Isle of Man

Ellan Vannin

AT 9 of 1993

CRIMINAL JURISDICTION ACT 1993

The text of this Act is shown "as amended" by amendments found within the Justice Reform Act 2021, and any additional amendments set out within the Justice and Home Affairs (Reform and Miscellaneous Amendments) Bill 2025 once these take effect.

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Received Royal Assent:	*16 June 1993*
Passed:	*7 July 1993*
Commenced:	*1 October 1993*

AN ACT to re-enact with amendments the enactments relating to Courts of General Gaol Delivery and appeals therefrom; and for connected purposes.

Courts of General Gaol Delivery

1 Courts of General Gaol Delivery

(1) Courts of General Gaol Delivery shall continue to sit for the purpose of —

(a) trying offences on information;

(b) dealing with offenders committed for sentence under section 17 of the *Summary Jurisdiction Act 1989* (the 1989 Act); and

(c) exercising any other jurisdiction conferred on them by any statutory provision.

(2) The president of the High Court shall from time to time assign a judge of the High Court to be judge of such a court.

(3) A court shall sit at such times and places as the judge assigned to the court may in accordance with any directions of the First Deemster appoint, and at such sittings all persons against whom information has been duly preferred shall be arraigned and tried.[1]

(3A) A person against whom an information has been duly preferred shall be arraigned and tried at a convenient Court of General Gaol Delivery.[2]

~~(4) Neither subsection (3) nor subsection (3A) limits the power of a Court of General Gaol Delivery to postpone a trial for sufficient cause.[3]~~

~~(5) Any order made by a Court of General Gaol Delivery may be signed by a Deemster.[4]~~

Informations

2 Commencement of proceedings on information

[P1987/38/4]

(1) Proceedings in a court for trial of an offence triable on information shall be commenced by an information preferred by the Attorney General in the name and on behalf of ~~Her Majesty~~ His Majesty.

(2) The information shall be lodged in the General Registry, and 14 clear days before the date on which the defendant is arraigned —

(a) a certified copy shall be served on the defendant or sent to him by registered post or the recorded delivery service, and

(b) a certified copy shall be sent to his advocate (if any).

(3) An information may be preferred by the Attorney General —

(a) on the ~~committal of the defendant~~ on the sending of the defendant to a Court of General Gaol Delivery in accordance with Part II of the 1989 Act;

(b) on a direction of the Appeal Division under section 33(3)(b); or

(c) of his own motion.

(4) An information preferred under subsection (3)(a) need not be confined to the offences for which the defendant is ~~committed~~ sent, but may include any offences with which the Attorney General thinks it proper to charge him and which may lawfully be joined in the same information, either in substitution for or in addition to those offences.

(5) An information may not be preferred under subsection (3)(c) unless the Attorney General certifies in writing that in his opinion the evidence of the offence charged —

(a) would be sufficient for the defendant to be committed for trial; and

(b) reveals a case of such seriousness or complexity that its management should without delay be taken over by the court;

and a certificate under this subsection shall not be subject to appeal or liable to be questioned in any court.

~~(6) This section does not apply to proceedings for an offence under section 79 (defamatory libel) of the *Criminal Code 1872*.~~

2A Procedure in connection with offences sent for trial

Schedule A1 makes provision about procedure in connection with offences which are sent to a Court of General Gaol Delivery under section 18C or 18D of the 1989 Act.

2B Discontinuance of proceedings after accused has been sent for trial

P1985/23/23A

(1) This section applies where, —

(a) the Attorney General has the conduct of proceedings for an offence; and

(b) the accused has been sent for trial for the offence.

(2) Where, at any time before the information is preferred, the Attorney General gives notice under this section to the Chief Registrar that he or she does not want the proceedings to continue, they are discontinued with effect from the giving of that notice.

(3) The Attorney General shall, in any notice given under subsection (2) above, give reasons for not wanting the proceedings to continue.

(4) On giving any notice under subsection (2) above the Attorney General shall inform the accused of the notice; but the Attorney General is not obliged to give the accused any indication of his or her reasons for not wanting the proceedings to continue.

(5) The discontinuance of any proceedings under this section does not prevent the institution of fresh proceedings in respect of the same offence.

3 Form of information

(1) An information shall contain a statement of the specific offence or offences of which the defendant is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) Subject to subsection (1), rules of court may provide for the form and content of informations.

4 Amendment of information

(1) Where before trial or at any stage of the trial, it appears to the court that an information is defective, the court shall make such order for the amendment of the information as it thinks necessary to meet the circumstances of the case, unless the required amendments cannot be made without injustice.

(2) Where an information is amended, a note of the order under subsection (1) shall be endorsed on the information, which shall be treated for the purposes of the trial and all proceedings in connection with the trial as if it had always been in its amended form.

(3) Where before trial or at any stage of the trial, it appears to the court —

(a) that a defendant may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or

(b) that for any other reason it is desirable to direct that he should be tried separately for any one or more offences in the information,

the court may order a separate trial of any count or counts in the information.

(4) Where before trial or at any stage of the trial, it appears to the court that the trial ought to be postponed as a consequence of an order under subsection (1) or (3), the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where the court makes an order under subsection (3) or (4) —

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

(b) the procedure on a separate trial of a count shall be the same in all respects as if the count had been found on a separate information;

(c) the procedure on a postponed trial (if the jury has been discharged) shall be the same in all respects as if the trial had not commenced;

(d) the court may make such order as to costs, the admission of the defendant to bail, the enlargement of recognizances and otherwise as the court thinks fit.

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

5 Information of second or subsequent offence

[IV p160/406]

(1) In an information of an offence under a statutory provision committed after a previous conviction for an offence, it is sufficient, after charging the subsequent offence, to state that the defendant was at a certain time and place convicted of the previous offence as described in the statutory provision, without further description.

(2) The defendant shall in the first instance be arraigned upon so much only of the information as charges the subsequent offence, and if he pleads not guilty or the court enters a plea of not guilty on his behalf, the jury shall be charged in the first instance to inquire concerning the subsequent offence only or, in the case where the trial is being conducted without a jury, the court shall in the first instance inquire concerning the subsequent offence only.[5]

(3) Subject to subsection (4), if the defendant pleads guilty, or the jury or, in the case where the trial is being conducted without a jury, the court, finds him guilty, he shall then, and not before, be asked whether he has been previously convicted as alleged in the information; and

(a) if he admits that he has been so previously convicted, the court may proceed to sentence him accordingly;

(b) if he —

(i) denies that he has been so previously convicted, or

(ii) does not answer directly to the question,

the jury shall then be charged to inquire concerning the previous conviction, and need not be sworn again or, in the case where the trial is being conducted without a jury, the court shall inquire concerning the previous conviction.[6]

(4) If on the trial of the defendant for the subsequent offence he gives evidence of his good character, the prosecutor may give evidence of the previous conviction before the verdict is returned, and the jury shall inquire concerning the previous conviction at the same time as they inquire concerning the subsequent offence or, in the case where the trial is being conducted without a jury, the court shall inquire concerning the previous conviction at the same time as it inquires concerning the subsequent offence.[7]

(5) A certificate containing the substance and effect of the conviction, purporting to be signed —

(a) by the Chief Registrar, in the case of a conviction on information;

(b) in accordance with section 69 of the 1989 Act, in the case of a summary conviction; or

(c) by the clerk or other proper officer of the court, in the case of a conviction in the United Kingdom;

shall on proof of the identity of the defendant be sufficient evidence of the conviction without proof of the signature or official character of the person appearing to have signed it.

5A Power to join count for a summary offence in information

P1988/33/ 40 and drafting

(1) A count charging a person with a summary offence may be included in an information if the charge, —

(a) is founded on the same facts or evidence as a count charging an offence which is triable (otherwise than by virtue of this section) on information; or

(b) is part of a series of offences of the same or similar character as an offence so triable which is also charged,

but only if (in either case) the facts or evidence relating to the offence are disclosed by material which, in pursuance of regulations made under paragraph 1 of Schedule A1 has been served on the person charged.

(2) Where, by virtue of this section, a count charging an offence is included in an information, the offence is to be tried in the same manner as if it were an offence triable (otherwise than by virtue of this section) on information; but a Court of General Gaol Delivery may only deal with the offender in respect of such an offence in a manner in which a court of summary jurisdiction could have done.

6 Offences committed at sea

[VI p389/29]

(1) An offence triable on information committed —

(a) within the seaward limits of the territorial sea adjacent to the Island, or

(b) on a British ship whilst at sea but first arriving in the Island after the commission of the offence,

may be tried and punished as if it had been committed within the Island.

(2) In an information for or relating to an offence referred to in subsection (1) the offence shall be averred to have been committed at sea.

(3) In this section "British ship" means —

(a) a Manx ship within the meaning of the *Merchant Shipping Registration Act 1991*; and

(b) any other ship which is a British ship within the meaning of section 2 of the Merchant Shipping Act 1988 (an Act of Parliament), as it has effect in the United Kingdom.

Pleas

7 Plea of guilty

[1981/20/10(6); 1974/34/48(2); IV p160/386]

(1) If a person, being arraigned on an information for an offence, pleads guilty of the offence, his plea shall be taken and sentence shall be pronounced in the same manner as if he had been found guilty by a jury.

(2) Where a person arraigned on an information —

(a) pleads not guilty of an offence charged in the information but guilty of some other offence of which he might be found guilty on that charge, and

(b) is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty,

his conviction of the one offence is an acquittal of the other, whether or not the 2 offences are separately charged in distinct counts.

(3) Where a person arraigned on an information for an offence pleads guilty to the offence, and the court is satisfied —

(a) that he did the act or made the omission charged against him, and

(b) that it would have power under section 29, on convicting him of that offence, to deal with him as being a person suffering from mental illness or severe mental impairment within the meaning of the *Mental Health Act 1998* ("the 1998 Act"),[8]

the court may deal with him in accordance with section 54 without convicting him.

8 Plea of not guilty

[IV p160/385 and 387; 1981/20/10 (1), (7), 11]

(1) Subject to section 7(2), subsection (2) and sections 8A to 8E, if a person, being arraigned on an information for an offence, pleads not guilty of the offence, the court shall order a jury for his trial.[9]

(2) If a person so arraigned pleads not guilty and the prosecutor proposes to offer no evidence against him, the court may order that a verdict of not guilty be recorded without any further steps being taken in the proceedings, and the verdict shall have the same effect as if he had been tried and acquitted on the verdict of a jury or a court.[10]

(3) If a person so arraigned does not answer directly to the information, the court may enter a plea of not guilty on his behalf.

(4) A plea of not guilty entered by the court shall have the same effect as if the defendant had actually pleaded not guilty.

(5) A person arraigned on information —

(a) may in all cases make a plea of not guilty in addition to any demurrer or special plea;

(b) may plead not guilty of the offence specifically charged in the information but guilty of another offence of which he might be found guilty on that information.

(6) This section applies to an information containing more than one count as if each count were a separate information.

8A Application by defendant for trial to be conducted without a jury

Drafting

(1) This section applies where —

(a) one or more defendants are to be tried on information for one or more offences; and

(b) an application is made to a Deemster by the defendant, or in a case where there is more than one defendant, all of the defendants, before the trial in a Court of General Gaol Delivery commences, for the trial to be conducted without a jury.[11]

(2) If this section applies, the Deemster to whom the application is made under subsection (1)(b) must —

(a) direct that the trial is to be conducted by a Deemster sitting alone; and

(b) give such further directions as he or she considers appropriate for the disposal of the offences to be tried in consequence of their being tried by a Deemster sitting alone.

8B Applications by prosecution for certain fraud cases to be conducted without a jury

P2003/44/43 and P1998/37/51B

(1) This section applies if —

(a) one or more defendants are to be tried on information for one or more offences; and

(b) notice has been given under subsection (2) in respect of that offence or those offences.

(2) A notice may only be given, —

(a) by the Attorney General or a person authorised by him;

(b) if the person giving it is of the opinion that the evidence of the offence charged, —

(i) is sufficient for the defendant or defendants to be put on trial for the offence; and

(ii) reveals a case of fraud of such seriousness or complexity that it is appropriate that the case should be dealt with by a Deemster alone; and

(c) if the person giving the notice certifies the opinion referred to in paragraph (b).

(3) A notice under subsection (2) must be served on the defendant or defendants as soon as practicable after the defendant or defendants have been sent for trial.

(4) Where a notice under subsection (2) has been served, the prosecution may apply, in accordance with provision made by rules, to a Deemster for the trial to be conducted without a jury.

(5) If an application under subsection (4) is made and the Deemster is satisfied that the requirements of subsection (2) and the condition in subsection (7) are fulfilled, he or she may make an order that the trial is to be conducted without a jury; but if he or she is not so satisfied the application must be refused.

(6) Unless the Deemster considering the application is the First Deemster, the Deemster may not make such an order without the approval of the First

Deemster or a Deemster nominated by the First Deemster for the purpose of this section.

