

The Law Commission

(LAW COM. No. 177)

CRIMINAL LAW A CRIMINAL CODE FOR ENGLAND AND WALES

VOLUME 1 REPORT AND DRAFT CRIMINAL CODE BILL

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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A CRIMINAL CODE FOR ENGLAND AND WALES

VOLUME 1: REPORT AND DRAFT CRIMINAL CODE BILL

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A CRIMINAL CODE FOR ENGLAND AND WALES

Summary

In this Report (which is published in two volumes) the Law Commission recommends that there should be a Criminal Code for England and Wales. The Report includes a draft Criminal Code Bill to give effect to this recommendation. Part I of the draft Bill (clauses 1 to 52) covers the general principles of criminal liability applicable to a Criminal Code and is designed to replace the present fluctuating mix of common law and statutory provisions. Part II (clauses 53 to 220) contains specific offences grouped in five Chapters dealing with: offences against the person; sexual offences; theft, fraud and related offences; other offences relating to property; and offences against public peace and safety. These groups include the most frequently encountered indictable offences and together would encompass 90 - 95 per cent of the work of the criminal courts in relation to such offences. The Commission argues that implementation of the draft Criminal Code Bill, which is a matter for Parliament, would make the criminal law more accessible, comprehensible, consistent and certain.

THE LAW COMMISSION

Item XVIII of the Second Programme

CRIMINAL LAW

A CRIMINAL CODE FOR ENGLAND AND WALES

VOLUME 1: REPORT AND DRAFT CRIMINAL CODE BILL

*To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain*

PART I

INTRODUCTION

1.1 This Report, which is published in two volumes, contains, in **Volume 1**, our recommendations for a Criminal Code for England and Wales, together with a draft of a Criminal Code Bill. Part I of the draft Bill covers general principles of liability applicable to a Criminal Code, while Part II contains specific offences. **Volume 2** of the Report contains our commentary on the clauses in the draft Bill.¹

1.2 The Report and the draft Bill are the culmination of many years' work by the Commission in the field of criminal law. Since 1981, much of the burden of work on this project has been carried out under the auspices of the Law Commission by a small group of distinguished academic lawyers — Professor J.C. Smith, C.B.E., Q.C., (chairman), Professor Edward Griew and Professor Ian Dennis (hereafter referred to as “the Code team”). It was the Code team's “Report to the Law Commission on Codification of the Criminal Law” which, in 1985, we presented to the then Lord Chancellor, Lord Hailsham of St Marylebone, as a “document for discussion”.² That Report contained the Code team's proposals for a draft Criminal Code Bill, stating the “General Part” of the criminal law (in Part I) and including some specific offences (in Part II) for the purpose of illustrating how those general principles would function. The draft Criminal Code Bill contained in the present Report³ takes account of the many comments received on the earlier draft Bill and our own conclusions, as well as considerably expanding the scope of offences covered in Part II.

The background

1.3 English criminal law is derived from a mixture of common law and statute. Most of the general principles of liability are still to be found in the common law, though some for example, the law relating to conspiracy and attempts to commit crime have recently been defined in Acts of Parliament.⁴ The great majority of crimes are now defined by statute but there are important exceptions. Murder, manslaughter and assault are still offences at common law, though affected in various ways by statute.⁵ There is no system in the relative roles of common law and legislation. Thus, incitement to commit crime — though closely related to conspiracy and attempts — is still a common law offence. Whether an offence is defined by statute has almost always been a matter of historical accident rather than systematic organisation. For example, rape is defined in the Sexual Offences (Amendment) Act 1976 because of the outcry which followed the decision in *Morgan v. D.P.P.*⁶ and led to the subsequent Heilbron Report.⁷ The legislation in force extends over a very long period of time.⁸ It is true that only a very small amount of significant legislation is earlier than the mid-nineteenth century, but that is quite long enough for the language of the criminal law and the style of drafting to have undergone substantial changes.

¹In this Volume, referred to as “Report, Vol. 2”.

²Criminal Law: Codification of the Criminal Law. A Report to the Law Commission (1985), Law Com. No. 143. We refer to this document hereafter as “the Code team's Report” and the draft Criminal Code Bill contained in it as “the Code team's Bill”.

³See Appendix A below.

⁴The Criminal Law Act 1977, Part I and the Criminal Attempts Act 1981, respectively.

⁵The definition of the crime of murder is currently being reviewed by the House of Lords Select Committee on Murder and Life Imprisonment: see Report, Vol. 2, para. 14.5.

⁶[1976] A.C. 182.

⁷Report of the Advisory Group on the Law of Rape (1975), Cmnd. 6352.

⁸The earliest criminal statute in force is the Treason Act 1351.

1.4 There has been a steady flow of reform of the criminal law in recent years but it has been accomplished in somewhat piecemeal fashion. Some of it is derived from our own reports, where in recent years we have been pursuing a policy of putting common law offences into statutory form, and some from reports of the Criminal Law Revision Committee and committees, like the Heilbron Committee, appointed to deal with particular problems. Other reforms have resulted from the initiative of Ministers or private Members of Parliament in introducing Bills. As there is no authoritative statement of general principles of liability or of terminology to which we or these other bodies, or their draftsmen, can turn it would be surprising if there were not some inconsistencies and incongruities in the substance and language of the measures which are proposed and which become law. Some examples are pointed out below. This Report addresses the question whether it is desirable to replace the existing fluctuating mix of legislation and common law by one codifying statute.

