be tried was considered; and, if an appeal is allowed under this subsection, the Court of Appeal shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).

(3) Subject to subsection (2) of this section, where an appeal under section 83M is allowed, the appellant may be tried accordingly for the offence with which he was charged, and the Court of Appeal may make such orders as appear to it to be necessary or expedient pending any such trial for his custody, admission to bail or continued detention under the Mental Health Ordinance (Cap 136); and Schedule 7 shall have effect for applying provisions in Part IV of that Ordinance to persons in whose case an order is made by the Court of Appeal under this subsection. (Amended 58 of 1994 s. 4)

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 16 U.K.]

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| Section: | 83O | Prohibition of staying or reversal of judgment or allowing appeal on specified grounds | | 30/06/1997 |
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Further provisions relating to appeals and questions of law reserved

Except where, in the opinion of the Court of Appeal, a miscarriage of justice has actually occurred, no judgment shall be stayed or reversed under section 81 and no appeal shall be allowed under section 83, 83K or 83N-

- (a) on the ground of any defect which, if pointed out before the jury were empanelled or during the progress of the trial, might have been amended by the court of trial; or
- (b) because of any error committed in summoning or swearing a juror; or
- (c) because of any objection which might have been stated as a ground of challenge of a juror; or
- (d) because of any informality in the swearing of a witness.

(Added 34 of 1972 s. 18)

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|----------|-----|-------------------------------------|------------------------|------------|
| Section: | 83P | Reference by Chief Executive | 79 of 1995; 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

Review by Court of Appeal of cases tried on indictment

(1) Where a person has been convicted on indictment or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability, the Chief Executive may, if he thinks fit, at any time either-

- (a) refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to the Court of Appeal by that person; or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for its opinion thereon, and the Court of Appeal shall consider the point so referred and furnish the Chief Executive with its opinion thereon accordingly.

(2) A reference by the Chief Executive under this section may be made by him either on an application by the person referred to in subsection (1), or without any such application.

(3) For the avoidance of doubt, it is hereby declared that this section also applies in a case where an appeal has been heard and determined by the Court of Final Appeal. (Added 79 of 1995 s. 50)

(Added 34 of 1972 s. 18. Amended 39 of 1999 s. 3)
[cf. 1968 c. 19 s. 17 U.K.]

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| Section: | 83Q | Initiating procedure | | 30/06/1997 |
|----------|-----|-----------------------------|--|------------|

Procedure from notice of appeal to hearing

(1) A person who wishes to appeal under this Part to the Court of Appeal, or to obtain the leave of that Court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as

may be provided by rules and orders made under section 9.

(2) Notice of appeal, or of application for leave to appeal, shall be given within 28 days from the date of the conviction, verdict or finding appealed against, or, in the case of appeal against sentence, from the date on which sentence was passed, or, in the case of an order made or treated as made on conviction, from the date of the making of the order:

Provided that, where sentence was passed more than 7 days after the date of conviction, verdict or finding, notice of appeal, or of application for leave to appeal, against the conviction, verdict or finding may be given within 28 days from the date on which sentence was passed.

(3) The time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

(4)-(5) (Repealed 24 of 1993 s. 11)

(6) (a) Where a protected prisoner of war or protected internee has been sentenced to imprisonment for a term of 2 years or more, the time within which he must give notice of appeal or of an application for leave to appeal shall, notwithstanding the provisions of subsection (1), be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of 10 days after the date on which he received a notice given- (Amended 24 of 1993 s. 11)

(i) in the case of a protected prisoner of war, by an officer of Her Majesty's forces;

(ii) in the case of a protected internee, by or on behalf of the Commissioner of Correctional Services, that the protecting power has been notified of his conviction and sentence. (Replaced L.N. 346 of 1982)

(b) For the purposes of this subsection, the expression "protected prisoner of war" (受保護的戰俘), "protected internee" (受保護的囚犯) and "the protecting power" (保護當局) have the meanings assigned to them by the Geneva Conventions Act, 1957, as applied to Hong Kong by the Geneva Conventions Act (Colonial Territories) Order in Council 1959*. [cf. 1968 c. 19 Sch. 5 Part I U.K.]

(Added 34 of 1972 s. 18)

[cf. 1968 c. 19 s. 18 U.K.]

Note:

* See Revised Edition: App. III, p. BF 1.

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| Section: | 83R | Bail | 79 of 1995 | 01/07/1997 |
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(1) The Court of Appeal may, if it thinks fit, on the application of an appellant, admit him to bail pending the determination of his appeal. (Amended 56 of 1994 s. 7)

(2) (Repealed 79 of 1995 s. 50)

(Added 34 of 1972 s. 18)

[cf. 1968 c. 19 s. 19 U.K.]

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| Section: | 83S | Disposal of groundless appeal | 39 of 1999 | 01/07/1997 |
|----------|-----|--------------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

If it appears to the Registrar that a notice of an appeal purporting to be a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, he may refer the appeal to the Court of Appeal for summary determination; and where the case is so referred the Court of Appeal may, if it considers that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal summarily, without calling on anyone to attend the hearing or to appear for the HKSAR thereon.

(Added 34 of 1972 s. 18. Amended 39 of 1999 s. 3)

[cf. 1968 c. 19 s. 20 U.K.]

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| Section: | 83T | Preparation of case for hearing | | 30/06/1997 |
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(1) The Registrar shall-

(a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to

him and which is not referred and dismissed summarily under section 83S; and

(b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the appeal or application.

(2) Rules and orders made under section 9 may enable an appellant to obtain from the Registrar any documents or things, including copies or reproductions of documents, required for his appeal.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 21 U.K.]

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|----------|-----|-----------------------------------------|------------|------------|
| Section: | 83U | Right of appellant to be present | 79 of 1995 | 01/07/1997 |
|----------|-----|-----------------------------------------|------------|------------|

The hearing

(1) A defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court of Appeal, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise. (Replaced 79 of 1995 s. 50)

(2) (Repealed 79 of 1995 s. 50)

(3) The power of the Court of Appeal to pass sentence on a person may be exercised although he is for any reason not present.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 22 U.K.]

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|----------|-----|-----------------|------------|------------|
| Section: | 83V | Evidence | 23 of 2003 | 04/07/2003 |
|----------|-----|-----------------|------------|------------|

(1) For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice-

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Court of Appeal whether or not he was called in those proceedings; and
- (c) subject to subsection (3), receive the evidence, if tendered, of any witness.

(2) Without prejudice to subsection (1), where evidence is tendered to the Court of Appeal thereunder the Court of Appeal shall, unless it is satisfied that the evidence, if received, would not afford any ground for allowing the appeal, exercise its powers of receiving it if-

- (a) it appears to it that the evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
- (b) it is satisfied that it was not adduced in those proceedings but there is a reasonable explanation for the failure to adduce it.

(3) Subsection (1)(c) applies to any witness (including the appellant) who is a competent but not a compellable witness. (Amended 3 of 2003 s. 6)

(4) For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) to be conducted, in manner provided by rules and orders made under section 9, before any judge or officer of the Court of Appeal or other person appointed by the Court of Appeal for the purpose, and allow the admission of any depositions so taken as evidence before the Court of Appeal.

(5) In no case shall any sentence be increased by reason of or in consideration of any evidence which was not given at the trial.

(6) Where the husband or wife of an appellant or respondent is required to be examined under subsection (1)(b) or (4), other than on behalf of the appellant or respondent concerned, the husband or wife may apply to the Court of Appeal for an exemption from the requirement to be so examined. (Added 23 of 2003 s. 6)

(7) Where the husband or wife of an appellant or respondent has the right to apply to the Court of Appeal for an exemption under subsection (6), the Court of Appeal must be satisfied that the husband or wife is aware of such a right. (Added 23 of 2003 s. 6)

(8) Where the husband or wife of an appellant or respondent applies to the Court of Appeal for an exemption under subsection (6), the Court of Appeal may exercise the same powers that a court may exercise under section

57A(2), and that section shall apply with such modifications as the circumstances require. (Added 23 of 2003 s. 6)

(9) Section 7 of the Evidence Ordinance (Cap 8) (privilege of husband and wife) and section 8(2) of that Ordinance (evidence of access) shall not apply to the husband or wife of an appellant or respondent, where the husband or wife is being examined under subsection (1)(b) or (4). (Added 23 of 2003 s. 6)

(10) Section 65A of the Evidence Ordinance (Cap 8) (privilege against incrimination of self or spouse in criminal proceedings) shall not apply to the husband or wife of an appellant or respondent, where the husband or wife is being examined under subsection (1)(b) or (4), other than on behalf of the appellant or respondent concerned. (Added 23 of 2003 s. 6)

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 23 U.K.]

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|----------|-----|-------------------------------------|------------|------------|
| Section: | 83W | Effect of appeal on sentence | 39 of 1999 | 01/07/1997 |
|----------|-----|-------------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

Other matters depending on result of appeal

(1) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

(2) Where the Court of Appeal gives a contrary direction under subsection (1), it shall state its reasons for doing so; and it shall not give any such direction where-

- (a) leave to appeal has been granted; or
- (b) a certificate has been given by the judge of the court of trial under section 82; or
- (c) the case has been referred to it by the Chief Executive under section 83P. (Amended 39 of 1999 s. 3)

(3) Where an appellant is admitted to bail under section 83R, the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(4) The term of any sentence passed by the Court of Appeal under section 83A, 83B, 83C, 83I or 83K(4) shall, unless the Court of Appeal otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 29 U.K.]

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|----------|-----|----------------------------------------------|--|------------|
| Section: | 83X | Restitution of property on conviction | | 30/06/1997 |
|----------|-----|----------------------------------------------|--|------------|

(1) The operation of an order for the restitution of property to a person made on a conviction on indictment shall (unless the court of trial direct to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended-

- (a) in any case until the expiration of 28 days from the date of conviction; and
- (b) where notice of appeal or of application for leave to appeal is given within 28 days from the date of conviction, until the determination of the appeal.

(2) In cases where the operation of such an order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(3) Provision may be made by rules and orders made under section 9 for securing the safe custody of any property, pending the suspension of the operation of any such order.

(4) The Court of Appeal may by order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 30 U.K.]