(7) The condition is that the complexity of the trial or the length of the trial (or both) is likely to make the trial so burdensome to the members of a jury hearing the trial that the interests of justice require that serious consideration should be given to the question of whether the trial should be conducted without a jury.

(8) In deciding whether or not he or she is satisfied that that condition is fulfilled, the Deemster must have regard to any steps which might reasonably be taken to reduce the complexity or length of the trial.

(9) But a step is not to be regarded as reasonable if it would significantly disadvantage the prosecution.[12]

8C Application by prosecution for trial to be conducted without a jury where danger of jury tampering

P2003/44/44

(1) This section applies where one or more defendants are to be tried on information for one or more offences.

(2) The prosecution may apply to a Deemster for the trial to be conducted without a jury.

(3) If an application under subsection (2) is made and the Deemster is satisfied that both of the following two conditions are fulfilled, the Deemster must make an order that the trial is to be conducted without a jury; but if he or she is not so satisfied the Deemster must refuse the application.

(4) The first condition is that there is evidence of a real and present danger that jury tampering would take place.

(5) The second condition is that, despite any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

(6) The following are examples of cases where there may be evidence of a real and present danger that jury tampering would take place, —

(a) a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place;

(b) a case where jury tampering has taken place in previous criminal proceedings involving the defendant or any of the defendants;

(c) a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.[13]

8D Procedure for applications under section 8B or 8C

P2003/44/45 (as it stood before 30.4.2012)

(1) This section applies, —

(a) to an application under section 8B;

(b) to an application under section 8C.

(2) An application to which this section applies must be determined at a pre-trial hearing.

(3) At a pre-trial hearing, the parties must be given an opportunity to make representations with respect to the application.

(4) The purposes of a pre-trial hearing under this section are, —

(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial;

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them; and

(c) determining the application to which this section applies.[14]

8E Power to order a pre-trial hearing in serious, complex or lengthy cases

P1987/38/7(1) to (3) (adapted)

(1) Where it appears to a Deemster that the evidence in relation to a prosecution on information reveals —

(a) a case of such complexity;

(b) a case of such seriousness; or

(c) a case whose trial is likely to be of such length,

that substantial benefits are likely to accrue from a pre-trial hearing for any of the purposes mentioned in subsection (3), the Deemster may order that a pre-trial hearing is to be held.

(2) [*Not commenced*]

(3) The purposes are those of, —

(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial;

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them;

(c) [*Not commenced*]

(d) assisting the Deemster's management of the trial;

(e) considering questions as to the severance or joinder of charges.

(4) An order that a pre-trial hearing is to be held may be made, —

(a) on the application of the prosecutor;

(b) on the application of the accused or, if there is more than one, any of them; or

(c) of the Deemster's own motion.[15]

9 Unfitness to plead

[P1964/84/4, 4A; P1991/25/2]

(1) Subject to subsections (2) and (3), where on the trial of a person on information the question arises (at the instance of the defence or otherwise) whether the defendant is under disability, that question shall be determined as soon as it arises.[16]

(2) If the court, having regard to the nature of the supposed disability, thinks that it is expedient to do so and in the interests of the defendant, it may postpone consideration of that question until any time up to the opening of the case for the defence.

(3) If before that question falls to be determined the jury return or, in the case where the trial is being conducted without a jury, the court returns, a verdict of acquittal on the count or each of the counts on which the defendant is being tried, that question shall not be determined.[17]

~~(3A) Subsections (3B) and (3C) apply in respect of any proceedings where a Deemster has made a direction under section 8A(2) or an order under section 8B(5) or 8C(3).[18]~~

(3B) Where the question whether the defendant is under disability falls to be determined on the arraignment of the defendant and the trial proceeds, the question of fitness to be tried shall be determined by a Deemster without a jury.[19]

(3C) The Deemster shall not make a determination under paragraph (3B) except on the written or oral evidence of two or more registered medical practitioners at least one of whom must be present at the court and at least one of whom is duly approved for the purposes of section 12 of the *Mental Health Act 1998* as having special experience in the diagnosis or treatment of mental disorder.[20]

~~(3D) Subsections (4) and (5) apply in any proceedings in respect of which subsections (3B) and (3C) do not apply.[21]~~

~~(4) Where the question whether the defendant is under disability falls to be determined on the arraignment of the defendant and the trial proceeds, he shall be tried by a jury other than that which determined that question.~~

~~(5) Where that question falls to be determined after the defendant's arraignment, it may be determined either by a separate jury or by the jury by whom he is being tried, as the court may direct.~~

(6) Where it is determined in accordance with this section that the defendant is under disability, the trial shall not proceed or further proceed, but it

shall be determined by a jury or, in the case where the trial is being conducted without a jury, the court —

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

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

whether they are satisfied, as respects the count or each of the counts on which the defendant was to be or was being tried, that he did the act or omission charged against him as the offence.[22]

(7) If as respects that count or any of those counts —

(a) the jury are so satisfied, they shall make a finding or, in the case where the trial is being conducted without a jury, the court is so satisfied, it shall make a finding, that the defendant did the act or made the omission charged against him; and[23]

(b) if the jury are not or, as the case may be, the court is not, so satisfied, the jury or the court, as the case may be, shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.[24]

~~(8) A determination under subsection (6) in any proceedings in respect of which subsections (3B) and (3C) do not apply shall be made —~~

~~(a) where the question whether the defendant is under disability was determined on the arraignment of the defendant, by a jury other than that which determined that question;~~

~~(b) where that question was determined later, by the jury by whom the defendant was being tried.[25]~~

(8A) A determination under subsection (6) shall be made ~~in any proceedings in respect of which subsections (3B) and (3C) apply~~ —

(a) where the question whether the defendant is under disability was determined on the arraignment of the defendant, by a Deemster other than the Deemster who determined that question;

(b) where that question was determined later, by the court by whom the defendant was being tried.[26]

(9) Where findings are recorded that the defendant is under disability and that he did the act or omission charged against him, the court shall deal with him in accordance with section 54.

10 Plea by corporation

(1) A corporation arraigned on information may enter a plea of guilty or not guilty in writing by its representative.

(2) If a corporation on arraignment —

(a) does not appear by a representative, or

(b) appears by a representative but fails to enter a plea,

the court shall enter a plea of not guilty on its behalf.

(3) In this section "representative", in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of entering a plea on its behalf, or of doing anything which a representative may do under section 32 of the 1989 Act; but a person so appointed is not thereby qualified to act on behalf of the corporation for any other purpose.

(4) A representative for the purpose of this section may be appointed under hand; and a statement in writing purporting to be signed by a director, manager or secretary of the corporation or by any other person having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in it has been appointed as the representative of the corporation for the purpose of this section or the said section 32 shall be admissible without further proof as evidence that that person has been so appointed for the purpose of this section.

Procedure: general

11 Power to adjourn

At any stage of a trial on information before the conclusion of the judge's summing-up, the court may adjourn the trial for such period as it thinks fit.

12 Right of reply

On the trial of a person on information —

(a) the prosecution is not entitled to the right of reply on the ground only that the Attorney General appears for the Crown at the trial; and

(b) the time at which the prosecution is entitled to exercise its right of reply is after the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the defendant.

Evidence

13 Competence of witnesses

[IV p160/394]

No person may be excluded as a witness in any case by reason of incapacity from crime or interest in the case.

13A Attendance of witnesses

[P1980/43/97]

(1) Where a Deemster is satisfied –

(a) that any person is likely to be able to give material evidence, or produce any document or thing likely to be material evidence in any trial on information; and

(b) that the person will not voluntarily attend as a witness or produce the document or thing,

the Deemster shall issue a summons directed to that person requiring the person to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) If a Deemster is satisfied by evidence on oath of the matters mentioned in subsection (1), and also that it is probable that a summons under that subsection would not procure the attendance of the person in question, the Deemster may instead of issuing a summons issue a warrant to arrest that person and bring the person before such a court at a time or place specified in the warrant.

(3) On the failure of any person to attend before a court in answer to a summons under this section, if –

(a) the court is satisfied by evidence on oath that the person is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and

(b) it is proved on oath, or in such other manner as may be prescribed, that the person has been duly served with the summons, and that a reasonable sum has been paid or tendered to the person for costs and expenses; and

(c) it appears to the Deemster that there is no just excuse for the failure,

the Deemster may issue a warrant to arrest the person and bring the person before the court at a time and place specified in the warrant.

(4) Without prejudice to subsection (3), where –

(a) a person is summoned under this section to attend before a court; and

(b) a reasonable sum is paid or tendered to the person for costs and expenses; and

(c) the person fails without reasonable excuse to attend in answer to the summons,

the person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If any person attending or brought before a court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit the person to custody until the expiration of such

period not exceeding 7 days as may be specified in the warrant or until the person sooner gives evidence or produces the document or thing.

(6) The powers conferred by subsection (5) may be exercised from time to time after adjournment of the proceedings, but so that the total period of imprisonment shall not exceed 28 days in the case of the trial on information of an offence.

14 Admission of deposition: general

[1989/15/5/1]

(1) Where the conditions in subsections (2), (3) and (4) are fulfilled, the deposition of a witness taken in accordance with ~~section 70 of the 1989 Act~~ paragraph 4 of Schedule A1 may be read in evidence at the trial of the defendant.

(2) The witness must be bound over conditionally, or treated as bound over conditionally, under section 61 of the 1989 Act.

~~(3) The deposition must purport to be authenticated in accordance with section 70(2)(c) of the 1989 Act.~~

(4) It must also be proved, by a certificate purporting to be signed by a justice taking the deposition or by the clerk to the court before which it was taken, or by evidence on oath —

(a) that the deposition was taken in the presence or hearing of the defendant, and

(b) that he or his advocate had full opportunity of cross-examining the witness.

(5) This section does not apply if it is proved —

(a) ~~that the deposition was not certified in accordance with section 70(2)(c) of the 1989 Act by the justice by whom it purports to be certified, or~~

(b) that the certificate under subsection (4) was not signed by the justice or clerk by whom it purports to have been signed, or

(c) that the witness has been notified that he is required to attend the trial.

(6) This section, except subsections (3), (4) and (5)(a) and (b), applies to a written statement put in evidence under ~~section 70 of the 1989 Act~~ paragraph 4 of Schedule A1 as it applies to a deposition.

15 Admission of deposition of absent witness

[1989/15/5/1]

(1) Where the conditions in subsections (2), (3) and (4) are fulfilled, the deposition of a witness taken in accordance with ~~section 70 of the 1989 Act~~

paragraph 4 of Schedule A1 may be read in evidence at the trial of the defendant.

~~(2) The deposition must purport to be authenticated in accordance with section 70(2)(c) of the 1989 Act.~~

(3) It must be proved —

(a) that the witness is dead; or

(b) that he is not in such a state of physical or mental health as to be able to appear in court to give evidence, and that his condition is not merely casual or temporary; or

(c) that he has left the Island and —

(i) that he is in a place outside the British Islands, or

(ii) that his place of residence cannot after reasonable inquiry be discovered; or

(d) that he has left the Island and is resident within the British Islands, and that his place of residence is known, and that he refuses to return to the Island for the purposes of the trial; or

(e) that, being a witness for the prosecution, he is kept out of the way by or on behalf of the defendant, or vice versa.

(4) It must also be proved by a certificate purporting to be signed by a justice taking the deposition or by the clerk to the court before which it was taken, or by evidence on oath —

(a) that the deposition was taken in the presence or hearing of the defendant, and

(b) that he or his advocate had full opportunity of cross-examining the witness.

(5) Where subsection (3)(a) applies, hearsay evidence may be admitted with respect to the death.

(6) Where subsection (3)(d) applies and —

(a) it is proved that a letter containing a summons was sent to the residence of the witness a reasonable time before the day appointed for the trial, and

(b) the witness does not appear in answer to the summons,

it shall be assumed, unless the contrary is shown, that he refuses to return to the Island for the purposes of the trial.

(7) This section does not apply if it is proved —

(a) ~~that the deposition was not certified in accordance with section 70(2)(c) of the 1989 Act by the justice by whom it purports to be certified, or~~

(b) that the certificate under subsection (4) was not signed by the justice or clerk by whom it purports to have been signed.

(8) This section, except subsections (2), (4) and (7), applies to a written statement put in evidence under ~~section 70 of the 1989 Act~~ paragraph 4 of Schedule A1 as it applies to a deposition.

16 Admissions of fact

[VI p389/13]

A person accused of an offence triable on information may, at the trial or any previous inquiry, himself or by his advocate admit any fact alleged against him so as to dispense with proof of it.

17 Evidence by mentally handicapped persons

[1991/25/12; P1984/60/77]

(1) Without prejudice to the general duty of the court at a trial on information to direct the jury on any matter which appears to the court appropriate to do so, where at such a trial —

(a) the case against the accused depends wholly or substantially on a confession by him; and

(b) the court is satisfied —

(i) that he is mentally handicapped; and

(ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) In this section —

"confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not, and whether made in words or otherwise;

"independent person" does not include a constable, police cadet or any other person employed for, or engaged on, police purposes in the Island;

"mentally handicapped", in relation to a person, means in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.