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|----------|------|------------------------------------|--|------------|
| Section: | 83XX | (Repealed 39 of 1996 s. 23) | | 30/06/1997 |
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|----------|-----|--------------------------------------------------------------------------------------|------------|------------|
| Section: | 83Y | Powers of Court of Appeal under Part IV which are exercisable by single judge | 25 of 1998 | 01/07/1997 |
|----------|-----|--------------------------------------------------------------------------------------|------------|------------|

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

Supplementary

(1) The powers of the Court of Appeal under this Part which are specified in subsection (2) and the power to give directions under section 156(5) of the Crimes Ordinance (Cap 200) may be exercised by a single judge in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions. (Amended 25 of 1978 s. 5)

(2) The said powers are the following-

- (a) to give leave to appeal;
- (b) to extend the time within which notice of appeal or of application for leave to appeal may be given;
- (c) to allow an appellant to be present at any proceedings;
- (d) to order a witness to attend for examination;
- (e) to admit an appellant to bail;
- (f) to make orders under section 83F(2) and discharge or vary such orders;
- (g) to give directions under section 83W(1);
- (h) to give leave to apply for the review of a sentence under section 81A;
- (i) to make orders under section 83XX for the payment of costs; (Added 2 of 1978 s. 4)
- (j) to order a respondent to be detained in custody under section 81A(3). (Added 20 of 1979 s. 8)

(3) If the single judge refuses an application on the part of an appellant or applicant to exercise in his favour any of the powers above specified, the appellant or applicant shall be entitled to have the application determined by the Court of Appeal.

(4) The references in this section to a single judge are to a single judge of the Court of Appeal or of the Court of First Instance. (Added 29 of 1978 s. 2. Amended 25 of 1998 s. 2)

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 31 U.K.]

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|----------|-----|---------------------------------------|--|------------|
| Section: | 83Z | Power to bail convicted person | | 30/06/1997 |
|----------|-----|---------------------------------------|--|------------|

A person need not be admitted to bail in connection with an offence if he has been convicted of that offence, but where any court has jurisdiction to remand that person in custody or to admit him to bail pending sentence or appeal, the court may make such orders as appear to it to be necessary for the detention or the admission to bail of that person and, in making any such order, shall have regard to-

- (a) pending sentence, the likelihood of a custodial sentence;
- (b) pending appeal against conviction or sentence, the likelihood of the sentence being completed before the disposal of the appeal or of the appeal being allowed; and
- (c) any other matter that appears to the court to be relevant.

(Added 56 of 1994 s. 8)

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|----------|------|------------------------------------|------------|------------|
| Section: | 83ZA | (Repealed 79 of 1995 s. 50) | 79 of 1995 | 01/07/1997 |
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| Part: | IVA | OTHER PROCEEDINGS SUBSEQUENT TO TRIAL* | | 30/06/1997 |
|-------|-----|-----------------------------------------------|--|------------|

Note:

* (Added 34 of 1972 s. 19)

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|----------|----|------------------------------------------------------|--|------------|
| Section: | 84 | Restitution of property in case of conviction | | 30/06/1997 |
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Restitution of property

(1) Subject to the provisions of the Pawnbrokers Ordinance (Cap 166), where any person is convicted of an indictable offence, any property found in his possession, or in the possession of any other person for him, may be ordered by the court or magistrate to be delivered to the person who appears to the court or magistrate to be entitled thereto. (Replaced 17 of 1930 s. 8)

(2) Nothing in this section shall prevent any magistrate or the court from ordering the return to any person charged with an indictable offence, or to any person named by the magistrate or the court, of any property found in the possession of the person so charged or in the possession of any other person for him, or of any portion thereof, if the magistrate or the court is of opinion that such property or portion thereof can be returned consistently with the interests of justice and with the safe custody or otherwise of the person so charged. (Amended 5 of 1924 Schedule; 17 of 1930 s. 8)

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|----------|-----|-------------------------------------------------------------|------------|------------|
| Section: | 84A | Criminal bankruptcy orders against convicted persons | 39 of 1999 | 01/07/1997 |
|----------|-----|-------------------------------------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

Criminal bankruptcy orders

- (1) Where a person is convicted of an offence before the court and it appears to the court that-
 - (a) as a result of the offence, or of that offence taken together with any other relevant offences, loss or damage (not attributable to personal injury) has been suffered by one or more persons whose identity is known to the court; and
 - (b) the amount, or aggregate amount, of the loss or damage exceeds \$150000,
 the court may, in addition to dealing with the offender in any other way (but not if it makes a compensation order against him under section 73), make an order, to be called a criminal bankruptcy order, against him in respect of the offence or, as the case may be, that offence and any other relevant offences.
- (2) In subsection (1) "relevant offences" (有關罪行) means offences-
 - (a) of which the person in question is convicted in the same proceedings;
 - (b) which the court takes into consideration in determining its sentence; or
 - (c) which, whether or not they are specifically charged or admitted, a judge of the court is satisfied are proved by the evidence adduced by the prosecution in the same proceedings.
- (3) A criminal bankruptcy order shall specify-
 - (a) the amount of the loss or damage appearing to the court to have resulted from the offence or, if more than one, the total amount appearing to have resulted from all the offences;
 - (b) the person or persons appearing to the court to have suffered that loss or damage;
 - (c) the amount of that loss or damage which it appears to the court that person, or each of those persons, has suffered; and
 - (d) the date which appears to the court to be the earliest date on which the offence or, if more than one, the earliest of the offences, was committed.
- (4) A criminal bankruptcy order may be made against 2 or more offenders in respect of the same loss or damage.
- (5) The Chief Executive in Council may by order amend subsection (1)(b) by substituting, for the amount specified therein, such amount as may be specified in the order. (Amended 39 of 1999 s. 3)
- (6) In this section "court" (法庭) includes the District Court.

(Added 20 of 1979 s. 9)
[cf. 1973 c. 62 s. 39 U.K.]

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| Section: | 84B | Appeals in the case of criminal bankruptcy orders | 79 of 1995 | 01/07/1997 |
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- (1) No appeal shall lie against the making of a criminal bankruptcy order.
- (2) Where a person successfully appeals to the Court of Appeal against this conviction of an offence by virtue of which such an order was made, the Court of Appeal shall rescind the order unless he was convicted in the same proceedings of another offence of which he remains convicted and a criminal bankruptcy order could have been made

without reference to loss or damage caused by the first-mentioned offence; and where, accordingly, the Court of Appeal does not rescind the order it shall amend it by striking out so much of it as relates to loss or damage caused by the offence in respect of which the conviction is quashed.

(3) Where on an appeal by a person against his conviction of an offence by virtue of which a criminal bankruptcy order was made the Court of Appeal substitutes a verdict of guilty of another offence, the Court of Appeal shall-

- (a) rescind the order if a criminal bankruptcy order could not have been made against that person if he had originally been convicted of that other offence;
- (b) in any other case, amend the order so far as may be required in consequence of the substitution of a verdict of guilty of the other offence.

(4) Where the Court of Appeal rescinds or amends a criminal bankruptcy order, the rescission or amendment shall not take effect-

- (a) in any case until the expiration of 14 days from the date of the decision of the Court of Appeal;
- (b) if within that period an application is made for leave to appeal to the Court of Final Appeal against the Court of Appeal's decision on the appeal against conviction, so long as the appeal is pending; and (Amended 79 of 1995 s. 50)
- (c) if on such an appeal the conviction is restored by the Court of Final Appeal. (Amended 79 of 1995 s. 50)

(5) For the purposes of subsection (4) an appeal to the Court of Final Appeal shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and if no application for leave to appeal is made before the expiration of 14 days from the date of the decision of the Court of Appeal, the rescission or amendment shall take effect at the end of that time. (Amended 79 of 1995 s. 50)

(Added 20 of 1979 s. 9)
[cf. 1973 c. 62 s. 40 U.K.]

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| Section: | 85 | Transmission and effect of calendar of sentences | L.N. 362 of 1997 | 01/07/1997 |
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Calendar of sentences

(1) At the end of each month or as soon as conveniently may be thereafter, a copy of the calendar of sentences, under the hand of a judge and the seal of the court, shall be transmitted by the Registrar to the Chief Secretary for Administration. (Amended 63 of 1971 s. 5; L.N. 362 of 1997)

(2) A similar copy shall also be transmitted by the Registrar to the Commissioner of Correctional Services, who shall record the same, and such calendar shall be a sufficient warrant for receiving and detaining all prisoners named therein, and for carrying into effect all sentences set forth therein, other than sentences of death. (Amended 5 of 1924 s. 12; 25 of 1937 s. 3; G.N. 678 of 1938)

(3) In the event of the copy of a calendar kept by the Commissioner of Correctional Services being lost or destroyed, a fresh copy, signed and sealed as above mentioned, shall be delivered by the Registrar to the Commissioner of Correctional Services and shall have the same effect as the copy first given to that officer. (Amended 5 of 1924 s. 12; 25 of 1937 s. 3; G.N. 678 of 1938)

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| Section: | 86 | Delivery and effect of certificate of sentences after each day | | 30/06/1997 |
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(1) At the end of each day's sitting of the court, the Registrar shall deliver to the Commissioner of Correctional Services or his deputy a certificate, in Form 5 in Schedule 1, of all sentences passed by the court during that day. (Amended 50 of 1911 s. 4; 8 of 1912 s. 52; 5 of 1924 s. 12; 25 of 1937 s. 3; G.N. 678 of 1938; 63 of 1971 s. 6; 58 of 1994 s. 4)

(2) Such certificate shall be a sufficient warrant to the Commissioner of Correctional Services for receiving into his custody all prisoners named therein, and for carrying into effect all sentences described therein, other than sentences of death, until the calendar of sentences for that month is received by him. (Amended 5 of 1924 s. 12; 25 of 1937 s. 3; G.N. 678 of 1938; 63 of 1971 s. 6)

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| Section: | 87 | (Repealed 50 of 1991 s. 4) | | 30/06/1997 |
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Undergoing sentence, etc.

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| Section: | 88 | Filing of original documents | | 30/06/1997 |
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When a case has been finally disposed of, the Registrar shall file in his office or otherwise deal with as the court may direct, all the original documents in that case which have been transmitted to him by the committing magistrate.
(Replaced 6 of 1954 s. 8)

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| Part: | V | PARTIES | | 30/06/1997 |
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| Section: | 89 | Aiders, abettors and accessories | | 30/06/1997 |
|----------|----|-----------------------------------------|--|------------|

Any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence.

(Replaced 5 of 1971 s. 7)
[cf. 1861 c. 94 s. 8 U.K.; 1952 c. 55 s. 35 U.K.]

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|----------|----|------------------------------------------|------------------|------------|
| Section: | 90 | Penalties for assisting offenders | L.N. 362 of 1997 | 01/07/1997 |
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(1) If a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence, does, without lawful authority or reasonable excuse, any act with intent to impede his apprehension or prosecution shall be guilty of an offence.

(2) If on the trial of an indictment for an arrestable offence the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).

(3) A person guilty of an offence under subsection (1) shall be liable-

(a) on conviction on indictment, to imprisonment for 10 years; or

(b) on summary conviction, to a fine of \$5000 and to imprisonment for 2 years.

(4) No proceedings shall be instituted for an offence under subsection (1) except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)

(5) Nothing in subsection (4) shall prevent the arrest, or the issue of a warrant for the arrest, of any person for an offence under subsection (1), or the remand in custody or on bail of a person charged with such an offence.

(Replaced 5 of 1971 s. 7)
[cf. 1967 c. 58 s. 4 U.K.]

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|----------|----|------------------------------------------|------------------|------------|
| Section: | 91 | Penalties for concealing offences | L.N. 362 of 1997 | 01/07/1997 |
|----------|----|------------------------------------------|------------------|------------|

(1) If a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.

(2) If a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any person or property, or tending to show that he has information material to any police inquiry he shall be guilty of an offence and shall be liable on conviction to a fine of \$2000 and to imprisonment for 6 months.

(3) No prosecution shall be instituted for an offence under subsection (1) except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)

(4) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

(5) (Repealed 50 of 1991 s. 4)

(Replaced 5 of 1971 s. 7)
[cf. 1967 c. 58 s. 5 U.K.]

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| Section: | 92 | (Repealed 5 of 1971 s. 7) | | 30/06/1997 |
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| Section: | 93 | (Repealed 5 of 1971 s. 7) | | 30/06/1997 |
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| Section: | 94 | (Repealed 5 of 1971 s. 7) | | 30/06/1997 |
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| Part: | VI | MISCELLANEOUS | E.R. 1 of 2012 | 09/02/2012 |
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(*Format changes—E.R. 1 of 2012)

Note:

***The format of Part VI has been updated to the current legislative styles.**

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| Section: | 94A | Negative averments | E.R. 1 of 2012 | 09/02/2012 |
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Negative averments

- (1) It shall not be necessary in an indictment, charge, complaint or information alleging an offence to negative any exception or exemption from or qualification to the operation of the law creating the offence.
- (2) For the avoidance of doubt it is hereby declared that in criminal proceedings-
 - (a) it is not necessary for the prosecution to negative by evidence any matter to which this subsection applies; and
 - (b) the burden of proving the same lies on the person seeking to avail himself thereof.
- (3) This section applies to criminal proceedings in the District Court or a magistrate's court.
- (4) The matters to which subsection (2) applies are any licence, permit, certificate, authorization, permission, lawful or reasonable authority, purpose, cause or excuse, exception, exemption, qualification or other similar matter.

(Added 5 of 1971 s. 8)

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| Section: | 95 | Mode of stating ownership of property of partners, etc. | E.R. 1 of 2012 | 09/02/2012 |
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Ownership of property

- (1) Where, in any document in any proceeding under this Ordinance, it is necessary to state the ownership of any property which belongs to or is in possession of more than one person, it shall be sufficient to name one of such persons and to state such property to belong to the person so named and another or others, as the case may be.
- (2) Where, in any such document, it is necessary to mention, for any purpose whatsoever, any partners or other joint owners or possessors, it shall be sufficient to describe them in manner aforesaid.
- (3) The provisions of this section shall be construed to extend to all joint-stock companies and associations, societies, and trustees.

[cf. 1826 c. 64 s. 14 U.K.]

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|----------|----|--------------------------------------------------|----------------|------------|
| Section: | 96 | Mode of stating ownership of church, etc. | E.R. 1 of 2012 | 09/02/2012 |
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Where, in any such document, it is necessary to state the ownership of any church, chapel, or building set apart for religious worship, or of anything belonging to or being in the same, it shall be sufficient to state that such church, chapel, or building, or such thing is the property of the clergyman, or of the officiating minister, or of the church body or the church-wardens of such church, chapel or building, without its being necessary to name him or them.

(Amended 51 of 1911; 2 of 1912 Schedule)

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| Section: | 97 | Mode of stating ownership of public property | E.R. 1 of 2012 | 09/02/2012 |
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Where, in any such document, it is necessary to state the ownership of any work or building made, erected, or maintained, either in whole or in part, at the expense of the Government, or of any city, town, or village, or of anything belonging to or being in or used in relation to the same, or of anything provided for the use of the poor or of any public institution or establishment, or of any materials or tools provided or used for making, altering, or repairing any such work or building or any public road or highway, or of any other property whatsoever of the Government it shall be sufficient to state that such property is the property of the Government, or of the city, town, or village, as the case may be, without naming any of the inhabitants thereof.

(Amended 50 of 1911; 51 of 1911; 1 of 1912 Schedule; 2 of 1912 Schedule; 21 of 1912 s. 2)
[cf. 1826 c. 64 ss. 15 & 16 U.K.]

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| Section: | 98 | (Repealed 21 of 1970 Second Schedule) | | 30/06/1997 |
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| Section: | 99 | (Repealed 21 of 1970 Second Schedule) | | 30/06/1997 |
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| Section: | 100 | Abolition of presumption of coercion of married woman by husband | E.R. 1 of 2012 | 09/02/2012 |
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Coercion by husband

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished, but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

(Added 17 of 1930 s. 9)
[cf. 1925 c. 86 s. 47 U.K.]

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| Section: | 101 | Summary apprehension of offender in certain cases | E.R. 1 of 2012 | 09/02/2012 |
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Apprehension of offenders

- (1) (Repealed 5 of 1971 s. 9)
- (2) Any person may arrest without warrant any person whom he may reasonably suspect of being guilty of an arrestable offence. (Replaced 70 of 1967 s. 2)
- (3) Any person to whom any property is offered to be sold, pawned, or delivered, and who has reasonable ground to suspect that any arrestable offence has been or is about to be committed on or with respect to such property, may, and, if he can, shall, without warrant, apprehend the person offering the same and take possession of the property so offered. (Amended 70 of 1967 s. 2)
- (4) Every person who finds any person in possession of any property which he, on reasonable grounds, suspects to have been obtained by means of an arrestable offence may arrest such last-mentioned person without warrant and take possession of the property. (Amended 70 of 1967 s. 2)
- (5) Every person who arrests any person under any of the provisions herein contained shall (if the person making the arrest is not himself a police officer) deliver the person so arrested, and the property, if any, taken possession of by him, to some police officer in order that he may be conveyed as soon as reasonably may be before a magistrate, to be by him dealt with according to law, or himself convey him before a magistrate, as soon as reasonably may be, for that purpose. (Amended 51 of 1911; 2 of 1912 Schedule)
- (6) Nothing in this section shall affect the powers of apprehension conferred upon constables or other persons by any other enactment. (Amended 51 of 1911; 2 of 1912 Schedule)

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| Section: | 101A | Use of force in making arrest, etc. | E.R. 1 of 2012 | 09/02/2012 |
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- (1) A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.
- (2) Subsection (1) shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.

(Added 5 of 1971 s. 10)
[cf. 1967 c. 58 s. 3 U.K.]

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| Section: | 101B | (Repealed 49 of 1996 s. 4) | | 30/06/1997 |
|----------|------|-----------------------------------|--|------------|

Attempts, penalties, proceedings, etc.

(Added 89 of 1993 s. 32)

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|----------|------|--------------------------------------------------------|----------------|------------|
| Section: | 101C | Reference to an offence to include aiding, etc. | E.R. 1 of 2012 | 09/02/2012 |
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- (1) Where-
- (a) any Ordinance confers a power or imposes a duty which is to be exercised or performed consequent upon a conviction of an offence or in relation to a person who is detained in custody for an offence; or
 - (b) a reference is otherwise made in any Ordinance to an offence,
- then that power or duty or that reference shall be deemed to be also exercisable or performable consequent upon a conviction of, or include a reference to, as the case may be-
- (i) (Repealed 49 of 1996 s. 5)
 - (ii) aiding, abetting, counselling or procuring that offence;
 - (iii) (Repealed 49 of 1996 s. 5)
 - (iv) an incitement to commit that offence. (Added 64 of 1983 s. 2)
- (2) Subsection (1) shall apply to powers of imposing pecuniary penalties and of forfeiture, seizure and search, and to powers and discretions to cancel, suspend or refuse to issue any licence, permit or other authorization, but nothing in this section shall be deemed to authorize the imposition of any sentence of imprisonment otherwise than in default of payment of any pecuniary penalty which may be imposed by virtue of this section. (Amended 24 of 1993 s. 13)

Note:

This provision previously appeared in s. 82 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 101C of this Ordinance.

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| Section: | 101D | Acts constituting 2 or more offences | E.R. 1 of 2012 | 09/02/2012 |
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Where any act constitutes 2 or more offences, whether under the same Ordinance or otherwise, the offender shall be liable to be prosecuted and punished for any or all such offences but shall not be liable to be punished twice for the same offence.

Note:

This provision previously appeared in s. 83 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 101D of this Ordinance.

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|----------|------|-------------------------------------|----------------|------------|
| Section: | 101E | Liability of directors, etc. | E.R. 1 of 2012 | 09/02/2012 |
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Where a person by whom an offence under any Ordinance has been committed is a company and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company, or any person purporting to act as such director or officer, the director or other officer shall be guilty of the like offence.

(Amended 67 of 1975 s. 5)

Note:

This provision previously appeared in s. 84 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 101E of this Ordinance.

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| Section: | 101F | Penalties prescribed to be deemed maximum penalties | E.R. 1 of 2012 | 09/02/2012 |
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Where in any Ordinance a penalty is prescribed for an offence under that Ordinance, such provision shall imply-

- (a) that such offence shall be punishable upon conviction by a penalty not exceeding the penalty prescribed; and
- (b) if the amount of the fine is unspecified, that such offence shall, without prejudice to any law against excessive or unreasonable fines or assessments, be punishable by a fine of any amount.

Note:

This provision previously appeared in s. 86 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 101F of this Ordinance.

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| Section: | 101G | Statement of penalty at end of section | E.R. 1 of 2012 | 09/02/2012 |
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Where in any Ordinance a penalty is set out at the foot of any section or part thereof the same shall mean that any contravention of that section or part shall be an offence under such Ordinance punishable upon conviction by a penalty not exceeding the penalty so set out.

Note:

This provision previously appeared in s. 87 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 101G of this Ordinance.

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| Section: | 101H | Certain penalties may be cumulative | E.R. 1 of 2012 | 09/02/2012 |
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Where in any Ordinance more than one penalty is prescribed for an offence, the use of the word "and" shall mean that the penalties may be inflicted alternatively or cumulatively.

Note:

This provision previously appeared in s. 88 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 101H of this Ordinance.