18 Technical evidence

[1991/25/17-18; P1984/60/81; P1988/33/31]

(1) Rules of court may make provision for —

(a) requiring any party to proceedings before a court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and

(b) prohibiting a party who fails to comply in respect of any evidence with a requirement imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.

(2) For the purpose of helping members of juries understand complicated issues of fact or technical terms, rules of court may make provision —

(a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and

(b) as to the furnishing of glossaries for such purposes as may be specified,

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

19 Evidence of mental disorder

[1974/34/48(1), 50(1)]

(1) This section applies to —

(a) a determination by a court under section 7(3)(b);

(b) a finding by a jury or a court under section 9 that a defendant is under disability;[27]

(c) a special verdict under section 21;

(d) a determination by a court under section 29(2)(a) or paragraph 2(2) of Schedule 1A;[28]

(e) a determination by the Appeal Division under section 35(1) or (2) or section 36(2);

(f) a determination under section 54C(2).[29]

(2) The jury, court or Appeal Division shall not make a finding or determination or reach a verdict to which this section applies except on the written or oral evidence of 2 or more registered medical practitioners.

(3) At least one of those practitioners must be approved for the purposes of section 12 of the 1998 Act as having special experience in the diagnosis or treatment of mental disorder.[30]

(4) Section 61(2) and (3) of the 1998 Act (medical reports) applies for the purpose of this section as it applies for the purpose of any provision of Part 3 of that Act.[31]

Verdict

20 No acquittal because facts show greater offence

[VI p389/11]

(1) No person charged with an offence on information is entitled to be acquitted on the ground that the facts proved amount to an offence greater than that charged, but he is not afterwards liable to be prosecuted for a greater offence on the same facts.

(2) Subsection (1) is without prejudice to the power of the Attorney General, at any time before a verdict, to enter a *nolle prosequi*, or to the power of the court to discharge the jury, with a view to the preferment of an information for the greater offence.

21 Acquittal on grounds of insanity

[P1964/84/1; P1991/25/1, 3]

(1) Where —

(a) in an information an act or omission is charged against any person as an offence, and

(b) it is given in evidence on his trial 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 omission made, and

(c) it appears to the jury or the court that the defendant did the act or made the omission charged, but that he was insane as aforesaid when he did the act or made the omission,[32]

the jury shall return or, in the case where the trial is being conducted without a jury, the court shall return, a special verdict to the effect that the defendant is not guilty by reason of insanity.[33]

(2) Where a special verdict is returned by a jury or court under this section, the court shall deal with the defendant in accordance with section 54.[34]

22 Alternative verdicts

[1981/20/7 (2), 10; 1992/6/33]

(1) On an information for murder, a person found not guilty of murder may be found guilty of —

(a) an offence under section 20 (manslaughter) or section 33 (grievous bodily harm) of the *Criminal Code 1872*;

(b) an offence under section 2(1) (abetting suicide) of the *Criminal Law Act 1981*;

(c) any offence of which he may be found guilty under subsection (4), or under any other enactment specifically so providing;

(d) any offence under sections 23 to 27 (attempted murder) of the *Criminal Code 1872*, or an attempt to commit any other offence of which he might be found guilty,

but may not be found guilty of any offence not included above.

(2) Where, on the trial of a person on information for any offence except treason or murder —

(a) the jury or the court finds him not guilty of the offence specifically charged in the information, but[35]

(b) the allegations in the information amount to or include (expressly or by implication) an allegation of another offence,

the jury or the court may find him guilty of that other offence or of an offence of which he could be found guilty on an information specifically charging that other offence.[36]

For the purposes of this subsection an allegation of an offence shall be taken as including an allegation of attempting to commit that offence.

(3) [Repealed][37]

(4) If on the trial of a person on information for an offence the jury or the court are satisfied that the offence charged (or some other offence of which the defendant might on that charge be found guilty) was committed, but find the defendant not guilty of it, they may find him guilty of any offence under section 7(1) of the *Criminal Law Act 1981* (act to impede apprehension or prosecution of offender) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).[38]

(5) On the trial of a person on information of attempting to commit an offence, he may be convicted of the offence charged even though he is shown to be guilty of the completed offence, but he is not afterwards liable to be prosecuted for the completed offence.

(6) Subsection (5) is without prejudice to the power of the Attorney General, at any time before a verdict, to enter a nolle prosequi, or to the power of the court to discharge the jury, with a view to the preferment of an information for the completed offence.

(7) Subsections (1) to (4) apply to an information containing more than one count as if each were a separate information.

(8) Nothing in this section prejudices section 9 (attempt to commit offence is an offence) of the *Criminal Law Act 1981*.

(9) [Repealed][39]

Sentence

23 Sentence on person convicted

[IV p160/367; VI p389/7]

(1) Subject to subsection (2) and section 24, the court shall immediately after conviction of a person on information sentence him or otherwise deal with him for the offence, unless it sees reasonable cause for postponing sentence.

(2) The court may, after a person has been convicted and before he is sentenced or otherwise dealt with, postpone sentence indefinitely on his entering into a recognizance, with or without sureties, to appear and receive sentence whenever required.

24 Power to adjourn for reports

[1974/34/Sch 4]

(1) After a person has been convicted on information and before he has been sentenced or otherwise dealt with, the court may adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case, and may remand him in custody or on bail.

(2) Without prejudice to subsection (1), where —

(a) a person is charged on information with an offence punishable with custody, and

(b) the court is satisfied that he did the act or made the omission charged, but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined,

the court shall adjourn the case and remand him in custody or on bail for such period or periods, no single period exceeding 6 weeks, as the court thinks necessary to enable a medical examination and report to be made.[40]

(3) Where a person is remanded on bail under subsection (2) —

(a) it shall be a condition of the recognizance that he shall —

(i) undergo medical examination by a registered medical practitioner or, where the inquiry is into his mental condition and the recognizance so specifies, 2 such practitioners; and[41]

(ii) for that purpose, attend at an institution or place, or on any such practitioner, specified in the recognizance and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person of any class so specified; and

(b) if arrangements have been made for his reception, it may be a condition of the recognizance that he shall, for the purpose of the examination, reside until the expiration of such period as may be specified in the recognizance or he is discharged therefrom, whichever occurs first, in an institution or place so specified, not being an institution or place to which he could have been committed.

(4) On exercising the powers conferred by subsection (2) the court shall send to the institution to which the defendant is committed, or to the institution or place at which or the person by whom he is to be examined, as the case may be, a statement of —

(a) the reasons why the court is of opinion that an inquiry ought to be made into his physical or mental condition, and

(b) any information before the court about his physical or mental condition.

25 Discretion as to penalties

[IV p160/407 and 418; VI p389/4 and 6; 1981/20/Sch 7]

(1) Where under any statutory provision (whenever made) a court may on conviction on information impose a sentence of custody or a fine, then, unless otherwise provided, the court may —

(a) instead of custody for life or for any other term, impose custody for a shorter term;

(b) instead of or in addition to custody, impose a fine on the offender;

(c) instead of or in addition to custody (with or without a fine) or a fine, order him to enter into a recognizance, with or without sureties, for keeping the peace and being of good behaviour.

(1A) Subsection (1) does not apply to a sentence of custody on conviction of a relevant offence within the meaning of the *Death Penalty Abolition Act 1993*.[42]

(2) Where a court makes an order under subsection (1)(c) it may —

(a) order that the offender be committed to custody until the order is complied with;

(b) suspend an order under paragraph (a); and

(c) limit the period for which the offender may be detained in custody.

(3) A person may not be detained in custody pursuant to an order under subsection (2)(a) for more than one year, exclusive of the period for which he may be detained under any other part of his sentence.

26 Consecutive sentences

[IV p160/395]

(1) Where a person —

(a) is convicted of an offence punishable with custody, and

(b) is already liable to be detained in custody for another offence,

the court may impose a sentence of custody to commence at the expiration of the term of custody for which he was previously sentenced.

(2) Subsection (1) applies even though the aggregate term of custody exceeds the term which may be imposed for either offence.

27 Custody for non-payment of fine etc

[VI p389/5; 1989/15/95]

(1) Where a court imposes a fine on any person, orders any other sum to be paid by any person or forfeits his recognizance, it may make an order that he be committed to custody until the sum due is paid.[43]

(2) On making an order under subsection (1) the court may —

(a) suspend the order on such conditions as it thinks fit; and

(b) specify the maximum term for which he may be detained in pursuance of the order.

(3) Subject to subsection (4), the term for which a person may be detained pursuant to an order under subsection (1), and a term specified under subsection (2)(b), shall not exceed the period specified in Schedule 1 corresponding to the amount of the fine or forfeited recognizance.

(4) Where part only of that amount is unpaid, the maximum term for which that person may be detained shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the sum paid bears to that amount; and in calculating the reduction a fraction of a day shall be left out of account.

(5) Where a person is committed to custody under this section, he shall be released on payment of the amount due with any costs of the commitment, unless he is in custody for some other cause.

28 Power to dispense with immediate payment

[1989/15/92]

(1) This section applies to the following sums —

(a) a fine imposed by a court;

(b) an amount due under an order for the payment of costs or a compensation order made by a court; or

(c) an amount due under a recognizance forfeited by a court.

(2) The court may, instead of requiring immediate payment of a sum to which this section applies, do all or any of the following —

(a) allow time for payment;

(b) order payment by instalments;

(c) in the case of a sum mentioned in subsection (1)(a) or (b), direct that the person liable to pay the sum enter into a recognizance for the payment of the sum or any instalment of it.

(2A) Where the court has allowed time for payment, it may, on an application by or on behalf of the person liable to make the payment —

(a) allow further time; or

(b) order payment by instalments; or

(c) vary an order for payment by instalments previously made.[44]

(3) Where a court makes an order for payment by instalments and default is made in the payment of one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

28A Remission of fines

1981/20/27

(1) Where a court imposes a fine it may, on a subsequent application by the offender and on inquiring into his or her means, remit the whole or any part of the fine if it thinks it just to do so, having regard to any change in the offender's circumstances since the conviction.

(2) Where the court remits the whole or part of a fine after a term of custody has been fixed in default of payment of the fine, the court must also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole fine, or must remit the whole term, as the case may be.

(3) In calculating the reduction in a term under subsection (2) a fraction of a day shall be left out of account.

(4) Subsection (1) does not authorise a court to remit the whole or any part of a sum which an offender is liable to pay under section 119 (recovery of unpaid contributions) or section 120 (proof of previous offences) of the Social Security Administration Act 1992 (of Parliament) as it applies to the Island, and recoverable as a penalty by virtue of section 121(4) of that Act.

(5) In this section "court" includes the Appeal Division.[45]

29 Order on conviction of mentally disordered person

[1974/34/48(1), (6)]

(1) Where a person is convicted before a court of an offence and the conditions in subsection (2) are satisfied, the court may deal with him in accordance with section 54.

(2) The conditions referred to in subsection (1) are —

(a) the court is satisfied that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment and that either —

(i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition; or

(ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under the 1998 Act; and[46]

(b) that the court is of opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under section 54.

(3) Where the court deals with an offender pursuant to this section, it shall not —

(a) pass a sentence of custody,

(b) impose a fine, or

(c) make a probation order;

but may make any other order which it has power to make apart from this section.

Appeals

30 Right of appeal

[P1968/19/10-13; 1989/15/17 (5)]

(1) A person convicted on information may appeal to the Appeal Division against his conviction.

(2) A person in whose case there is returned a verdict of not guilty by reason of insanity may appeal to the Appeal Division against the verdict.

(3) A person in whose case there have been findings under section 9 that he is under disability and that he did the act or made the omission charged against him may appeal to the Appeal Division against either or both of those findings.

(4) An appeal under subsection (1), (2) or (3) may be made —

(a) without leave, on any ground of appeal which involves a question of law alone;

(b) with the leave of the Appeal Division or upon the certificate of the judge who tried him that it is a fit case for appeal —

(i) on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or

(ii) on any other ground which appears to the Appeal Division to be a sufficient ground of appeal.

(5) A person convicted on information of an offence may, with the leave of the Appeal Division, appeal to that Division against the sentence passed on his conviction (unless the sentence is fixed by law).

(5A) A person in respect of whom a declaration under section 1(4) of the *Death Penalty Abolition Act 1993* (minimum period of sentence) is made may, with the leave of the Appeal Division, appeal to that Division against the declaration.[47]

(6) A person dealt with by a court for an offence —

(a) after being committed for sentence under section 17 of the 1989 Act;

(b) under section 5 or 7 (breach of probation order, condition etc.) of the *Criminal Justice Act 1963*;

(c) under paragraph 7 or 36(4) of Schedule 1 (suspended sentences) to the *Criminal Law Act 1981*; or

(d) under paragraph 16 or 22 of Schedule 3 (breach or revocation of community service order) to that Act;

may, without the leave of the Appeal Division, appeal to that Division against a sentence specified in subsection (7).