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|----------|------|------------------------------------------|------------|------------|
| Section: | 101I | Punishment of indictable offences | 10 of 2008 | 09/05/2008 |
|----------|------|------------------------------------------|------------|------------|

(1) Subject to subsections (2) and (5), where a person is convicted of an offence which is an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment for 7 years and a fine. (Amended 12 of 1986 s. 2; 50 of 1991 s. 4(1); 49 of 1996 s. 6; 10 of 2008 s. 15)

(2) Where a person is convicted of-

- (a) (Repealed 12 of 1986 s. 2)
- (b) (Repealed 49 of 1996 s. 6)
- (c) incitement,

to commit an offence for which a maximum penalty is provided by any Ordinance, and no penalty is otherwise provided by any Ordinance for such conspiracy or incitement, he shall be liable to be sentenced to that maximum penalty. (Amended 12 of 1986 s. 2)

(3) (Repealed 24 of 1993 s. 14)

(4) (Repealed 49 of 1996 s. 6)

(5) Where a person is convicted of an offence of perverting the course of justice at common law, he shall be liable to be sentenced at the discretion of the court to imprisonment for any term and a fine of any amount, subject to any limitations as to the maximum term or terms of imprisonment and the maximum fine which such court may lawfully impose under the District Court Ordinance (Cap 336) or the Magistrates Ordinance (Cap 227). (Added 10 of 2008 s. 15)

(6) In subsection (5), "court" (法院) includes the District Court and a magistrate. (Added 10 of 2008 s. 15)
(Replaced 64 of 1983 s. 3)

Note:

This provision previously appeared in s. 90 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 1011 of this Ordinance.

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| Section: | 101J | Amendment of penalty | E.R. 1 of 2012 | 09/02/2012 |
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- (1) Subject to subsection (2), where an act or omission is an offence and the penalty for the offence is amended between the time a person commits an offence and he is convicted of the offence, the offender is liable to the penalty prescribed at the time of the offence.
 - (2) If the amended penalty is a lighter penalty, the offender is liable to the lighter penalty.
- (Added 89 of 1993 s. 33)

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| Section: | 102 | Disposal of property connected with offences | E.R. 1 of 2012 | 09/02/2012 |
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Disposal of property

- (1) Where-
 - (a) any property has come into the possession of a court, the police or the Customs and Excise Service in connection with any offence;
 - (b) it appears to a court that an offence has been committed in respect of any property in the possession of the court, the police or the Customs and Excise Service; or
 - (c) it appears to a court that any property in the possession of the court, the police or the Customs and Excise Service has been used in the commission of an offence,then, whether or not the offence was committed or appears to have been committed in Hong Kong, a court may dispose of such property in the manner provided in this section. (Amended 46 of 1977 s. 16)
- (2) Of its own motion or upon application, a court may-
 - (a) in respect of property to which subsection (1)(a) applies-
 - (i) make an order for the delivery of any such property to the person who appears to the court to be entitled thereto;
 - (ii) where the person so entitled is unknown or cannot be found, make an order that the property be sold or retained in the possession of the court, the police or the Customs and Excise Service; or (Amended 46 of 1977 s. 16; 13 of 1995 s. 56)
 - (iii) if the property is of no value, order that the property be destroyed; and (Added 13 of 1995 s. 56)
 - (b) in respect of property to which subsection (1)(b) or (c) applies-
 - (i) deal with such property under paragraph (a) in the like manner as property to which subsection (1)(a) applies; or
 - (ii) make an order for the forfeiture of the property.
- (3) Save where the property is perishable, no order for the delivery, sale or forfeiture of property shall be made under subsection (2) unless the court is satisfied that the property will not be required as an exhibit in any proceedings before a court.
- (4) Where under subsection (2) a court orders the sale or retention of property, and no person establishes a claim to the property or the proceeds of sale thereof within 6 months from the date such order is made, the property or the proceeds of sale shall become the property of the Government. (Amended 39 of 1999 s. 3)
- (5) An order made under subsection (2), other than an order for the retention of property, shall not, except when the property is a live animal, bird or fish or is perishable, be carried out until the period allowed for making an appeal against the order has expired or, where such an appeal is duly made, until the appeal has been finally determined or abandoned.
- (6) Where by any other Ordinance it is provided that any particular property or class of property shall or may be forfeited, destroyed or disposed of, then the provisions of such Ordinance shall prevail.
- (7) The power conferred on a court by subsection (2)(b)(ii) to order the forfeiture of property shall not apply in respect of immovable property or any aircraft, motor vehicle or ship.
- (8) In this section *court* (法院、法庭) includes a magistrate.

(Replaced 70 of 1967 s. 4)

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| Section: | 103 | Seizure of things intended for use in commission of indictable offence | E.R. 1 of 2012 | 09/02/2012 |
|----------|-----|-------------------------------------------------------------------------------|----------------|------------|

Any magistrate or the court may order the seizure of any instruments, materials or things which there is reason to believe are provided or prepared, or being prepared, with a view to the commission of any indictable offence, and the same may be dealt with under section 102 as though it were property to which subsection (1)(c) of that section applies.
(Amended 50 of 1911 s. 4; 5 of 1924 s. 8; 70 of 1967 s. 5)

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| Section: | 104 | Search warrant | E.R. 1 of 2012 | 09/02/2012 |
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An order made under section 103 may be enforced by a search warrant.
(Amended 50 of 1911 s. 4; 5 of 1924 s. 8; 70 of 1967 s. 6)

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| Section: | 105 | Report of property found upon person apprehended | E.R. 1 of 2012 | 09/02/2012 |
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If, on the apprehension of any person charged with an indictable offence, any property is taken from him, a report shall be made by the police to the magistrate or the court of the fact of such property having been taken from such person and of the particulars of such property.

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| Section: | 106 | Application of money found upon person apprehended | E.R. 1 of 2012 | 09/02/2012 |
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If, on the apprehension of any person charged with an indictable offence, any money is taken from him, the court may, in its discretion, in case of the conviction of such person, order such money or any part thereof to be applied to the payment of any costs, or costs and compensation, directed to be paid by such person.

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| Section: | 106A | Presumption and determination of age | E.R. 1 of 2012 | 09/02/2012 |
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Presumption and determination of age

- (1) Where the age of any person at any time is material for the purposes of any provision in this Ordinance or any other Ordinance regulating the powers of a court in relation to offenders, 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.
- (2) In this section, *court* (法庭) includes the District Court and a magistrate.

(Added 33 of 1979 s. 2)
[cf. 1948 c. 58 s. 80 (3) U.K.]

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|----------|-----|---------------------------------------------------------|----------------|------------|
| Section: | 107 | Power to permit conditional release of offenders | E.R. 1 of 2012 | 09/02/2012 |
|----------|-----|---------------------------------------------------------|----------------|------------|

Probation of first offenders

- (1) Where any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding 3 years, as may be specified in the order. (Amended 12 of 1960 s. 3)
- (2) The court may, where it makes an order under this section, further order that the offender shall pay such costs of the proceedings as the court thinks reasonable. (Amended 48 of 1972 s. 4)

(Replaced 27 of 1937 Schedule)
[cf. 1907 c. 17 s. 1 (2) & (3) U.K.]

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|----------|-----|-------------------------------------------------------------------------------|----------------|------------|
| Section: | 108 | Provision in case of offender failing to observe conditions of release | E.R. 1 of 2012 | 09/02/2012 |
|----------|-----|-------------------------------------------------------------------------------|----------------|------------|

- (1) In any such case the court or a magistrate, if satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, may issue a warrant for his apprehension, or may, if it or he thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court as may be specified in the summons.
- (2) The offender, when apprehended, shall, if not brought forthwith before the court, be brought before a magistrate.
- (3) The magistrate before whom an offender on apprehension is brought, or before whom he appears in pursuance of such summons as aforesaid, may remand him in custody or on bail until he can be brought before the court.
- (4) An offender so remanded to custody may be committed during remand to a prison, or, if he is a child or young person under the age of 16, to a place of detention provided under the Juvenile Offenders Ordinance (Cap 226).
- (5) The court, on being satisfied that a person bound by his recognizance to appear for conviction and sentence has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilty, convict and sentence him for the original offence.

(Replaced 2 of 1937 Schedule)
[cf. 1907 c. 17 s. 6 U.K.]

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| Section: | 109 | Conditions as to abode of sureties | E.R. 1 of 2012 | 09/02/2012 |
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The court, before directing the release of an offender under section 107, shall be satisfied that the sureties, if any, have fixed places of abode or regular occupation in Hong Kong.

(Amended 39 of 1999 s. 3)
[cf. 1887 c. 25 s. 3 U.K.]

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| Section: | 109A | Restriction on imprisonment of persons between 16 and 21 years of age | E.R. 1 of 2012 | 09/02/2012 |
|----------|------|------------------------------------------------------------------------------|----------------|------------|

Imprisonment of young offenders

- (1) No court shall sentence a person of or over 16 and under 21 years of age to imprisonment unless the court is of opinion that no other method of dealing with such person is appropriate; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to the character of such person and his physical and mental condition.
- (1A) This section shall not apply to a person who has been convicted of any offence which is declared to be an excepted offence by Schedule 3. (Added 5 of 1971 s. 10A. Amended 58 of 1994 s. 4)
- (2) In this section *court* (法庭) includes the District Court and a magistrate. (Amended 35 of 1976 s. 11)

(Added 66 of 1967 Schedule)
[cf. 1948 c. 58 s. 17 (2) U.K.]

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|----------|-------|---------------------------|----------------|------------|
| Section: | 109AA | Supervision orders | E.R. 1 of 2012 | 09/02/2012 |
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Supervision of young prisoners on release from prison

- (1) In the case of a person who, before attaining the age of 25 years, is released from imprisonment or completes after such release a period of supervision ordered under section 7(2) of the Prisoners (Release under Supervision) Ordinance (Cap 325), the Commissioner of Correctional Services shall, subject to subsections (1A) and (2) of this section, make a supervision order under this section if the sentence of imprisonment which that person has served, or in respect of which the order under section 7(2) of that Ordinance was made, was for a term-
 - (a) of 3 months or more;
 - (b) other than in default of payment of a sum of money; and
 - (c) which that person began to serve-

- (i) before he attained the age of 21 years; and
 - (ii) after 1 May 1980. (Replaced 59 of 1987 s. 21)
- (1A) No supervision order shall be made under subsection (1) on the release of a person from imprisonment where he is so released subject to supervision under section 7(1) of the Prisoners (Release under Supervision) Ordinance (Cap 325). (Added 59 of 1987 s. 21)
- (2) No supervision order shall be made under subsection (1) on the release of a person in respect of whom-
- (aa) a removal order made under section 19 of the Immigration Ordinance (Cap 115), or deportation order made under section 20 of that Ordinance, is in force; (Added 6 of 1990 s. 7)
 - (a) there is revived upon his release a detention order, supervision order, or recall order, that was suspended under section 6A of the Drug Addiction Treatment Centres Ordinance (Cap 244); or (Amended 6 of 1990 s. 7)
 - (b) there is revived upon his release a sentence of detention in a training centre, a supervision notice, or an order of recall, that was suspended under section 5A of the Training Centres Ordinance (Cap 280). (Amended 6 of 1990 s. 7)
- (3) A supervision order under subsection (1) shall contain conditions that the person against whom it is made shall-
- (a) subject to subsections (4) and (5), be subject to supervision by such organization or person as may be specified therein for a period commencing on the date of his release from prison and expiring not more than 12 months thereafter; and
 - (b) while under supervision, comply with such requirements, including requirements as to residence, as may be specified therein.
- (4) The Commissioner of Correctional Services may at any time cancel or vary the terms of a supervision order under subsection (1).
- (5) A supervision order under subsection (1) shall-
- (a) be suspended in its operation for any period during which the person against whom it was made-
 - (i) is detained pursuant to a recall order under section 109AB; or
 - (ii) is serving a term of imprisonment of less than 3 months, but shall not by reason of any such suspension expire more than 12 months after the date on which it was made;
 - (b) cease to have effect where the person against whom it was made-
 - (i) is ordered to serve a term of imprisonment of 3 months or more;
 - (ii) is ordered to be detained in an addiction treatment centre under the Drug Addiction Treatment Centres Ordinance (Cap 244);
 - (iii) is ordered to be detained in a training centre under the Training Centres Ordinance (Cap 280);
 - (iv) is made the subject of a probation order under section 3 of the Probation of Offenders Ordinance (Cap 298); or
 - (v) attains the age of 26.
- (6) A person who fails to comply with a supervision order under subsection (1) shall be guilty of an offence and liable on conviction to a fine of \$5000 and to imprisonment for 12 months.

(Added 14 of 1980 s. 2)

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| Section: | 109AB | Recall orders | E.R. 1 of 2012 | 09/02/2012 |
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- (1) Where the Commissioner of Correctional Services is satisfied that a person against whom a supervision order under subsection (1) of section 109AA is in force has failed to comply with the order, he may, if such person earned remission under rule 69 of the Prison Rules (Cap 234 sub. leg. A) in respect of the period of imprisonment which ended on his release from prison referred to in that subsection, make a recall order against him requiring him to return to prison.
- (2) Subject to subsections (3) and (4), a person against whom a recall order is made under subsection (1) may be detained in prison for a period equivalent to the amount of the remission that was earned by him.
- (3) The Commissioner of Correctional Services may at any time release a person who is detained pursuant to a recall order under subsection (1).
- (4) A recall order under subsection (1) shall cease to have effect where the person against whom it was made-
 - (a) is ordered to serve a term of imprisonment;
 - (b) is ordered to be detained in an addiction treatment centre under the Drug Addiction Treatment Centres

Ordinance (Cap 244);

- (c) is ordered to be detained in a training centre under the Training Centres Ordinance (Cap 280);
- (d) is made the subject of a probation order under section 3 of the Probation of Offenders Ordinance (Cap 298);
or
- (e) attains the age of 26.

(Added 14 of 1980 s. 2)

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|----------|-------|---------------------------------------------------|----------------|------------|
| Section: | 109AC | Arrest etc. of persons unlawfully at large | E.R. 1 of 2012 | 09/02/2012 |
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- (1) If a person against whom a recall order is made under section 109AB(1) is at large at the time it is made, he shall be deemed to be unlawfully at large.
- (2) A police officer may, if he reasonably suspects that a recall order under section 109AB(1) is in force against a person and that that person is unlawfully at large, arrest him and take him to a prison.
- (2A) An officer of the Correctional Services Department specified in a supervision order made under section 109AA in respect of a person against whom a recall order has been made under section 109AB(1) or such other officer of that Department as the Commissioner of Correctional Services may substitute for the officer so specified by a variation of the terms of that supervision order may, if he reasonably suspects that that recall order is in force against that person and that that person is unlawfully at large, arrest him and take him to a prison. (Added 14 of 1988 s. 2)
- (3) Any period during which a person against whom a recall order under section 109AB(1) is in force is unlawfully at large shall be disregarded in calculating the period for which he may be detained under the recall order, unless the Chief Executive otherwise directs in a particular case. (Amended 39 of 1999 s. 3)

(Added 14 of 1980 s. 2)

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| Section: | 109B | Suspended sentences of imprisonment | E.R. 1 of 2012 | 09/02/2012 |
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Suspended sentences

- (1) A court which passes a sentence of imprisonment for a term of not more than 2 years for an offence, other than an excepted offence, may order that the sentence shall not take effect unless, during a period specified in the order, being not less than 1 year nor more than 3 years from the date of the order, the offender commits in Hong Kong another offence punishable with imprisonment and thereafter a court having power to do so orders under section 109C that the original sentence shall take effect. (Amended 39 of 1999 s. 3)
- (2) A court which passes a suspended sentence on any person for an offence shall not make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.
- (3) On passing a suspended sentence the court-
 - (a) may impose such conditions as it thinks fit;
 - (b) shall explain to the offender in ordinary language his liability under section 109C if during the operational period he commits an offence punishable with imprisonment or breaks any condition imposed under paragraph (a).
- (4) If a court has passed a suspended sentence on any person, and that person is subsequently sentenced to detention in a training centre, he shall cease to be liable to be dealt with in respect of the suspended sentence unless the subsequent sentence or any conviction or finding on which it was passed is quashed on appeal.
- (5) Subject to any provision to the contrary contained in this or any other Ordinance-
 - (a) a suspended sentence which has not taken effect under section 109C shall be treated as a sentence of imprisonment for the purposes of all Ordinances except any Ordinance which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment; and
 - (b) where a suspended sentence has taken effect under section 109C, the offender shall be treated for the purposes of the said excepted Ordinances as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under section 109C expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.

(Added 5 of 1971 s. 11)

[cf. 1967 c. 80 s. 39 U.K.]

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| Section: | 109C | Power of court on conviction of further offence to deal with suspended sentence | E.R. 1 of 2012 | 09/02/2012 |
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) If an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence or if, during such period, he breaks a condition imposed under section 109B(3)(a) and either he is so convicted by or before a court having power under section 109D to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such a court, then, unless the sentence has already taken effect, that court shall consider his case and deal with him by one of the following methods-
 - (a) the court may order that the suspended sentence shall take effect with the original term unaltered;
 - (b) it may order that the sentence shall take effect with the substitution of a greater or lesser term for the original term;
 - (c) it may by order vary the original order under section 109B(1) by substituting for the period specified therein a period expiring not later than 3 years from the date of the variation; or
 - (d) it may make no order with respect to the suspended sentence,
 and a court shall make an order under paragraph (a) of this subsection unless the court is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, and where it is of that opinion the court shall state its reasons.
- (2) Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the term of such sentence shall commence on the expiration of another term of imprisonment passed on the offender by that or another court, unless the court is of opinion that, by reason of special circumstances, the sentence should take effect immediately.
- (3) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Court of First Instance any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the court and not by the verdict of a jury. (Amended 25 of 1998 s. 2)
- (4) Where a court deals with an offender under this section in respect of a suspended sentence the clerk of the court shall notify the clerk of the court which passed the sentence of the method adopted.
- (5) Where on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the clerk of the court shall record that fact.
- (6) For the purposes of any Ordinance conferring rights of appeal in criminal cases any such order made by a court shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

(Added 5 of 1971 s. 11)
[cf. 1967 c. 80 s. 40 U.K.]

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| Section: | 109D | Court by which suspended sentence is to be dealt with | E.R. 1 of 2012 | 09/02/2012 |
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) An offender may be dealt with in respect of a suspended sentence by any court before which he appears or is brought.
- (2) Where an offender is convicted by a magistrate of an offence punishable with imprisonment and the magistrate is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Court of First Instance or the District Court- (Amended 25 of 1998 s. 2)
 - (a) the magistrate may, if he thinks fit, commit him in custody or on bail to the court having power to deal with him in respect of the suspended sentence; and
 - (b) if he does not, shall give written notice of the conviction to the clerk of the court by which the suspended sentence was passed.
- (3) The court to which a magistrate commits an offender under subsection (2) shall be the court by which the suspended sentence was passed, except that the magistrate may commit him to some other court if, having regard to the time when and the place where he is likely to be dealt with in respect of the suspended sentence by

the court by which that sentence was passed, it would be more convenient that he should be dealt with by that other court.

- (4) For the purpose of this section and section 109E a suspended sentence passed on an offender on appeal shall be treated as having been passed by the court by which he was originally sentenced.

(Added 5 of 1971 s. 11)
[cf. 1967 c. 80 s. 41 U.K.]

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| Section: | 109E | Discovery of further offences | E.R. 1 of 2012 | 09/02/2012 |
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- (1) If it appears to a judge, a District Judge or a magistrate that an offender has been convicted in Hong Kong of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the judge, District Judge or magistrate may issue a summons requiring the offender to appear at the place and time specified therein, or may, subject to the following provisions of this section, issue a warrant for his arrest. (Amended 39 of 1999 s. 3)
- (2) A magistrate shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- (3) A summons or warrant issued under this section shall direct the offender to appear or to be brought before the court by which the suspended sentence was passed, but if a warrant is so issued requiring him to be brought before the Court of First Instance or the District Court and he cannot forthwith be brought before that court because that court is not being held, the warrant shall have effect as if it directed him to be brought before a magistrate and the magistrate shall commit him in custody or on bail to the Court of First Instance or District Court. (Amended 25 of 1998 s. 2)

(Added 5 of 1971 s. 11)
[cf. 1967 c. 80 s. 42 U.K.]

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| Section: | 109F | Breach of condition | E.R. 1 of 2012 | 09/02/2012 |
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If, during the operational period of a suspended sentence, an offender is guilty of the breach of any condition imposed on him by a court under section 109B(3)(a), he shall be liable to be dealt with as if, during such period, he had been convicted of an offence punishable with imprisonment.

(Added 5 of 1971 s. 11)

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| Section: | 109G | Interpretation | E.R. 1 of 2012 | 09/02/2012 |
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In sections 109B, 109C, 109D, 109E and 109F-

court (法庭) includes the District Court and a magistrate; (Amended 35 of 1976 s. 12)

excepted offence (例外罪行) means an offence declared to be an excepted offence by Schedule 3; (Amended 58 of 1994 s. 4)

operational period (實施期間), in relation to a suspended sentence, means the period specified in an order made under section 109B(1).