(7) An appeal lies under subsection (6) against —

(a) a sentence of custody for a term of 6 months or more, either for the offence in question alone or for that offence and other offences for which sentence is passed in the same proceedings;

(b) a sentence which the court convicting him had no power to pass;

(c) a recommendation for deportation;

(d) an order under section 17 of the *Criminal Law Act 1981* or paragraph 11 or 12 of Schedule 3 to the *Road Traffic Act 1985* (disqualification for driving); or

(e) an order under paragraph 7 or 36(4) of Schedule 1 to the *Criminal Law Act 1981* (suspended sentence to take effect).

31 Appeal procedure

(1) A person convicted on information who desires to appeal to the Appeal Division or to obtain leave of the Appeal Division to appeal shall lodge in the General Registry notice in writing of appeal or of his application for leave to appeal, stating the general grounds of appeal and signed by him or his advocate.

(2) A notice under subsection (1) shall be lodged —

(a) in the case of an appeal against conviction (except where paragraph (b) applies), within 28 days beginning with the date of the conviction;

(b) in the case of an appeal against sentence, or an appeal against conviction made at the same time as an appeal against sentence passed on the conviction, within 28 days beginning with the date of the sentence.

(3) The appellant shall also, within that period, serve a copy of the notice on the Attorney General.

(4) The Appeal Division may extend the time within which notice of appeal or of an application for leave to appeal may be given.

(5) An appellant may present his case and argument either orally or, if he wishes, in writing.

(6) Subject to subsection (7), an appellant is entitled to be present on the hearing of his appeal, or in any proceedings preliminary or incidental to his appeal.

(7) The Appeal Division may direct that an appellant who is in custody shall not be present —

(a) on the hearing of his appeal where it is on a ground involving a question of law alone;

(b) on the hearing of an application for leave to appeal;

(c) in any proceedings preliminary or incidental to an appeal; or

(d) where he is detained in consequence of a verdict of not guilty by reason of insanity or a finding of disability.

(8) [Repealed][48]

32 Custody etc pending appeal

[XP1968/19/29]

(1) The Appeal Division may, on the application of the appellant, admit him to bail pending the determination of an appeal under this Act.

(2) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Appeal Division may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

(3) Where the Appeal Division gives a contrary direction under subsection (2), it shall give its reasons for doing so; and it shall not give any such direction where —

(a) leave to appeal has been given; or

(b) the trial judge has given a certificate under section 30(4)(b); or

(c) the case has been referred to it under section 39.

(4) Where an appellant is released on bail pending the determination of his appeal, the time during which he is on bail shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(5) The term of any sentence passed by the Appeal Division shall, unless it 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.

33 Determination of appeals

(1) Subject to subsection (2), the Appeal Division on an appeal against conviction shall allow the appeal if it thinks —

(a) that the conviction of the jury or the court should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory, or[49]

(b) that the judgment of the court before which the appellant was convicted 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 Appeal Division, even though it thinks that the point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) The Appeal Division, if it allows an appeal against conviction, shall quash the conviction and either —

(a) direct a verdict of acquittal to be entered, or

(b) if it appears to that Division that the interests of justice so require, order the appellant to be retried and direct the Attorney General to prefer a fresh information for the purpose.

(4) On an appeal against sentence the Appeal Division —

(a) if it thinks that a different sentence should have been passed, shall quash the sentence passed at the trial and pass such other sentence authorised in law by the verdict (whether more or less severe) in substitution for it as the Appeal Division thinks ought to have been passed, and

(b) in any other case shall dismiss the appeal.

(5) The Appeal Division shall not increase a sentence by reason of or in consideration of any evidence which was not given at the trial.

(6) On an appeal under section 30(5A) the Appeal Division —

(a) if it thinks that a different period ought to have been specified in the declaration, may vary it by specifying such other period (either shorter or longer) as it thinks ought to have been specified, and

(b) in any other case shall dismiss the appeal.[50]

34 Substitution of verdict or sentence

[P1968/19/3-5]

(1) Where on an appeal against conviction for an offence —

(a) the jury or court could on the information have found the appellant guilty of some other offence, and[51]

(b) on the finding of the jury or court it appears to the Appeal Division that the jury or court must have been satisfied of facts which proved him guilty of that other offence,[52]

the Appeal Division may, instead of allowing or dismissing the appeal —

(i) substitute for the verdict found by the jury or court a verdict of guilty of that other offence, and[53]

(ii) pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for that other offence, not being a sentence of greater severity.

(2) Where, on an appeal against conviction on an information containing 2 or more counts, the Appeal Division allows the appeal in respect of part of the information, it may in respect of any count in respect of which the appellant remains convicted pass such sentence, in substitution for the sentence passed on it at the trial, as it thinks proper and is authorised by law for the offence of which he remains convicted on that count.

(3) Where —

(a) on the conviction of the appellant the jury or court have found a special verdict (other than a verdict of not guilty by reason of insanity), and[54]

(b) the Appeal Division consider that a wrong conclusion has been arrived at by the court on the effect of that verdict,

the Appeal Division may, instead of allowing the appeal —

(i) order such conclusion to be recorded as appears to it to be in law required by the verdict; and

(ii) pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

35 Appeals in case of insanity or disability

[P1968/19/6 (1), 12-14, 16]

(1) Where on an appeal against conviction the Appeal Division thinks —

(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 there should have been findings —

(i) that the appellant was under disability, and

(ii) that he did the act or made the omission charged against him,

it shall deal with the appellant in accordance with section 54.

(2) Where on an appeal under section 30(2) (appeal against verdict of not guilty by reason of insanity) the Appeal Division thinks that the case is not one where there should have been a verdict of acquittal, but there should have been findings —

(i) that the appellant was under disability, and

(ii) that he did the act or made the omission charged against him,

it shall deal with the appellant in accordance with section 54.

(3) Subject to subsections (4) and (5), the Appeal Division on an appeal under section 30(2) or (3) (appeal against verdict of not guilty by reason of insanity or findings of disability etc.) shall allow the appeal if it thinks —

(a) that the verdict or finding 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 or 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 trial or the determination of the relevant question, as the case may be,

and in any other case shall dismiss the appeal.

(4) The Appeal Division, even though it thinks that the point raised in an appeal under section 30(2) or (3) might be decided in favour of the

appellant, may dismiss the appeal if it considers that no miscarriage of justice has occurred.

(5) Where —

(a) apart from this subsection an appeal under section 30(2) would fail to be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the appellant; and

(c) the Appeal Division thinks that, but for the insanity of the appellant, the proper verdict would have been that he was guilty of an offence other than the offence charged,

the Appeal Division may dismiss the appeal.

36 Appeals in case of insanity or disability: supplemental

[P1968/19/6, 12-14; P1991/25/4]

(1) Where an appeal under section 30(2) (appeal against verdict of not guilty by reason of insanity) is allowed, the Appeal Division shall substitute for the verdict of the jury or court a verdict of acquittal, unless subsection (3) applies.[55]

(2) Where under subsection (1) the Appeal Division substitutes a verdict of acquittal and thinks —

(a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,

it shall deal with him in accordance with section 54.

(3) Where —

(a) an appeal under section 30(2) is allowed, and

(b) the ground, or one of the grounds, for allowing the appeal is that the finding of the jury or court as to the insanity of the appellant ought not to stand, and[56]

(c) the Appeal Division thinks that the proper verdict would have been that he was guilty of an offence (whether the offence charged or another offence of which the jury or court could have found him guilty),[57]

the Appeal Division —

(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 would have had if the jury had come to the substituted verdict.

(4) Where the Appeal Division allow an appeal under section 30(3) against a finding that the appellant is under a disability, he may be tried accordingly for the offence with which he was charged, and the Appeal Division may make such orders as appear to it to be necessary or expedient pending any such trial for —

(a) keeping the appellant in custody or releasing him on bail, or

(b) his continued detention under the 1998 Act.[58]

(5) Where an order is made by the Appeal Division under subsection (4)(b), Part 3 of the 1998 Act applies to the appellant as if he had been ordered under subsection (4)(a) to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a restriction direction.[59]

37 Supplemental powers of appeal court

(1) In connection with any appeal under this Act, the Appeal Division may, if it thinks necessary 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 the Appeal Division to be necessary for the determination of the case;

(b) order any witness who would have been a compellable witness at the trial to attend for examination and be examined before the Appeal Division, whether or not he was called at the trial;

(c) order the examination of any such witness to be conducted before any judge, a justice or any other person appointed by the Appeal Division for the purpose, and allow the admission of any depositions so taken as evidence before the Appeal Division;[60]

(d) receive the evidence, if tendered, of any witness to whom this paragraph applies.

(2) Without prejudice to subsection (1), where —

(a) evidence is tendered to the Appeal Division in such an appeal, and

(b) it appears to that Division that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and

(c) that Division is satisfied that it was not adduced at the trial but there is a reasonable explanation for the failure to adduce it,

the Appeal Division shall receive the evidence unless it is satisfied that, if tendered, it would not afford any ground for allowing the appeal.

(3) Subsection (1)(d) applies to —

(a) any witness (including the appellant) who is competent but not compellable, and

(b) the appellant's husband or wife, where the appellant makes an application for the purpose and the evidence of the husband or wife could not have been given at the trial except on such an application.

(4) Where any question arising on the appeal involves prolonged examination of documents or accounts, or a scientific or local investigation, which cannot in its opinion conveniently be conducted before it, the Appeal Division may order the reference of the question for inquiry or report to a special commissioner appointed by it, and act on the report of the commissioner so far as it thinks fit to adopt it.

(5) The Appeal Division may appoint any person with special expert knowledge to act as assessor to it in any case where it appears to it that such special knowledge is required for the proper determination of the appeal.

(6) The Appeal Division may exercise in relation to the proceedings in such an appeal any other powers which may be exercised by it in civil matters, and issue any warrants or other process necessary for enforcing its orders or sentences.

(7) Sections 27 and 28 apply in the case of a sentence or order of the Appeal Division as they apply in the case of a sentence or order of a court.

38 Restitution and compensation

[1981/20/6/6]

(1) This section applies to —

(a) an order under section 30 (restitution) of the *Theft Act 1981*,

(b) any other order for the restitution of property, or

(c) a compensation order,

made on a conviction on information.

(2) The operation of the order shall be suspended —

(a) in any case until the expiration of 28 days after the date of the order; and

(b) in cases where notice of appeal or leave to appeal is given within 28 days after the date of order, until the determination of the appeal.

(3) Subsection (2) does not apply to an order referred to in subsection (1)(a) or (b) where the court is of opinion that the title to the property concerned is not in dispute and directs that it shall not apply.

(4) The Appeal Division on an appeal against conviction may revoke or vary the order, whether or not the conviction is quashed, and the order —

(a) if revoked, shall not take effect; and

(b) if varied, shall take effect as so varied.

39 Reference to appeal court after conviction etc

[P1968/19/17]

(1) This section applies where a person has been —

(a) convicted on information, or

(b) tried on information and found not guilty by reason of insanity, or

(c) found by a jury or court to be under disability and to have done the act or omission charged against him.[61]

(2) The Department of Home Affairs may at any time refer the whole case to the Appeal Division, and the case shall then be treated for all purposes as an appeal to that Division by the person concerned.

(3) The said Department, if it desires the assistance of the Appeal Division on any point arising in the case, may refer that point to the Appeal Division for its opinion on it, and that Division shall consider the point so referred and give its opinion.

(4) A reference under this section may be made either on an application by the person concerned or without any such application.

40 Reference to appeal court after acquittal

[P1972/71/36]

(1) Where a person tried on information has been acquitted (whether in respect of the whole or part of the information), the Attorney General may, if he desires the opinion of the Appeal Division on a point of law which has arisen in the case, refer the point to that Division, who shall consider the point and give its opinion on it.

(2) For the purpose of considering the point the Appeal Division shall hear argument —

(a) by the Attorney General, and

(b) if the acquitted person desires to present any argument to it, by an advocate on his behalf or, with leave, by the acquitted person himself.

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

41 Reference of sentence to appeal court

[1991/25/24 and 25; P1988/33/35 and 36]

(1) If it appears to the Attorney General that —

(a) the sentencing of a person sentenced by a court for any offence has been unduly lenient; or[62]

(b) a court has erred in law as to its powers of sentencing for such an offence,

he may, with the leave of the Appeal Division, refer the case to it for review of the sentencing of that person.

(2) On such a reference in relation to any person the Appeal Division may —

(a) quash any sentence passed on him by the court in the same proceedings; and

(b) in place of it pass on him such sentence as it thinks appropriate for the case and as the court had power to pass in dealing with him.

(3) and (4) [Repealed][63]

(5) For the purpose of this section, any 2 or more sentences are to be treated as passed in the same proceedings 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 custody and terms which are wholly or partly concurrent are to be treated as a single term.