(Added 5 of 1971 s. 11)

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| Section: | 109H | (Repealed 74 of 1976 s. 2) | | 30/06/1997 |
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|----------|------|---------------------------------------------|----------------|------------|
| Section: | 109I | Power to bind over to keep the peace | E.R. 1 of 2012 | 09/02/2012 |
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A judge, a District Judge or a magistrate shall have, as ancillary to his jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring him to enter into his own recognizances or to find sureties or both, and committing him to prison if he does not comply.

(Added 47 of 1997 s. 10)
[cf. 1968 c. 69 s. 1 U.K.]

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| Section: | 110 | Preparation of list of persons making default on recognizance | E.R. 1 of 2012 | 09/02/2012 |
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Enforcing recognizance

- (1) The Registrar shall, once a month, make out a list or lists of persons bound by recognizance to appear or to do any other thing, or who have been bound for the appearance of any other person or for his doing any other thing, and who have made default, or whose principal, or other person for whom they are so bound, has made default, to appear or to do such other thing; and the Registrar shall, if he is able to do so, state the cause why such default has been made. (Amended 50 of 1911; 1 of 1912 Schedule; 17 of 1931 s. 2; 63 of 1971 s. 7)
- (2) The list or lists so made out shall be examined, and, if necessary, corrected and signed by the judge, and shall be delivered by the Registrar to the bailiff. (Amended 17 of 1931 s. 2)

[cf. 1826 c. 64 s. 31 U.K.]

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|----------|-----|-----------------------------------|----------------|------------|
| Section: | 111 | Issue of writ of execution | E.R. 1 of 2012 | 09/02/2012 |
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A writ of execution shall be issued from the Registrar's office against every such person who is liable on a recognizance in respect of any such default, and shall be delivered to the bailiff; and such writ shall be the authority of the bailiff for levying and recovering such forfeited recognizance on the real and personal property of such person and for taking into custody the body of such person, in case sufficient real or personal property is not found whereon levy may be made.

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| Section: | 112 | Apprehension and detention of person making default where recognizance is unsatisfied | E.R. 1 of 2012 | 09/02/2012 |
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Every person who is arrested under the provisions of section 111 shall be committed to prison and be there kept until ordered to appear before the court on such day as the Registrar may appoint, there to abide the decision of the court, unless in the meantime the forfeited recognizance, or a sum of money in lieu or satisfaction thereof, is paid, together with all costs and expenses in consequence of his arrest and detention:

Provided that if any person so arrested and imprisoned gives to the bailiff good and sufficient bail for his appearance before the court on the appointed day, to abide the decision of the court, and for the payment of the forfeited recognizance or a sum of money in lieu or satisfaction thereof, together with such costs as may be awarded by the court, then it shall be lawful for the bailiff, and he is hereby required, forthwith to cause such person to be discharged out of custody.

(Amended 50 of 1911 s. 4; 63 of 1971 s. 8)

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|----------|-----|------------------------------------------------------------------------|----------------|------------|
| Section: | 113 | Failure of such person when released to appear on appointed day | E.R. 1 of 2012 | 09/02/2012 |
|----------|-----|------------------------------------------------------------------------|----------------|------------|

If such person fails to appear before the court on the appointed day in pursuance of his undertaking in that behalf, the court may order that a writ of execution be issued from the Registrar's office against the surety or sureties of the person so bound as aforesaid, and such writ shall be delivered to the bailiff, who shall proceed as therein directed: (Amended 63 of 1971 s. 9)

Provided that the court may, in its discretion, order the discharge of the whole or any part of the forfeited recognizance or of the sum of money paid or to be paid in lieu or satisfaction thereof.

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| Section: | 113A | Power of court to fine | E.R. 1 of 2012 | 09/02/2012 |
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General power to fine

- (1) Where a person is convicted of any offence, other than an offence for which the sentence is fixed by law, the court may, if it is not precluded from sentencing him by the exercise of some other power (such as the power to make a probation order under section 3 of the Probation of Offenders Ordinance (Cap 298)), impose a fine in lieu of or in addition to dealing with such person in any other way in which the court has power to deal with him,

subject however to any enactment requiring him to be dealt with in a particular way.

- (2) If the court imposes a fine on any person under subsection (1), the court may make an order-
 - (a) allowing time for the payment of the amount of the fine; and
 - (b) directing payment of that amount by instalments of such amounts and on such dates respectively as may be specified in the order. [cf. 1973 c. 62 s. 31 U.K.]
- (3) If the court imposes a fine on any person under subsection (1), the court shall make an order fixing a term of imprisonment not exceeding 12 months which that person is to undergo if any sum which he is liable to pay is not duly paid.
- (4) In this section, *court* (法庭) includes the District Court.

(Added 50 of 1981 s. 4)
[cf. 1973 c. 62 s. 30 (1) U.K.]

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|----------|------|-------------------------------------|----------------|------------|
| Section: | 113B | Levels of fines for offences | E.R. 1 of 2012 | 09/02/2012 |
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- (1) Where an Ordinance provides for a fine for an offence by reference to a level, the fine applicable for the offence is the amount shown for that level in Schedule 8.
- (2) Where a provision in an Ordinance specifies a level of fine that may be prescribed under subsidiary legislation, the level specified is a reference to the level as set out in Schedule 8.
- (3) The Chief Executive in Council may by regulation amend the amounts set out in Schedule 8 to reflect his opinion of the effect of inflation on the value of the amounts set out in the Schedule since the date when the Schedule came into operation or since the date that the amounts in the Schedule were last amended. (Amended 39 of 1999 s. 3)

(Added 58 of 1994 s. 2)

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|----------|------|-----------------------------------------|----------------|------------|
| Section: | 113C | Provision for fines for offences | E.R. 1 of 2012 | 09/02/2012 |
|----------|------|-----------------------------------------|----------------|------------|

- (1) In this section, *excluded fine* (非規定罰款) means-
 - (a) a fine of an amount greater than the maximum amount set out in the table in subsection (2);
 - (b) a daily fine or daily penalty; and
 - (c) a fixed penalty within the meaning of the Housing Ordinance (Cap 283), the Fixed Penalty (Traffic Contraventions) Ordinance (Cap 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap 240), the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap 570), the Fixed Penalty (Smoking Offences) Ordinance (Cap 600) or the Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap 611). (Amended 24 of 2001 s. 20; 26 of 2008 s. 19; 3 of 2011 s. 33)
- (2) Where an Ordinance provides for a fine, other than an excluded fine, for an offence expressed as an amount of money, the fine shall be deemed to be a fine at the level relevant to the amount of the fine in the following table-

TABLE

| Fine | Level applied |
|---------------------|---------------|
| \$1 to \$2000 | Level 1 |
| \$2001 to \$5000 | Level 2 |
| \$5001 to \$10000 | Level 3 |
| \$10001 to \$25000 | Level 4 |
| \$25001 to \$50000 | Level 5 |
| \$50001 to \$100000 | Level 6 |

- (3) Where a provision in an Ordinance specifies a fine, other than an excluded fine, expressed as an amount of money that may be prescribed under subsidiary legislation, the fine shall be deemed to be a fine at the level relevant to the amount of the fine in the table in subsection (2).
- (4) The Chief Executive in Council may by regulation amend the amounts set out in the table in subsection (2) to reflect his opinion of the effect of inflation on the value of the amounts set out in the table since the date that the amounts in the table were last amended. (Amended 39 of 1999 s. 3)

(5) (Repealed 13 of 2011 s. 36)

(Added 58 of 1994 s. 2)

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|----------|-----|-------------------------------------------------------------------------|----------------|------------|
| Section: | 114 | Powers of court in relation to fines and forfeited recognizances | E.R. 1 of 2012 | 09/02/2012 |
|----------|-----|-------------------------------------------------------------------------|----------------|------------|

Fines, forfeitures, and contempts

- (1) Subject to the provisions of this section, where a fine is imposed by, or a recognizance is forfeited before, a court, an order may be made in accordance with the provisions of this section-
 - (a) allowing time for the payment of the amount of the fine or the amount due under the recognizance;
 - (b) directing payment of the said amount by instalments of such amounts and on such dates respectively as may be specified in the order;
 - (c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered;
 - (d) in the case of a recognizance, discharging the recognizance or reducing the amount due thereunder. (Amended 35 of 1976 s. 13)
- (2) Where any person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment, the court may order that any term of imprisonment fixed under subsection (1)(c) shall not begin to run until after the end of the first-mentioned term of imprisonment.
- (3) The power conferred by this section to discharge a recognizance or reduce the amount due thereunder shall be in addition to the powers conferred by any other enactment relating to the discharge, cancellation, mitigation or reduction of recognizances or sums forfeited thereunder.
- (4) Where any such order as aforesaid is made directing payment by instalments of a fine or the amount due under a recognizance, and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.
- (5) Where any such order as aforesaid is made fixing a term of imprisonment in default of payment of a fine or the amount due under a recognizance, then-
 - (a) on payment of the fine or the said amount to the officer responsible for the recovery thereof, or (if the person in respect of whom the order was made is in prison) to the Commissioner of Correctional Services, the order shall cease to have effect; and, if the said person is in prison and is not liable to be detained for any other cause, he shall forthwith be discharged;
 - (b) on payment to the said officer or to the Commissioner of Correctional Services of a part of the fine or of the amount due under the recognizance, the total number of days in the term of imprisonment shall be reduced proportionately, that is to say, by such number of days as bears to the said total number of days less one day the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine or the amount due under the recognizance.
- (6) In reducing the number of days in the term of imprisonment under subsection (5)(b), the term of such imprisonment to be reduced shall be deemed, at any given time, to have been reduced by any period of remission earned under the Prison Rules (Cap 234 sub. leg. A).
- (7) For the purposes of this section, *court* (法庭) includes the District Court. (Amended 35 of 1976 s. 13)

(Replaced 12 of 1960 s. 4)

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| Section: | 115 | Power to grant conditional pardon | E.R. 1 of 2012 | 09/02/2012 |
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Pardon

A magistrate or the court may, with the consent in writing of the Secretary for Justice, order that a pardon be granted to any person accused or suspected of, or committed for trial for any indictable offence, on condition of his giving full and true evidence on any preliminary inquiry or any trial; and such order shall have effect as a pardon by the Chief Executive, but may be withdrawn by the magistrate or the court on proof that such person has withheld evidence or given false evidence.