(5A) If it appears to the Attorney General that in fixing a period under section 1(4) of the *Death Penalty Abolition Act 1993* the court has been unduly lenient, he may, with the leave of the Appeal Division, refer the case to it for review of that period; and on such a reference the Appeal Division may vary the declaration in question by specifying such other period (either shorter or longer) as it thinks ought to have been specified.[64]

(6) Section 2(4) (judges not to review own decisions) of the *High Court Act 1991* applies to a review under this section as it applies to an appeal.

42 Custody etc pending review

[1991/25/26; P1988/33/Sch 3]

(1) The time during which a person whose case is referred for review under section 41 is in custody pending the review shall be reckoned as part of the term of any sentence to which he is for the time being subject.

(2) The term of any sentence passed by the Appeal Division under section 41 shall, unless it otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in relation to which the reference was made.

(2A) Subsections (1) and (2) apply to a review under section 41(5A) with the substitution for references to the term of a sentence of references to the period specified in the declaration in question.[65]

(3) On a reference under section 41 the Treasury shall pay out of money provided by Tynwald to the person whose case is referred such sums as are reasonably sufficient to compensate him for expenses properly incurred by him in relation to the reference; and the amount of such sums shall be ascertained as soon as practicable by the Chief Registrar.

42A Criminal appeals in respect of pre-trial rulings

(1) In this section a ruling is a pre-trial ruling if it relates to a trial on information and the ruling is given —

(a) after the information is issued; but

(b) before the start of the trial.

(2) Where a Deemster has made a pre-trial ruling in respect of any question, an appeal against the ruling shall lie to the Appeal Division but only with the leave of the Appeal Division.[66]

(3) Notwithstanding that leave to appeal has been granted under subsection (2), a jury may be sworn and the trial continued unless the Appeal Division orders otherwise.[67]

(4) On the termination of the hearing of an appeal, the Appeal Division may confirm, reverse or vary the ruling appealed against.

(5) There is no appeal to the Privy Council from a decision of the Appeal Division under subsection (4).

(6) Subsection (5) does not —

(a) prevent an appeal against conviction; or

(b) affect the right of the Attorney General to make a reference under section 40.

(7) For the purposes of this section, the start of a trial on information occurs, —

(a) in a case where a jury is to consider the issue of the accused's guilt or fitness to plead, when the jury is sworn;

(b) in a case where a Deemster sitting alone under section ~~8A, 8B, 8C, 8D or 8E~~ 8A, 8B or 8C is to determine the issue of guilt, when the Deemster begins to hear evidence;

(c) if the court accepts a plea of guilty —

(i) before a jury is sworn, when that plea is accepted; or

(ii) if a Deemster sits alone as mentioned in paragraph (b) to determine the issue of guilt, when the Deemster accepts the plea.[68]

(8) This section applies in relation to pre-trial rulings made on or after the day on which this section comes into operation.[69]

43 Powers of Appeal Division exercisable by Deemster[70]

[1986/23/Sch 4; 1991/12/22(4), (7)]

(1) The following powers of the Appeal Division may be exercised by a Deemster —

(a) the powers under this Act —

(i) to give leave to appeal or to do any other thing;

(ii) to extend the time within which notice of appeal or of an application for leave to appeal may be given;

(iii) to release an appellant on bail;

(iv) to make orders under section 36(4) (orders pending trial) and section 37 (supplemental powers);

(v) to give a direction under section 46(4)(b) (acquittal instead of retrial);

(vi) to make or renew an interim hospital order;

(vii) to make orders for costs;

(b) the power to give directions under section 143(4) of the *Sexual Offences and Obscene Publications Act 2021* (power to displace section 139);[71]

(c) the power to grant a legal aid certificate under section 18 of the *Legal Aid Act 1986*;

(d) any powers under Schedule 3A (contribution orders) to that Act.[72]

(2) On the refusal by a Deemster of an application to exercise any power referred to in subsection (1), the applicant may require that the application be referred to and determined by the Appeal Division.[73]

(3) An order made by a Deemster by virtue of this section may be revoked or varied by the Appeal Division.[74]

44 Compliance with rules of court

(1) The following officers —

(a) the officers of any court before whom an appellant is convicted;

(b) the officers of any institution having the custody of an appellant;

(c) any constable or other officer concerned,

shall comply with the requirements of any rules of court relating to the practice and procedure of the Appeal Division in exercising any criminal jurisdiction.

(2) Compliance with those rules may be enforced by an order of the Appeal Division.

45 Meaning of "sentence" in ss 30- 44

[1986/19/3/1]

(1) In sections 30 to 44 "**sentence**", in relation to an offence, includes any order made by a court when dealing with an offender, including a hospital order (with or without a restriction order) or guardianship order under section 54, a hospital direction and a limitation direction under section 54C and a recommendation for deportation.

(2) "Sentence" also includes —

(a) a confiscation order under Part 2 of the *Proceeds of Crime Act 2008*;

(b) an order which varies a confiscation order made under Part 2 of the *Proceeds of Crime Act 2008* if the varying order is made under section 81, 82 or 89 of that Act (but not otherwise).[75] [76]

Retrial

46 Retrial of appellant

[P1988/33/43; 1991/25/4/9]

(1) An appellant shall not be retried by virtue of an order under section 33(3)(b) for any offence other than —

(a) the offence for which he was convicted at the original trial and in respect of which his appeal was allowed ("the original offence");

(b) any offence of which he could have been convicted at the original trial on an information for the original offence; or

(c) any offence charged in an alternative count of the information in respect of which the jury or court were discharged from giving a verdict in consequence of convicting him of the original offence.[77]

(2) The appellant shall be retried by a court on a fresh information preferred by the Attorney General on the direction of the Appeal Division, but after the end of 2 months from the date of the order for retrial he may not be arraigned on such an information unless the Appeal Division gives leave.

(3) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Appeal Division to set aside the order for retrial and to direct a verdict of acquittal to be entered in respect of the offence for which he was ordered to be retried.

(4) On an application under subsection (2) or (3) the Appeal Division may —

(a) give leave to arraign, or

(b) direct the entry of a verdict of acquittal,

but shall not give leave to arraign unless it is satisfied —

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

(ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 33(3)(b) was made.

(5) The Appeal Division may, on ordering a retrial, make such orders as appear to it to be necessary or expedient pending the retrial for —

(a) keeping the appellant in custody or releasing him on bail, or

(b) the retention of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on the conviction.

(6) Where a new trial is ordered in the case of a person who, immediately before the determination of his appeal, was liable to be detained in pursuance of a hospital order or an order or direction under Part V of the 1974 Act, the order or direction shall continue in force pending the retrial as if the appeal had not been allowed, and any order under subsection (5)(a) shall have effect subject to the order or direction.

(7) Subject to subsection (8), evidence given orally at the original trial must be given orally at the retrial.

(8) On a retrial 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 —

(i) that the witness is dead or unfit to give evidence or to attend for that purpose, or

(ii) that all reasonable efforts to find him or to secure his attendance have been made without success,

and in either case may be so read without further proof.

47 Sentence on conviction on retrial

[P1968/19/2/2]

(1) Where a person ordered to be retried under section 33(3)(b) is again convicted on the retrial, the court before whom he is convicted may pass in respect of the offence any sentence authorised by law, being more or less severe than that passed on the original conviction.

(2) Without prejudice to its power to impose any other sentence, the court before whom 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, even though, at the date of the conviction on retrial, he has ceased to be of an age at which that sentence could otherwise be passed.

(3) Where a person convicted on retrial is sentenced to custody, 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 the sentence or the period for which he may be detained under it, 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 remanded on bail under section 46(5)(a).

(4) Section 6 of the *Custody Act 1995* applies to a sentence imposed on conviction on retrial as if it had been imposed on the original conviction.[78]

~~*Costs*~~

~~**48 Award of costs against prosecution or defence**~~

~~[1981/20/Sch 7]~~

~~(1) The court before which a person is convicted on information may, if it thinks fit, order the offender to pay the whole or any part of the costs incurred in or in relation to the prosecution and conviction, including any inquiry under section 5 of the 1989 Act, as taxed.~~

~~(2) Where a person —~~

~~(a) is acquitted on an information by a private prosecutor for the publication of a defamatory libel, and~~

~~(b) has not been committed to custody or bound by a recognizance to answer the information,~~

~~the court before which he was acquitted may order the prosecutor to pay the whole or any part of the costs incurred in or in relation to the defence, including any inquiry under section 5 of the 1989 Act, as taxed.~~

~~(3) An order under this section may be made in addition to an order under section 50, and where an order under that section is made the costs shall be primarily payable under that order, but notice of any order under this section shall be sent to the Treasury.~~

~~(4) An order under subsection (2) may be enforced and recovered in the same manner as a judgment for a civil debt.~~

~~**49 Costs of defective information**~~

~~(1) Where the court makes an order under section 4(1) (amendment of defective information) it may make such order as it thinks fit as to the payment of any costs incurred by reason of the necessity for the amendment.~~

~~(2) Where it appears to the court that an information —~~

(a) contains unnecessary matter, or

(b) is of unnecessary length, or

(c) is materially defective in any respect,

the court may make such order as it thinks fit as to the payment of any costs incurred by reason of the unnecessary matter or length or defect.

50 Award of trial costs out of public funds

(1) A court may, in relation to any proceedings on information, order the payment by the Treasury out of money provided by Tynwald of such sums as appear to the court reasonably sufficient —

(a) to compensate the prosecutor for the expenses properly incurred in the prosecution, or

(b) to compensate any person properly attending to give evidence for the prosecution or the defence or both, or called to give evidence at the instance of the court, for the expense, trouble or loss of time properly incurred or incidental to his attendance and giving of evidence.

(1A) Where a person is tried in any proceedings on information and acquitted on any count in the information, the court may, to such extent and subject to such conditions or limitations as may be contained in rules of court, order the payment by the Treasury out of money provided by Tynwald of such sums as appear to the court reasonably sufficient to compensate the defendant for the expenses properly incurred by him in carrying on the defence.[79]

(1B) Provision may be made by rules of court to specify circumstances in which an order may or may not be made under subsection (1A).[80]

(2) Where an appellant is acquitted on a retrial, the costs of the defence which may be ordered to be paid by the Treasury under this section include —

(a) any costs which could have been ordered to be so paid under that section by the court by which he was originally tried, if he had been acquitted at the original trial, and

(b) the costs of the appeal.

(3) Unless the court otherwise orders, no expenses shall be allowed to a witness, whether for the prosecution or the defence, under this section if his evidence is as to character only.

51 Award of costs where defendant is not tried

Where a person has been committed for trial for an offence triable on information and is not ultimately tried, the court may order payment of costs as if he had been tried and acquitted.

52 Award of costs on appeal

(1) The Appeal Division may, on dismissing an appeal or an application for leave to appeal, order the appellant to pay the whole or any part of the costs of the appeal or application, including the costs of any transcript of the notes or recording of the proceedings at the trial.

(2) The Appeal Division, on allowing an appeal against a conviction, may order the payment by the Treasury out of money provided by Tynwald of such sums as appear to the Appeal Division reasonably sufficient to compensate the appellant for any expenses incurred in the prosecution of the appeal, including any proceedings preliminary or incidental thereto, or in carrying on his defence.

(3) Whether or not the Appeal Division makes an order under subsection (1) or (2), the Treasury shall defray out of money provided by Tynwald the expenses or any witness attending on the order of the Appeal Division or examined in the course of the appeal or in any proceedings incidental thereto.

(4) Except as provided in this section, no costs shall be allowed in or in relation to —

(a) the hearing or determination of an appeal; or

(b) any proceedings preliminary or incidental to an appeal.

53 Payment of costs out of public funds

(1) Subject to regulations under subsection (2)(a), the amount of any sums payable under section 50 or 52 out of money provided by Tynwald shall as soon as practicable be ascertained by the Chief Registrar, who shall pay the same to the person entitled thereto, or to any person appearing to the Chief Registrar to be acting on his behalf, out of funds made available by the Treasury for the purpose.

(2) The Treasury may by regulations prescribe —

(a) the rates and scales of sums payable under subsection (1) and under section 29 of the 1989 Act, and the conditions under which any such sums may be allowed;

(b) the manner in which the Chief Registrar is to be reimbursed in respect of payments made by him;

(c) the forms of documents relating to claims for and payments of such sums.

Mentally disordered persons

54 Orders relating to mentally disordered persons

[1974/34/48, 53(1), (2); P1983/20/38; P1991/25/3]

(1) Subject to the following provisions of this section, where a court or the Appeal Division deals with a defendant or appellant ("the patient") in accordance with this section, it shall make such one of the following orders with respect to the patient as it thinks most suitable in all the circumstances of the case —

(a) [Repealed][81]

(b) an order (a "hospital order") authorising him to be admitted to, and his detention in, such hospital as may be specified in the order;

(c) an order (a "guardianship order") placing him under the guardianship of the Department of Health and Social Care or of such other person approved by that Department as may be specified in the order;[82]

(ca) where a special verdict under section 21 is returned, or findings under section 9(1) and (7)(a) are recorded, or section 35(1)(a) or (b) applies, an order (a "supervision and treatment order") requiring him —

(i) to be under the supervision of a probation officer or an officer of the Department of Health and Social Care for a period specified in the order of not more than 2 years, and[83]

(ii) to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of his mental condition;[84]

(d) an order for his absolute discharge.

(2) Where the offence to which the verdict, finding, determination or appeal relates is one the sentence for which is fixed by law, the court or Appeal Division shall make a hospital order.[85]

(3) In a case to which section 36(2) applies (substituted verdict of acquittal), the Appeal Division shall make a hospital order in respect of the patient.

(4) Before making an order under subsection (1) or dealing with the patient in some other way, the court or Appeal Division, if it has reason to suppose that it may be appropriate to make a hospital order or hospital direction in respect of him, may make an order (an "interim hospital order") authorising him to be admitted to, and his detention in, such hospital as may be specified in the order.[86]

(5) An interim hospital order —

(a) shall remain in force for such initial period, not exceeding 12 weeks, as the court or Appeal Division may specify when making the order;

(b) may be renewed for further periods of not more than 21 days at a time if it appears to the court or Appeal Division, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted;

(c) shall not continue in force for more than 12 months in all; and[87]

(d) shall cease to have effect if the court or Appeal Division makes an order under subsection (1) or deals with the patient in some other way.

(6) A hospital order or interim hospital order shall not be made unless the court or Appeal Division is satisfied that arrangements have been made for the admission of the patient to the hospital in question, and for his admission to it within 28 days beginning with the date on which the order is made; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.[88]

(7) A guardianship order shall not be made unless the court or Appeal Division is satisfied that the Department of Health and Social Care or other person is willing to receive the patient into guardianship.[89]

(8) A hospital order or guardianship order shall specify one or more of the following forms of mental disorder, namely mental illness, psychopathic disorder, mental impairment or severe mental impairment, from which, on the evidence taken into account by the court or Appeal Division under section 19, the patient is found to be suffering.[90]

(9) No hospital order or guardianship order shall be made unless the patient is described by each of the medical practitioners whose evidence is so taken into account as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of those forms.

(10) Where the court or the Appeal Division makes a hospital order, and —

(a) it thinks it necessary for the protection of the public from serious harm, and

(b) at least one of the medical practitioners whose evidence is taken into account under section 19 has given evidence orally before the court or Appeal Division, as the case may be,

it may make an order (a "restriction order") that the patient shall be subject to the special restrictions set out in section 48 (restrictions on discharge from hospital) of the 1998 Act, either without limit of time or during such period as may be specified in the order.[91]

(11) Where the court or Appeal Division makes a hospital order with a restriction order, the hospital order may authorise the patient to be admitted to and detained in a hospital unit specified in the order.[92]

(12) In this section, section 54C and Schedule 1A —

"**hospital**", "**mental disorder**", "**mental illness**", "**psychopathic disorder**", "**mental impairment**" and "**severe mental impairment**" have the same meanings as in the 1998 Act;

"**hospital unit**", "**place of safety**" and "**responsible medical officer**" have the same meanings as in Part 3 of the 1998 Act.[93]

54A Remand to hospital for report or treatment

Schedule 1A shall have effect in relation to the remand of accused persons to hospital for reports or for treatment.[94]

54B Supervision and treatment orders: supplemental

(1) A supervision and treatment order shall not be made unless the court or the Appeal Division is satisfied —

(a) that the chief probation officer or the Department of Health and Social Care is willing that the supervision of the patient be undertaken by a probation officer or an officer of that Department, as the case may be; and[95]

(b) that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the patient where he is required to submit to treatment as a resident patient).

(2) No supervision and treatment order shall be made unless each of the medical practitioners whose evidence is taken into account in accordance with section 19(2) states that the mental condition of the patient —

(a) is such as requires and may be susceptible to treatment; but

(b) is not such as to warrant the making of a hospital order or a guardianship order.

(3) A supervision and treatment order shall require the patient to be under the supervision of a probation officer or an officer of the Department of Health and Social Care assigned in accordance with the order ("the supervisor").[96]

(4) Before making such an order, the court or Appeal Division shall explain to the patient in ordinary language —

(a) the effect of the order (including any requirements proposed to be included in the order in accordance with subsection (9)); and

(b) that a court of summary jurisdiction has power under section 51(1) and (2) of the *Mental Health Act 1998* to review the order on the application either of the patient or of the supervisor.

(5) After such an order is made, the ~~Chief Registrar~~ court shall give copies of the order to the patient, to the supervisor and to the person in charge of any institution in which the patient is required by the order to reside.

(6) Where such an order is made, the supervised person shall keep in touch with the supervisor in accordance with such instructions as he may from time to time be given by the supervisor and shall notify him of any change of address.

(7) A supervision and treatment order shall include a requirement that the patient shall submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of his mental condition.

(8) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order —

(a) treatment as a resident patient in a hospital or mental nursing home;

(b) treatment as a non-resident patient at such institution or place as may be specified in the order; and

(c) treatment by or under the direction of such registered medical practitioner as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c).

(9) A supervision and treatment order may include requirements as to the residence of the patient; but —

(a) before making such an order containing any such requirement, the court or Appeal Division shall consider the home surroundings of the patient; and

(b) where such an order requires the patient to reside in any institution, the period for which he is so required to reside shall be specified in the order.[97]

54C Power to make hospital and limitation directions

[P1983/20/45A; P1997/43/46]

(1) This section applies where, in the case of a person convicted on information of an offence the sentence for which is not fixed by law —

(a) the conditions mentioned in subsection (2) are fulfilled; and

(b) the court or the Appeal Division considers making a hospital order before deciding to impose a sentence of custody ("the relevant sentence") in respect of the offence.

(2) The conditions referred to in subsection (1) are that the court or Appeal Division is satisfied, on the written or oral evidence of 2 registered medical practitioners —

(a) that the offender is suffering from a psychopathic disorder;

(b) that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and

(c) that such treatment is likely to alleviate or prevent a deterioration of his condition.

(3) The court or Appeal Division may give both of the following directions —

(a) a direction (a "hospital direction") that, instead of being removed to and detained in an institution, the offender be removed to and detained in such hospital or hospital unit as may be specified in the direction; and

(b) a direction (a "limitation direction") that the offender be subject to the special restrictions set out in section 48 (restrictions on discharge from hospital) of the 1998 Act.

(4) A hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court or Appeal Division under subsection (2) has given evidence orally before the court or Appeal Division; and at least one of those practitioners must be approved for the purposes of section 12 of the 1998 Act as having special experience in the diagnosis or treatment of mental disorder.

(5) Section 61(2) and (3) of the 1998 Act (medical reports) applies for the purpose of this section as it applies for the purpose of Part 3 of that Act.

(6) Section 54(6) (arrangements for admission) applies to a hospital direction and a limitation direction as it applies to a hospital order.

(7) A hospital direction and a limitation direction given in relation to an offender have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of custody imposed on the same or a previous occasion.

(8) The Department of Home Affairs may by order provide that this section shall have effect as if the reference in subsection (2) to psychopathic disorder included a reference to a mental disorder of such other description as may be specified in the order.

(9) An order under subsection (8) —

(a) may apply generally, or in relation to such classes of offenders as may be specified in the order;

(b) may include such supplementary, incidental or consequential provisions as appear to the Department of Home Affairs to be necessary or expedient; and

(c) shall not have effect unless it is approved by Tynwald.[98]

Miscellaneous and supplemental

~~**55 Information for libel**~~

~~[IV p160/79; VI p389/20]~~

~~(1) Within 10 days after the committal of a person for trial on a charge of an offence under section 79 of the *Criminal Code 1872* (defamatory libel), the prosecutor shall cause an information to be filed in the General Registry and a copy of it to be served on the defendant.~~

~~(2) If an information is not filed in accordance with subsection (1), no further proceedings shall be taken on the prosecution and the defendant shall be entitled to be discharged on an application to a judge of the High Court, such discharge to have the same effect as an acquittal.~~

~~(3) The defendant shall plead to the information in writing, and shall file the plea in the General Registry within 14 days after service of the information on the defendant.~~

~~(4) The defendant may plead justification, that is —~~

~~(a) that the defamatory matter published by him was true, and~~

~~(b) that it was for the public benefit that the matters charged should be published in the manner and at the time when they were published.~~

~~(5) A plea of justification may justify the defamatory matter —~~

~~(a) in the sense specified (if any) in the count, or~~

~~(b) in the sense which it bears without such specification; or~~

~~(c) in separate pleas justifying it in each sense separately to each, as if 2 libels had been charged in separate counts.~~

~~(6) The defendant may, in addition to a plea of justification, plead not guilty, and the pleas may be inquired into together.~~

~~(7) The truth of the matters charged shall not be inquired into unless —~~

~~(a) the defendant pleads justification, or~~

~~(b) the information charges him with publishing the matter knowing it to be false,~~

~~and in the latter case evidence of the truth may be given under the plea of not guilty in order to negative the allegation that the defendant knew the libel to be false.~~

~~(8) If, when a plea of justification is made, the defendant is convicted, the court may in determining sentence, consider whether his guilt is aggravated or mitigated by the plea.~~

56 Power to re-open case to rectify mistake

(1) The court or the Appeal Division may, within 28 days beginning with the day on which a sentence or other order made by it when dealing with an offender was made, vary or rescind the sentence or order.

(2) The power conferred by subsection (1) extends to replacing a sentence or other order which for any reason appears to be invalid by another which the court or the Appeal Division, as the case may be, has power to impose or make.

(3) Where a sentence or order is varied under this section, the sentence or order as varied shall take effect from the beginning of the day on which it was originally imposed or made, unless the court or the Appeal Division, as the case may be, otherwise directs.

56A Sealed orders

(1) Any document purporting to be sealed or stamped with the seal of the court shall have the same effect as if such document were signed by a Judge of the Court and such a document shall be received in evidence in the Island without further proof.

(2) The seal of the court shall be the same as the seal of the High Court.[99]

57 Rules of court

(1) The powers of the Deemsters to make rules of court under section 25 of the *High Court Act 1991* are exercisable in relation to Courts of General Gaol Delivery as well as in relation to the High Court.

(2) Rules under subsection (1) may, in particular, make provision —

(a) authorising or requiring the use of electronic communications for the purposes of giving specified information in the course of, or otherwise in connection with, proceedings;

(b) specifying technical standards to be met in relation to the method and manner of giving such information;

(c) specifying the effect of giving (or not giving) information in accordance with standards under paragraph (b).

(3) Rules may also make provision as to how a requirement for a signature in or in connection with the giving of such information is to be met.

(4) Subsections (5) and (6) of section 4 of the *Electronic Transactions Act 2000* (which give an extended meaning to the expression "give information")

apply for the purpose of this section as they apply for the purposes of that section.

58 Forfeiture of recognizances

[1985/7/1/11]

(1) Where a recognizance is declared to be forfeited by the court or the Appeal Division, it may by order —

(a) discharge the recognizance or reduce the amount due under it; or

(b) order any or all of the persons bound by the recognizance, whether as principal or as surety, to pay the sum in which they are respectively bound.

(2) All sums paid in respect of a recognizance so declared to be forfeited shall be applied as fines imposed by the court.

59 Interpretation

In this Act —

"**the 1974 Act**" [Repealed][100]

"**the 1989 Act**" means the *Summary Jurisdiction Act 1989*;

"**the 1998 Act**" means the *Mental Health Act 1998*;[101]

"**the Appeal Division**" means the Staff of Government Division of the High Court;

"**compensation order**" means an order under paragraph 1 of Schedule 6 to the *Criminal Law Act 1981*;

"**court**" means a Court of General Gaol Delivery;

"**custody**" includes imprisonment or detention of any kind except detention pursuant to an order under section 54;[102]

"**jury**" means a jury of 7 or 12 persons determined in accordance with the *Jury Act 1980*;[103]

"**justice**", where preceded by either the definite or indefinite article, means a justice of the peace;[104]

"**offence the sentence for which is fixed by law**" means an offence in respect of which the court has no discretion as to the sentence which it may impose;

"**rules of court**" means rules under section 25 of the *High Court Act 1991* as applied (except in the case of the Appeal Division) by section 56;

"**under disability**", in relation to a person arraigned or tried on information, means under any disability such that he is not fit to be tried on the information.

60 Transitional provisions, amendments and repeals

(1) The transitional provisions in Schedule 2 shall have effect.

(2) The enactments specified in Schedule 3 are amended in accordance with that Schedule.

(3) The enactments specified in Schedule 4 are repealed to the extent specified in column 3 of that Schedule.

61 Short title and commencement

(1) This Act may be cited as the Criminal Jurisdiction Act 1993.