(Amended 50 of 1911; 1 of 1912 Schedule; L.N. 362 of 1997; 39 of 1999 s. 3)

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| Section: | 116 | Effect of pardon | E.R. 1 of 2012 | 09/02/2012 |
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In every case where either a free or conditional pardon is granted to any person, the discharge of the offender in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the same effect as a pardon has in the like cases under the public seal.

(Amended 50 of 1911; 21 of 1912 s. 2)
[cf. 1827 c. 28 s. 13 U.K.]

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| Section: | 117 | Recording of pardon | E.R. 1 of 2012 | 09/02/2012 |
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- (1) Whenever the Chief Executive is pleased to grant to any offender a pardon under the public seal, the Registrar shall be bound, on the direction of the Chief Executive, to record such pardon in the book to be kept by him for that purpose and to endorse such pardon with the word "Recorded" and with his signature. (Amended 50 of 1911; 21 of 1912 s. 2; 39 of 1999 s. 3)
- (2) Every such pardon shall be valid and effectual for all purposes whatsoever, and it shall be the duty of all courts, judges, magistrates, officers, and others, on production thereof, to take notice of and to give effect to the same. (Amended 24 of 1993 s. 12)

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| Section: | 118 | Saving of prerogative of mercy | E.R. 1 of 2012 | 09/02/2012 |
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Subject as hereinbefore provided, nothing in this Ordinance shall affect the power vested in the Chief Executive to pardon offences or commute penalties.

(Amended 50 of 1911; 1 of 1912 Schedule; 39 of 1999 s. 3)

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| Section: | 119 | Prohibition of proceedings in error | E.R. 1 of 2012 | 09/02/2012 |
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Error, etc.

No proceeding in error shall be taken upon any trial under the provisions of this Ordinance.

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| Section: | 120 | Interpretation of reference to information | E.R. 1 of 2012 | 09/02/2012 |
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Where, in any Ordinance, or in any rules, regulation, by-law, or order, or in any other document of whatever kind, reference is made to an information in the court in respect of an indictable offence, such reference shall, unless the context otherwise requires, be taken as applying to an indictment in the court.

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| Section: | 121 | Repeal of rules and orders | E.R. 1 of 2012 | 09/02/2012 |
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All rules and orders of the court which are inconsistent with the provisions of this Ordinance shall and the same are hereby declared to be of no force or effect whatsoever.

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| Section: | 122 | Power to exclude public from criminal courts | E.R. 1 of 2012 | 09/02/2012 |
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- (1) Any judge, District Judge or magistrate may, if he considers it necessary in the interests of justice or public order or security, direct that, save as provided in subsection (3) or with the permission of a public officer acting under his direction, no person shall be in the court in which such judge, District Judge or magistrate sits in the exercise of his criminal jurisdiction or in the building, or within the curtilage of the building, in which that court sits.
- (2) The Chief Justice may, if he considers it necessary in the interests of justice or public order or security, direct that, save as provided in subsection (3) or with the permission of a public officer acting under his direction, no person shall be in any court hearing any criminal proceedings or in any building, or within the curtilage of any building, in which that court sits.
- (3) Subsections (1) and (2) shall not apply to a person who is required to be in any such court or any such building by virtue of his office or profession or an order of a court or who is otherwise required for the purposes of any

proceedings, whether civil or criminal, to be in any such court or any such building or to any one person representing a newspaper or news agency.

- (4) Any person who contravenes any direction of a judge, District Judge or magistrate under subsection (1) or of the Chief Justice under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$5000 and to imprisonment for 6 months and may be forcibly removed by any police officer from the court or building or the curtilage of the building, as the case may be.
- (5) Notwithstanding any other law, the exclusion of persons from any court or any building by or in accordance with a direction of a judge, District Judge or magistrate under subsection (1) or of the Chief Justice under subsection (2) shall not affect the validity of the proceedings of that court or of any court which sits in that building as the case may be.
- (6) Nothing in subsection (1) or (2) shall derogate from or affect the power of any judge, District Judge or magistrate to order the exclusion from the court in which he sits of members of the public where the proper administration of justice so requires.
- (7) In this section *court* (法庭) includes the District Court and a magistrate. (Amended 35 of 1976 s. 14)

(Added 37 of 1968 s. 2)

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| Section: | 123 | Criminal proceedings may be held in camera and non-disclosure of identity of witnesses in certain cases | E.R. 1 of 2012 | 09/02/2012 |
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Notwithstanding any other law but subject to the provisions of the Hong Kong Bill of Rights Ordinance (Cap 383), if it appears to a court that it is necessary so to do in the interests of justice or public order or security, the court may order that the whole of the proceedings before it in respect of any offence or, having regard to the reason for making such an order, any appropriate part of such proceedings shall take place in a closed court. (Replaced 68 of 1995 s. 10)
- (1A) (a) Notwithstanding the making of an order under subsection (1) in respect of certain proceedings and subject to paragraph (b), such an order shall not apply to the following matters in those proceedings-
 - (i) the arraignment of the accused person;
 - (ii) the reading of the summary of facts with respect to the accused person;
 - (iii) the delivery of verdict by a jury or a court (as the case may be);
 - (iv) the pronouncement of sentence by a court.
 (b) Where the court is satisfied that in the special circumstances of the case, the non-application of an order made under subsection (1) to the matter referred to in paragraph (a)(ii) will prejudice the interests of justice or public order or security, the court may determine that such an order shall apply to that matter referred to in paragraph (a)(ii). (Added 68 of 1995 s. 10)
- (1B) (a) A person aggrieved by an order made under subsection (1) may appeal to the Court of Appeal, if the Court of Appeal grants leave, against such an order and the decision of the Court of Appeal shall be final.
- (b) On an application for leave to appeal under this subsection, the Court of Appeal shall have power to give such directions as appear to it to be appropriate and, without prejudice to the generality of this paragraph, power-
 - (i) to order the production in court of any transcript or note of proceedings or other document;
 - (ii) to give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish and as to service of documents on any person.
- (c) Subject to any rules of court made by virtue of paragraph (e), any party to an appeal under this subsection may give evidence before the Court of Appeal orally or in writing.
- (d) On the hearing of an appeal under this subsection the Court of Appeal shall have power-
 - (i) to stay any proceedings in any other court until after the appeal is disposed of;
 - (ii) to confirm, reverse or vary the order complained of; and
 - (iii) to make such order as to costs as it thinks fit.
- (e) Without prejudice to the generality of section 54 of the High Court Ordinance (Cap 4) and section 9, rules of court may make in relation to criminal proceedings satisfying specified conditions special provision as to practice and procedure to be followed in relation to criminal proceedings taking place in closed court and appeals from orders made under subsection (1) and may in particular, but without prejudice to the generality

of this paragraph, provide that paragraph (c) shall not have effect. (Amended 25 of 1998 s. 2)

- (f) Notwithstanding any other law but subject to the provisions of the Hong Kong Bill of Rights Ordinance (Cap 383), if it appears to the Court of Appeal that it is necessary so to do in the interests of justice or public order or security, the Court of Appeal may order that the whole of the hearing of an appeal under this subsection or, having regard to the reason for making such an order, any appropriate part of such hearing shall take place in a closed court. (Added 68 of 1995 s. 10)
- (2) In any case where a court may make an order under subsection (1), the court may, whether or not it makes an order under that subsection, order that no question shall be put to any specified witness in the proceedings before it if the answer thereto would lead, or tend to lead, to disclosure of the name or address of any witness in the proceedings; but the court may require any such witness to record the name and address of a witness in the proceedings in writing and to deliver it into the custody of the court. (Replaced 35 of 1976 s. 15)
- (3) In this section *court* (法庭、法院) includes the District Court and a magistrate. (Amended 35 of 1976 s. 15)
(Added 37 of 1968 s. 2)

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| Section: | 124 | Amendment of Schedule 3 | E.R. 1 of 2012 | 09/02/2012 |
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The Legislative Council may, by resolution, from time to time amend Schedule 3.

(Added 5 of 1971 s. 12A. Amended 58 of 1994 s. 4)

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|-----------|---|--|------------------------------------------------|------------|
| Schedule: | 1 | | L.N. 362 of 1997; 25 of 1998; 39 of 1999 | 01/07/1997 |
|-----------|---|--|------------------------------------------------|------------|

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 39 of 1999 s. 3

(Amended 58 of 1994 s. 4)

FORM 1

[section 15(2)]

HONG KONG.

Be it remembered that the Secretary for Justice declines to file any indictment against
detained in the custody of upon a charge of .

Given under my hand this day of 19 .

Secretary for Justice

To the Registrar of the High Court.

(Added and amended 8 of 1912 s. 52. Amended L.N. 362 of 1997; 25 of 1998 s. 2; 39 of 1999 s. 3)

FORM 2

[section 15(2)]

IN THE HIGH COURT OF HONG KONG

[L.S.]

To

Whereas is detained in your custody under the warrant of
upon a charge of and whereas the Secretary for Justice declines to file
any indictment against the said you are therefore hereby authorized and required forthwith to
discharge the said from your custody without fee or reward.

Given under my hand and the seal of the court the _____ day of
19 ____ .

Registrar.
(Added and amended 8 of 1912 s. 52. Amended L.N. 362 of 1997; 25 of 1998 s. 2)

FORM 3

(Repealed 35 of 1976 s. 16)

FORM 4

[section 27]

Notice of Trial of Indictment

IN THE HIGH COURT OF HONG KONG

To A.B.

Take notice that you will answer to this indictment [or to the indictment whereof this is a true copy] at the High Court, Victoria, on the _____ day of _____ 19 ____ .

(Signed)

Registrar.
(Replaced 63 of 1971 s. 10. Amended 25 of 1998 s. 2)

FORM 5

[section 86]

Certificate of Sentences

IN THE HIGH COURT OF HONG KONG

To the

This is to certify that the undermentioned persons were sentenced this day to undergo the undermentioned punishment namely-

A.B., $\frac{\text{months}}{\text{years}}$ imprisonment

C.D., $\frac{\text{months}}{\text{years}}$ imprisonment

Dated this _____ day of _____ 19 ____ .

(Signed)

FORM 6

[section 63]

Certificate of Previous Conviction

To the

This is to certify that-

- (a) the following conviction(s) is/are recorded in the criminal records in my custody relating to the person whose name appears on such records as and whose finger-prints appear therein also, and
- (b) the finger-prints exhibited to this certificate are true copies thereof.

Signed
Authorized to sign by Commissioner
of Police under section 63(2)(a).
(Added 31 of 1958 s. 3)

FORM 7

[section 63]

Certificate of Finger-printing

To the

This is to certify that the finger-prints exhibited to this certificate were taken on day of at the from the person ofin my presence and that at that time such person-

- (a) was under arrest in connection with the offence of
- (b) had appeared before this court and had been charged with the offence of

[Delete that which is inapplicable.]