(2) This Act shall come into operation on such day or days as the Council of Ministers may by order appoint.[105]

SCHEDULE A1

PROCEDURE IN CONNECTION WITH SENDING OFFENCES TO A COURT OF GENERAL GAOL DELIVERY

[Section 2A]

1 Rules of court

P1998/37/Sch. 3, para 1

(1) The Deemsters must make rules of court to provide that, where a person is sent for trial under section 18C or 18D of the 1989 Act on any charge or charges, copies of the documents containing the evidence on which the charge or charges are based shall, —

(a) be served on that person; and

(b) be given to the court,

by the person having the conduct of the prosecution before the expiry of the period prescribed by the rules; but the Deemster trying the charge or charges may at his or her discretion extend or further extend that period.

(2) The rules may make provision as to the procedure to be followed on an application for the extension or further extension of a period under sub-paragraph (1).

2 Application for dismissal of charge

P1998/37/Sch. 3, para 2

(1) A person who is sent for trial under section 18C or 18D of the 1989 Act on any charge or charges may, at any time, —

(a) after being served with copies of the documents containing the evidence on which the charge or charges are based; and

(b) before being arraigned (and whether or not an information has been preferred against the person),

apply orally or in writing to a Deemster for the charge, or any of the charges, in the case to be dismissed.

(2) The Deemster must dismiss a charge (and accordingly quash any count relating to it in any information preferred against the applicant) which is the subject of any such application if it appears to the Deemster that the evidence against the applicant would not be sufficient for the applicant to be properly convicted.

(3) No oral application may be made under sub-paragraph (1) unless, —

(a) the applicant has given 28 days' written notice to the court of the applicant's intention to make the application; or

(b) the Attorney General, or a person authorised by the Attorney General, consents to the making of the application.

(4) The period of notice required by subparagraph (3)(a) may be varied by rules.

(5) If the charge, or any of the charges, against the applicant is dismissed, —

(a) no further proceedings may be brought on the dismissed charge or charges except by means of the preferment of an information by the Attorney General under section 2(3)(c); and

(b) unless the applicant is in custody otherwise than on the dismissed charge or charges, he or she must be discharged.

(5A) The Attorney General may only prefer an information under subparagraph (5)(a) by the direction of the Appeal Division of the High Court or with the consent of a judge of the High Court.

(6) Rules of court may make provision for the purposes of this paragraph and may in particular make provision about, —

(a) the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);

(b) the contents and form of notices or other documents;

(c) the manner in which evidence is to be submitted; and

(d) the persons to be served with notices or other material.

(7) Rules of court made under section 3(2) may make provision as to the manner in which an application is to be made for consent for the preferment of an information under subparagraph (5)(a).

3 Reporting restrictions

P1998/37/Sch. 3, para 3

(1) Except as provided by this paragraph, it is not lawful, —

(a) to publish in the Island a written report of an application under paragraph 2(1);

(b) to include in a relevant programme for reception in the Island a report of such an application; or

(c) for a person resident in the Island to publish by means of an electronic communication on a website or other social medium a report of such an application,

if (in any case) the report contains any matter other than that permitted by this paragraph.

(2) An order that sub-paragraph (1) is not to apply to reports of an application under paragraph 2(1) may be made by the Deemster dealing with the application under that paragraph.

(3) Where in the case of 2 or more accused, one of them objects to the making of an order under sub-paragraph (2), the Deemster must make the order if, and only if, the Deemster is satisfied, after hearing the representations of the accused, that it is in the interests of justice to do so.

(4) An order under sub-paragraph (2) shall not apply to reports of proceedings under sub-paragraph (3), but any decision of the Deemster to make or not to make such an order may be contained in reports published or included in a relevant programme before the time authorised by sub-paragraph (5) below.

(5) It is not unlawful under this paragraph to publish or include in a relevant programme a report of an application under paragraph 2(1) containing any matter other than that permitted by sub-paragraph (8) where the application is successful.

(6) Where, —

(a) 2 or more persons were jointly charged; and

(b) applications under paragraph 2(1) are made by more than one of them,

sub-paragraph (5) has effect as if for the words "the application is" there were substituted the words "all the applications are".

(7) It is not unlawful under this paragraph to publish or include in a relevant programme a report of an unsuccessful application at the conclusion of the trial of the person charged, or of the last of the persons charged to be tried.

(8) The following matters may be contained in a report published or included in a relevant programme without an order under sub-paragraph (2) before the time authorised by sub-paragraphs (5) and (6), that is to say, —

(a) the location of the court and the name of the Deemster;

(b) the names, ages, home addresses and occupations of the accused and witnesses;

(c) where the application made by the accused under paragraph 2(1) relates to a charge for an offence in respect of which notice has been given to the court under section 18E, any relevant business information;

(d) the offence or offences, or a summary of them, with which the accused is or are charged;

(e) the names of the advocates or other legal representatives engaged in the proceedings;

(f) where the proceedings are adjourned, the date and place to which they are adjourned; and

(g) whether the accused is in custody and, if not, the arrangements as to bail.

(9) The addresses that may be published or included in a relevant programme under sub-paragraph (8) are addresses, —

(a) at any relevant time; and

(b) at the time of their publication or inclusion in a relevant programme.

(10) The following is relevant business information for the purposes of sub-paragraph (8) —

(a) any address used by the accused for carrying on a business on his or her own account;

(b) the name of any business which the accused was conducting on his or her own account at any relevant time;

(c) the name of any firm in which the accused was a partner at any relevant time or by which the accused was engaged at any such time;

(d) the address of any such firm;

(e) the name of any company of which the accused was a director at any relevant time or by which the accused was otherwise engaged at any such time;

(f) the address of the registered or principal office of any such company;

(g) any working address of the accused in his or her capacity as a person engaged by any such company;

and here "engaged" means engaged under a contract of service or a contract for services.

(11) If a report is published or included in a relevant programme in contravention of this paragraph, an offence is committed by the following persons, —

(a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;

(c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of the editor of a newspaper.

Maximum penalty — (summary) a level 5 fine.

(12) Proceedings for an offence under this paragraph may be instituted only by or with the consent of the Attorney General.

(13) Sub-paragraph (1) is in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports of court proceedings.

(14) In this paragraph, —

"publish", in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;

"relevant programme" means a programme included in a programme service (within the meaning of section 6 of the *Communications Act 2021*);

"relevant time" means a time when events giving rise to the charges to which the proceedings relate occurred.

4 Taking depositions

P1998/37/Sch.3 para 4

(1) Sub-paragraph (2) applies where a Deemster is satisfied that, —

(a) any person in the Island ("the witness") is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings for an offence for which a person has been sent for trial under section 18C or 18D of the 1989 Act by a court of summary jurisdiction; and

(b) it is in the interests of justice to issue a summons under this paragraph to secure the attendance of the witness to have the witness's evidence taken as a deposition or to produce the document or other exhibit.

(2) In such a case the Deemster must issue a summons directed to the witness requiring the witness to attend before a Deemster at the time and place appointed in the summons, and to have the witness's evidence taken as a deposition or to produce the document or other exhibit.

(3) If a Deemster is satisfied by evidence on oath of the matters mentioned in sub-paragraph (1), and also that it is probable that a summons under sub-paragraph (2) would not procure the result required by it, the Deemster may instead of issuing a summons issue a warrant to arrest the witness and to bring the witness before a Deemster at the time and place specified in the warrant.

(4) If, —

(a) the witness fails to attend before a Deemster in answer to a summons under this paragraph;

(b) the Deemster is satisfied by evidence on oath that the witness is likely to be able to make a statement or produce a document or other exhibit as mentioned in sub-paragraph (1)(a);

(c) it is proved on oath, or in such other manner as may be prescribed, that the witness has been duly served with the summons and that a reasonable sum has been paid or tendered to the witness for costs and expenses; and

(d) it appears to the Deemster that there is no just excuse for the failure,

the Deemster may issue a warrant to arrest the witness and to bring him or her before a Deemster at the time and place specified in the warrant.

(5) Where, —

(a) a summons is issued under sub-paragraph (2) or a warrant is issued under sub-paragraph (3) or (4); and

(b) the summons or warrant is issued with a view to securing that the witness has his or her evidence taken as a deposition,

the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before the relevant date.

(6) If any person attending or brought before a Deemster in pursuance of this paragraph refuses without just excuse to have his or her evidence taken as a deposition, or to produce the document or other exhibit, the Deemster may do one or both of the following, —

(a) commit the person to custody until the expiration of such period not exceeding one month as may be specified in the warrant or until the witness sooner has his or her evidence taken as a deposition or produces the document or other exhibit;

(b) impose on the person a fine not exceeding level 4 on the standard scale.

(7) A fine imposed under sub-paragraph (6) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid on conviction.

(8) If, under this paragraph, a person has his or her evidence taken as a deposition, the clerk of the court of summary jurisdiction must, as soon as is reasonably practicable, send a copy of the deposition to the prosecutor and the court.

(9) If, under this paragraph, a person produces an exhibit which is a document, an officer of the court of summary jurisdiction must, as soon as is reasonably practicable, send a copy of the document to the prosecutor and the court.

(10) If, under this paragraph, a person produces an exhibit which is not a document, an officer of the court of summary jurisdiction must, as soon as is reasonably practicable, inform the prosecutor and the court of that fact and of the nature of the exhibit.

(11) In this paragraph, —

"prescribed" means prescribed by rules of court;

"the relevant date" means the expiry of the period referred to in paragraph 1(1).

5 Proof of deposition

P1998/37/Sch.3 para 5

(1) Subject to sub-paragraph (3), sub-paragraph (2) applies where a person has his or her evidence taken as a deposition under paragraph 4.

(2) Where this sub-paragraph applies the deposition may without further proof be read as evidence on the trial of the accused, whether for an offence for which the accused was sent for trial or for any other offence arising out of the same transaction or set or circumstances.

(3) Sub-paragraph (2) does not apply if, —

(a) it is proved that the deposition was not signed by the Deemster by whom it purports to have been signed;

(b) the court of trial at its discretion orders that sub-paragraph (2) shall not apply; or

(c) a party to the proceedings objects to sub-paragraph (2) applying.

6 Disposal of other offences

Drafting

(1) This paragraph applies where a court of summary jurisdiction has sent a person for trial under section 18C or 18D of the 1989 Act for offences which include a summary offence ("the summary offence").

(2) The summary offence may be dealt with as if it were for all purposes (including those of any appeal) an offence triable on information, subject to sub-paragraphs (3) and (4).

(3) The power of a Court of General Gaol Delivery to sentence the defendant shall be limited to the power which a court of summary jurisdiction would have had if it had convicted the defendant of the summary offence.

(4) The Appeal Division has the like powers to deal on appeal with the summary offence as it has to deal with any other offence on appeal from a Court of General Gaol Delivery, subject to sub-paragraph (5).

(5) Where an appeal from a Court of General Gaol Delivery has been determined by the Appeal Division and that Division quashes the conviction of the defendant for the offence which is triable either way or which is triable only on information with which the summary offence is linked, but orders a retrial of only the summary offence, the summary offence must be remitted to a court of summary jurisdiction, and, —

(a) if the defendant is in custody, he or she may be remanded in custody or on bail until his or her appearance before the court of summary jurisdiction, and

(b) if the defendant is on bail, his or her bail may be enlarged to the date on which the defendant is due to appear before the court of summary jurisdiction.

SCHEDULE 1

MAXIMUM TERM OF CUSTODY FOR NON-PAYMENT OF FINES ETC.

Section 27 (3)

Amount of fine etc.	*Maximum term*
not over £25	7 days
over £25 but not over £50	14 days
over £50 but not over £200	1 month
over £200 but not over £500	2 months
over £500 but not over £1,000	3 months
over £1,000 but not over £2,000	6 months
over £2,000 but not over £10,000	12 months
over £10,000 but not over £50,000	18 months
over £50,000 but not over £100,000	2 years
over £100,000 but not over £250,000	3 years
over £250,000 but not over £1 million	5 years
over £1 million	10 years

SCHEDULE 1A[106]

[P1983/20/35-36]

[Section 54A]

REMAND TO HOSPITAL FOR REPORT OR TREATMENT

Remand for report on mental condition

1. (1) This paragraph applies to —

(a) any person who is awaiting trial before a court for an offence punishable with custody, or

(b) any person who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned, other than a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

(2) Subject to the provisions of this Schedule, a court may remand a person to whom this paragraph applies to a hospital specified by the court for a report on his mental condition if —

(a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the person

concerned is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and

(b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail.

Remand to hospital for treatment

2. (1) This paragraph applies to —

(a) any person who is in custody awaiting trial before a court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law), or

(b) any person who at any time before sentence is in custody in the course of a trial before a court for such an offence.

(2) Subject to the provisions of this Schedule, a court may, instead of remanding a person to whom this paragraph applies in custody, remand him to a hospital specified by the court if it is satisfied that he is suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment.

Restrictions on remand under this Schedule

3. The court shall not remand a person to a hospital under paragraph 1 or 2 unless it is satisfied that arrangements have been made for his admission to the hospital in question and for his admission to it within the period of 7 days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

Further remand

4. (1) Where a court has remanded a person under paragraph 1 it may further remand him if it appears to the court, on the written or oral evidence of the registered medical practitioner responsible for making the report, that a further remand is necessary for completing the assessment of the person's mental condition.