Signed
(Added 31 of 1958 s. 3)

FORM 8

[section 63]

Certificate of Comparison of Finger-prints

To the.....

This is to certify that the copies of finger-prints exhibited to the Certificate of Previous Conviction dated..... in respect of a person named and the finger-prints exhibited to the Certificate of Finger-printing dated in respect of a person named are those of the same person.

Signed.....
Authorized to sign by Commissioner
of Police under section 63(2)(c).
(Added 31 of 1958 s. 3)

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|-----------|---|-----------------------------------|------------|------------|
| Schedule: | 2 | (Repealed 23 of 2003 s. 7) | 23 of 2003 | 04/07/2003 |
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|-----------|---|--------------------------|--|------------|
| Schedule: | 3 | EXCEPTED OFFENCES | | 30/06/1997 |
|-----------|---|--------------------------|--|------------|

[sections 109A, 109G & 124]
(Amended 58 of 1994 s. 4)

The following offences are declared to be excepted offences-

1. Manslaughter.
2. Rape or attempted rape.
3. Affray.
4. Any offence against section 4, 5 or 6 of the Dangerous Drugs Ordinance (Cap 134).
5. Any offence contrary to section 10, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 28, 29, 30, 36 or 42 of the Offences against the Person Ordinance (Cap 212).
6. Any offence or attempted offence against section 122 of the Crimes Ordinance (Cap 200). (Amended 1 of 1978 s. 8)
7. An offence under any section in Part III of the Firearms and Ammunition Ordinance (Cap 238). (Replaced 68 of 1981 s. 56)
8. Any offence against section 10 or 12 of the Theft Ordinance (Cap 210).
9. Any offence against section 33 of the Public Order Ordinance (Cap 245). (Added L.N. 250 of 1972)
10. Any offence under section 4 or 10 of the Weapons Ordinance (Cap 217). (Added 69 of 1981 s. 19)
(Added 5 of 1971 s. 12B)

| | | | | |
|-----------|---|---------------------------------------------------|------------|------------|
| Schedule: | 4 | EFFECT OF ORDERS FOR ADMISSION TO HOSPITAL | 39 of 1999 | 01/07/1997 |
|-----------|---|---------------------------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

1. (1) An order for admission to the Correctional Services Department Psychiatric Centre or to a mental hospital under section 76(2)(a) shall be sufficient authority for- (Amended 37 of 1996 s. 7)

(a) in the case of admission to the Correctional Services Department Psychiatric Centre, the Commissioner of Correctional Services; or

(b) in the case of admission to a mental hospital, any person acting under the authority of the Chief Executive, to take the person to whom the order relates and convey him at any time within the period of 28 days (beginning with the date on which the order was made) to the Correctional Services Department Psychiatric Centre or the mental hospital specified by the Chief Executive. (Replaced 37 of 1973 s. 7)

(2) The court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of a person to whom the order relates to a place of safety and his detention therein pending his admission to the Correctional Services Department Psychiatric Centre or the mental hospital within the said period of 28 days.

(3) Where a person is admitted within the said period to the Correctional Service Department Psychiatric Centre or the mental hospital specified by the Chief Executive under section 76(2)(a), such order shall be sufficient authority for the Commissioner of Correctional Services or the medical superintendent to detain him therein in accordance with section 45 of the Mental Health Ordinance (Cap 136) as applied by paragraph 2 of this Schedule. (Amended 37 of 1996 s. 7)

2. A person who is admitted to the Correctional Services Department Psychiatric Centre or a mental hospital in pursuance of an order under section 76(2)(a) shall be treated for the purposes of the Mental Health Ordinance (Cap 136) as if he had been so admitted in pursuance of a hospital order made (on the date of the order under section 76(2)(a)) under section 45 of that Ordinance without an endorsement under subsection (1A) of that section. (Amended 46 of 1988 s. 33; 37 of 1996 s. 7)

3. If while a person is detained in a mental hospital in pursuance of an order under section 76(2)(a) the Chief Executive, after consultation with the medical superintendent, is satisfied that the person can properly be tried, the Chief Executive may by order direct that such person be remitted-

(a) to a prison; or

(b) to a training centre established under section 3 of the Training Centres Ordinance (Cap 280), for trial at the court (within the meaning of section 75(6)) where but for the first-mentioned order he would have been tried, and on his arrival at the prison or training centre, as the case may be, the first-mentioned order shall cease to have effect. (Added 37 of 1996 s. 7)

4. If the Chief Executive, after consultation with the Commissioner of Correctional Services, is satisfied that a person detained in the Correctional Services Department Psychiatric Centre in pursuance of an order under section 76(2)(a) can properly be tried-

(a) the Chief Executive may by order direct that the person be detained in the custody of the Commissioner of Correctional Services for trial at the court (within the meaning of section 75(6)) where but for the first-mentioned order he would have been tried; and

(b) the first-mentioned order shall cease to have effect if the Chief Executive makes an order under sub-paragraph (a). (Added 37 of 1996 s. 7)

(Added 34 of 1972 s. 20. Amended 37 of 1973 s. 7; 39 of 1999 s. 3)
[cf. 1964 c. 84 Sch. 1 U.K.; 1968 c. 19 Sch. 5 Paras. 1 & 2(1) U.K.]

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| Schedule: | 5 | CONSEQUENCES AND EFFECT OF ORDER FOR ADMISSION TO HOSPITAL UNDER SECTION 83D OR 83L | 39 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 39 of 1999 s. 3

[sections 83D & 83L]

(Amended 58 of 1994 s. 4)

1. (1) An order for admission to the Correctional Services Department Psychiatric Centre or a mental hospital under section 83D or 83L shall be sufficient authority for the Commissioner of Correctional Services or any other person directed to do so by the court to take the person to whom the order relates and convey him at any time within the relevant period to the Correctional Services Department Psychiatric Centre or the mental hospital specified by the Chief Executive.

(2) The relevant period for the purposes of this paragraph is-

(a) in relation to an order under section 83D or 83L(1), 28 days;

(b) in relation to an order under section 83L(2), 7 days,

the said period to begin in either case with the date on which the order was made.

(3) Where a person is admitted within the relevant period to the Correctional Services Department Psychiatric Centre or the mental hospital specified by the Chief Executive under section 83D or, as the case may be, section 83L, the order shall be sufficient authority for the Commissioner of Correctional Services or the medical superintendent to detain him in accordance with the provisions of the Mental Health Ordinance (Cap 136) referred to in paragraphs 2 and 3, as those provisions apply by virtue of those paragraphs. (Amended 39 of 1999 s. 3)

2. A person who is admitted to the Correctional Services Department Psychiatric Centre or a mental hospital in pursuance of an order under section 83D or 83L(1) shall be treated for the purposes of the Mental Health Ordinance (Cap 136) as if he had been so admitted in pursuance of a hospital order made (on the date of the order made under section 83D or 83L(1)) under section 45 of the Mental Health Ordinance (Cap 136) without any period or detention being specified in the order and without an endorsement under subsection (1A) of that section. (Amended 46 of 1988 s. 33)

3. A person who is admitted to a mental hospital in pursuance of an order under section 83L(2) shall be treated for the purposes of Part III of the Mental Health Ordinance (Cap 136) as if he had been admitted (on the date of the order made under section 83L(2)) in pursuance of an application for admission for observation duly made under the said Part III. (Amended 46 of 1988 s. 33)

(Added 34 of 1972 s. 20. Amended 37 of 1973 s. 7)

[cf. 1968 c. 19 Sch. 1 U.K.]

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| Schedule: | 6 | PROCEDURAL AND OTHER PROVISIONS APPLICABLE ON ORDER FOR RETRIAL | 30/06/1997 |
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[section 83F]

(Amended 58 of 1994 s. 4)

Depositions

1. On a retrial, section 70 of the Evidence Ordinance (Cap 8) (admissibility in evidence in criminal proceedings of deposition of person dead, etc.) shall not apply to the depositions of any person who gave evidence at the original trial or to any written statement by such a person tendered under section 81A of the Magistrates Ordinance (Cap 227) in the committal proceedings before the original trial; but a transcript of the record of the evidence given by any witness at the original trial may, with the leave of the judge, be read as evidence-

(a) by agreement between the prosecution and the defence; or

(b) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success,

and in either case may be so read without further proof, if verified in accordance with rules and orders made under section 9.

Sentence on conviction at retrial

2. (1) Where a person ordered to be retried is again convicted on retrial, the court before which he is convicted may pass in respect of the offence any sentence authorized by law.

(2) Without prejudice to its power to impose any other sentence, the court before which an offender is

convicted on retrial may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.

(3) Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded-

(a) any time before his conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed; and

(b) any time during which he was at large after being admitted to bail under section 83F(2).

(4) Section 67A shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

(5) In this paragraph "sentence" (刑罰) has the meaning assigned by section 80.

(Added 34 of 1972 s. 20)
[cf. 1968 c. 19 Sch. 2 U.K.]

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| Schedule: | 7 | APPLICATION OF PART IV OF MENTAL HEALTH ORDINANCE WHERE ORDER MADE UNDER SECTION 83N | | 30/06/1997 |
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[section 83N]
(Amended 58 of 1994 s. 4)

Order for custody pending trial

1. Where an order is made by the Court of Appeal under section 83N(3) of this Ordinance for a person to be kept in custody pending trial, sections 52A, 53, 54 and 54A of the Mental Health Ordinance (Cap 136), shall apply to him as they apply to the persons listed in section 53(2)(a) to (d) of the Mental Health Ordinance (Cap 136). (Amended 46 of 1988 s. 33)

Order for continued detention under Mental Health Ordinance

2. Where an order is made by the Court of Appeal under section 83N(3) of this Ordinance for a person's continued detention under the Mental Health Ordinance (Cap 136), Part IV of that Ordinance (admission of patients concerned in criminal proceedings and transfer of patients under sentence) shall apply to him as if he had been ordered under the said subsection (3) to be kept in custody pending trial and were detained in pursuance of a transfer order or an order under section 54A of that Ordinance.

(Added 34 of 1972 s. 20. Amended 37 of 1973 s. 7)
[cf. 1968 c. 19 Sch. 3 U.K.]

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| Schedule: | 8 | LEVEL OF FINES FOR OFFENCES | | 30/06/1997 |
|-----------|---|------------------------------------|--|------------|

[section 113B]

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| Level 1 | \$2000 |
| Level 2 | \$5000 |
| Level 3 | \$10000 |
| Level 4 | \$25000 |
| Level 5 | \$50000 |
| Level 6 | \$100000 |

(Added 58 of 1994 s. 3)