(2) Where a court has remanded a person under paragraph 2 it may further remand him if it appears to the court, on the written or oral evidence of the registered medical practitioner in charge of his treatment, that a further remand is warranted by his condition.

(3) The power of further remanding a person under this paragraph may be exercised by the court without his being brought before the court if he is represented by an advocate and his advocate is given an opportunity of being heard.

Duration of remand

5. (1) A person shall not be remanded or further remanded under this Schedule for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(2) A person remanded to hospital under this Schedule shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under sub-paragraph (1).

Detention etc. of person remanded under this Schedule

6. (1) Where a person is remanded under this Schedule —

(a) a constable or any other person directed to do so by the court shall convey the person to the hospital specified by the court within the period mentioned in paragraph 3; and

(b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this paragraph.

(2) If a person absconds from a hospital to which he has been remanded under this Schedule, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this Schedule.

Evidence

7. Without prejudice to section 19(4), section 61(2) and (3) of the *Mental Health Act 1998* (medical reports) applies for the purpose of this Schedule as it applies for the purpose of any provision of Part 3 of that Act.

SCHEDULE 2

TRANSITIONAL PROVISIONS

Section 60(1)

Form of information

1. Notwithstanding the repeal by this Act of the *Criminal Code (Informations) Act 1920*, the rules in Schedule 1 to that Act shall continue to have effect until revoked by rules of court. [107]

Unfitness to plead

2. Section 9 does not apply, and section 16(3) and (4) of the *Criminal Justice Act 1963* continues to apply, to a trial where the defendant was arraigned before the commencement of this Act.

Acquittal on grounds of insanity

3. Section 21 does not apply, and section 16(1) and (4) of the *Criminal Justice Act 1963* continues to apply, to a trial where the defendant was arraigned before the commencement of this Act.

Custody in default of payment

4 Section 27 does not apply to a fine imposed or recognizance forfeited before the commencement of this Act, and section 5 of the *Criminal Code Amendment Act 1892* continues to apply to such a fine.

Rights of appeal

5. Section 30(6) and (7), except section 30(6)(a) and (7)(b), does not apply where the sentence or other order of the court was passed or made before the commencement of this Act.

Appeals in case of insanity

6. Section 35(1) does not apply, and section 13(4) of the *Criminal Code Amendment Act 1921* continues to apply, to an appeal against a conviction where the hearing began before the commencement of this Act.

Reference to appeal court

7. (1) Section 40 does not apply in a case where the verdict of acquittal was given before the commencement of this Act.

(2) Sections 41 and 42 do not apply in a case where the sentence was passed before the 1st April 1992.

Retrial

8. The following provisions of section 46 —

(a) in subsection (2), the words from "but after" onwards; and

(b) subsections (3) and (4),

do not apply where the order for retrial was made before the commencement of this Act.

Amendments

9. (1) The amendment by Schedule 3 of section 59 of the *Mental Health Act 1974*, and the repeal by Schedule 4 of subsection (3) of that section, do not affect a case in which paragraph 3 or 5 applies.

(2) The amendment by Schedule 3 of paragraphs 17 and 23 of Schedule 3 to the *Criminal Law Act 1981* does not affect an appeal made before the commencement of this Act.

Further transitional provisions

10. An order under section 61(2) may make such further transitional provisions as the Council of Ministers thinks expedient in consequence of the partial commencement of this Act.

SCHEDULE 3

AMENDMENT OF ENACTMENTS

Section 60(2)

[Sch 3 amended by Mental Health Act 1998 Sch 6, and amends the following Acts —

Bail Act 1952 q.v.

Criminal Law Act 1981 q.v.

Legal Aid Act 1986 q.v.

Summary Jurisdiction Act 1989 q.v.

High Court Act 1991 q.v.]

SCHEDULE 4

ENACTMENTS REPEALED

Section 60(3)

[Sch 4 repeals the following Acts wholly —

Criminal Code Amendment Act 1917

Criminal Code (Informations) Act 1920

Criminal Code Amendment Act 1921

Criminal Code Amendment Act 1922

Costs in Criminal Cases Act 1947

Administration of Justice Act 1951

Criminal Procedure (Right of Reply) Act 1968

Criminal Law Act 1969

Criminal Appeal Act 1969

and the following Acts in part —

Criminal Code 1872

Criminal Code Amendment Act 1892

Petty Sessions and Summary Jurisdiction Act 1927

Criminal Justice Act 1953

Criminal Justice Act 1963

Mental Health Act 1974

Criminal Damage Act 1981

Criminal Law Act 1981

Theft Act 1981

Collection of Fines etc. Act 1985

Treasury Act 1985

Mental Health (Amendment) Act 1986

Legal Aid Act 1986

Summary Jurisdiction Act 1989

Territorial Sea (Consequential Provisions) Act 1991

High Court Act 1991

Criminal Justice Act 1991

Sexual Offences Act 1992

Transfer of Governor's Functions Act 1992.]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

[1] Subs (3) amended by Administration of Justice Act 2008 Sch 2.
[2] Subs (3A) inserted by Justice Reform Act 2021 s 31.
[3] Subs (4) substituted by Justice Reform Act 2021 s 31.
[4] Subs (5) substituted by Justice Reform Act 2021 s 31.
[5] Subs (2) amended by SD2024/0277.
[6] Subs (3) amended by SD2024/0277.
[7] Subs (4) amended by SD2024/0277.
[8] Para (b) amended by Mental Health Act 1998 Sch 5.
[9] Subs (1) amended by Justice Reform Act 2021 s 35 subject to transitional provisions (see SD 2024/0277 Art.3).
[10] Subs (2) amended by SD2024/0277.
[11] S 8A inserted by Justice Reform Act 2021 s 36, subject to transitional provisions (see SD 2024/0277 Art.3).
[12] S 8B inserted by Justice Reform Act 2021 s 36, subject to transitional provisions (see SD 2024/0277 Art.3).
[13] S 8C inserted by Justice Reform Act 2021 s 36, subject to transitional provisions (see SD 2024/0277 Art.3).
[14] S 8D inserted by Justice Reform Act 2021 s 36, subject to transitional provisions (see SD 2024/0277 Art.3).
[15] S 8E inserted by Justice Reform Act 2021 s 36, subject to transitional provisions (see SD 2024/0277 Art.3).
[16] Subs (1) amended by SD2024/0277.
[17] Subs (3) amended by SD2024/0277.

[18] Subs (3A) inserted by SD2024/0277.
[19] Subs (3B) inserted by SD2024/0277.
[20] Subs (3C) inserted by SD2024/0277.
[21] Subs (3D) inserted by SD2024/0277.
[22] Subs (6) amended by SD2024/0277.
[23] Para (a) amended by SD2024/0277.
[24] Para (b) amended by SD2024/0277.
[25] Subs (8) amended by SD2024/0277.
[26] Subs (8A) inserted by SD2024/0277.
[27] Para (b) amended by SD2024/0277.
[28] Para (d) amended by Mental Health Act 1998 Sch 2.
[29] Para (f) added by Mental Health Act 1998 Sch 5.
[30] Subs (3) amended by Mental Health Act 1998 Sch 5.
[31] Subs (4) substituted by Mental Health Act 1998 Sch 5.
[32] Para (c) amended by SD2024/0277.
[33] Subs (1) amended by SD2024/0277.
[34] Subs (2) amended by SD2024/0277.
[35] Para (a) amended by SD2024/0277.
[36] Subs (2) amended by SD2024/0277.
[37] Subs (3) repealed by Sexual Offences and Obscene Publications Act 2021 Sch 5.
[38] Subs (4) amended by Criminal Justice, Police Powers and Other Amendments Act 2014 Sch 3 and by SD2024/0277.
[39] Subs (9) repealed by Criminal Justice, Police Powers and Other Amendments Act 2014 Sch 3.
[40] Subs (2) amended by Criminal Justice Act 2001 s 59.
[41] Sub-para (i) amended by Interpretation Act 2015 s 106.
[42] Subs (1A) inserted by Custody Act 1995 Sch 4.
[43] Subs (1) amended by Criminal Justice Act 1996 Sch 2.
[44] Subs (2A) inserted by Criminal Justice Act 1996 Sch 2.
[45] S 28A inserted by Summary Jurisdiction and Miscellaneous Amendments Act 2013 s 11.
[46] Para (a) substituted by Mental Health Act 1998 Sch 5.
[47] Subs (5A) inserted by Custody Act 1995 Sch 4.
[48] Subs (8) repealed by Criminal Justice Act 2001 s 61.
[49] Para (a) amended by SD2024/0277.
[50] Subs (6) inserted by Custody Act 1995 Sch 4.
[51] Para (a) amended by SD2024/0277.
[52] Para (b) amended by SD2024/0277.
[53] Subpara (i) amended by SD2024/0277.
[54] Para (a) amended by SD2024/0277.
[55] Subs (1) amended by SD2024/0277.
[56] Para (b) amended by SD2024/0277.
[57] Para (c) amended by SD2024/0277.

[58] Para (b) amended by Mental Health Act 1998 Sch 5.
[59] Subs (5) amended by Mental Health Act 1998 Sch 5.
[60] Para (c) amended by Justice Reform Act 2021 s 37.
[61] Para (c) amended by SD2024/0277.
[62] Para (a) amended by Criminal Justice Act 1996 s 9.
[63] Subss (3) and (4) repealed by Criminal Justice Act 1996 s 9.
[64] Subs (5A inserted by Custody Act 1995 Sch 4.
[65] Subs (2A) inserted by Custody Act 1995 Sch 4.
[66] Subs (2) amended by Justice Reform Act 2021 s 38.
[67] Subs (3) amended by Justice Reform Act 2021 s 38.
[68] Subs (7) substituted by Justice Reform Act 2021 s 38.
[69] S 42A inserted by Administration of Justice Act 2008 s 29.
[70] S 43 heading substituted by Justice Reform Act 2021 s 39.
[71] Para (b) amended by Sexual Offences and Obscene Publications Act 2021 Sch 5.
[72] Subs (1) amended by Justice Reform Act 2021 s 39.
[73] Subs (2) amended by Justice Reform Act 2021 s 39.
[74] Subs (3) amended by Justice Reform Act 2021 s 39.
[75] Subs (2) added by Proceeds of Crime Act 2008 Sch 7.
[76] S 45 amended by Mental Health Act 1998 Sch 5 and by Proceeds of Crime Act 2008 Sch 7.
[77] Para (c) amended by SD2024/0277.
[78] Subs (4) amended by Statute Law Revision Act 1997 Sch 1.
[79] Subs (1A) inserted by Criminal Justice Act 1996 s 11.
[80] Subs (1B) inserted by Criminal Justice Act 1996 s 11.
[81] Para (a) repealed by Mental Health (Amendment) Act 2006 s 3 (with saving in s 3(4)).
[82] Para (c) amended by SD155/10 Sch 6 and by SD2014/08.
[83] Subpara (i) amended by SD2014/08.
[84] Para (ca) inserted by Mental Health Act 1998 Sch 2 and amended by SD155/10 Sch 6.
[85] Subs (2) amended by Mental Health (Amendment) Act 2006 s 3.
[86] Subs (4) amended by Mental Health Act 1998 Sch 5 and by Mental Health (Amendment) Act 2006 s 3.
[87] Para (c) amended by Mental Health Act 1998 Sch 5.
[88] Subs (6) amended by Mental Health Act 1998 Sch 5.
[89] Subs (7) amended by SD155/10 Sch 6 and by SD2014/08.
[90] Subs (8) amended by Mental Health Act 1998 Sch 5.
[91] Subs (10) amended by Mental Health Act 1998 Sch 5.
[92] Subs (11) substituted by Mental Health Act 1998 Sch 5.
[93] Subs (12) added by Mental Health Act 1998 Sch 5.
[94] S 54A inserted by Mental Health Act 1998 Sch 2.
[95] Para (a) amended by SD155/10 Sch 6 and by SD2014/08.
[96] Subs (3) amended by SD155/10 Sch 6 and by SD2014/08.
[97] S 54B inserted by Mental Health Act 1998 Sch 2.
[98] S 54C inserted by Mental Health Act 1998 Sch 2.

[99] S 56A inserted by Criminal Justice Act 2001 s 60.
[100] Definition of "the 1974 Act" repealed by Mental Health Act 1998 Sch 5.
[101] Definition of "the 1998 Act" inserted by Mental Health Act 1998 Sch 5.
[102] Definition of "custody" amended by Justice Reform Act 2021 s 41.
[103] Definition of "jury" substituted by Justice Reform Act 2021 s 41.
[104] Definition of "justice" inserted by Justice Reform Act 2021 s 41.
[105] ADO (whole Act) 1/10/1993 (SD327/93).
[106] Schedule 1A inserted by Mental Health Act 1998 Sch 2.
[107] See Criminal Code (Informations) Act 1920.