The history of the project

1.5 The Law Commission set out in its Second Programme (1968) its objective of a comprehensive examination of the criminal law with a view to its codification.⁹ The first stage of that examination was to include consideration of certain specific offences and, with the assistance of a Working Party, the general principles of the criminal law.¹⁰ While no specific mention was made in the Second Programme of work upon criminal procedure and evidence, it was envisaged that these would find a place within a complete criminal code and that such work would in due course be undertaken.

1.6 In the years following the Second Programme the Commission made substantial progress in the examination of specific offences. It published a series of working papers and reports upon offences at common law and some statutory offences in need of revision,¹¹ and this work continues. Some of the reports have been implemented by legislation based upon the draft Bills annexed to them.¹²

1.7 Some progress was also made in the examination of the general principles of liability to be incorporated in a code of the substantive criminal law. A series of working papers was produced by the Working Party assisting the Commission¹³ and some reports by the Commission on these subjects were published.¹⁴ Again, certain of these reports have been implemented by legislation.¹⁵ Some years ago, however, the Commission realised that its limited resources prevented it from making as much progress as it wished in this area.¹⁶ In particular insufficient attention could be devoted to matters which, while in need of clarification and restatement with a view to codification, had not shown themselves to be in pressing need of reform to meet apparent shortcomings in the law. Within this category of subject matter came some of the topics on which the Working Party had earlier produced working papers, and the Commission therefore felt it right formally to set them aside in favour of other matters.¹⁷

1.8 Consequently the Commission welcomed the initiative of the Criminal Law Sub-Committee of the Society of Public Teachers of Law which in 1980 proposed that a team drawn from its members should consider and make proposals to the Commission in relation

⁹(1968), Law Com. No. 14, Item XVIII.

¹⁰Work on specific offences was to be undertaken by both the Commission and the Criminal Law Revision Committee, particular items being allocated to each body.

¹¹See Reports on Offences of Damage to Property (1970), Law Com. No. 29; Forgery and Counterfeit Currency (1973), Law Com. No. 55; Offences relating to Interference with the Course of Justice (1979), Law Com. No. 96; Offences relating to Public Order (1983), Law Com. No. 123; Offences against Religion and Public Worship (1985), Law Com. No. 145; Poison-Pen Letters (1985), Law Com. No. 147; Criminal Libel (1985), Law Com. No. 149, Cmnd. 9618. See also Working Papers Nos. 72, Treason, Sedition and Allied Offences (1977); 104, Conspiracy to Defraud (1987). Much work has also been done by the Criminal Law Revision Committee, e.g., their Fourteenth Report: Offences against the Person (1980), Cmnd. 7844, and Fifteenth Report: Sexual Offences (1984), Cmnd. 9213.

¹²See Criminal Damage Act 1971, Forgery and Counterfeiting Act 1981, Public Order Act 1986 (Part I), Malicious Communications Act 1988.

¹³Working Papers Nos. 31, The Mental Element in Crime (1970); 43, Parties, Complicity and Liability for the Acts of Another (1972); 44, Criminal Liability of Corporations (1972); 50, Inchoate Offences: Conspiracy, Attempt and Incitement (1973); 55, Defences of General Application (1974).

¹⁴See Reports on Conspiracy and Criminal Law Reform (1976), Law Com. No. 76; Defences of General Application (1977), Law Com. No. 83; Mental Element in Crime (1978), Law Com. No. 89; Territorial and Extraterritorial Extent of the Criminal Law (1978), Law Com. No. 91; Attempt, and Impossibility in relation to Attempt, Conspiracy and Incitement (1980), Law Com. No. 102.

¹⁵See Criminal Law Act 1977 (Parts I and II); Criminal Attempts Act 1981.

¹⁶See Fifteenth Annual Report 1979-1980 (1981), Law Com. No. 107, para. 1.4.

¹⁷See Sixteenth Annual Report 1980-1981 (1982), Law Com. No. 113, para. 2.32.

to a criminal code. The Commission saw this as an opportunity not only for consideration of subjects upon which it had not itself been able to report but also, and of equal importance, for the systematic examination and synthesis of all matters which should be incorporated in a code of the substantive law, an aim which up to that time its resources had not enabled it to fulfil. Accordingly, the Commission invited Professor J.C. Smith, C.B.E., Q.C., then Head of the Department of Law at the University of Nottingham and co-author of Smith and Hogan's *Criminal Law*, to chair the project. In consultation with the Commission, he chose as the other members of his team Professor Edward Griew, then of the University of Leicester, Mr Peter Glazebrook, lecturer in law at Cambridge University¹⁸ and Mr. (now Professor) Ian Dennis, then lecturer in law at University College, London. The establishment of the Code team was announced in March 1981.

1.9 The Code team's terms of reference were as follows:

- "(1) to consider and make proposals in relation to
 - (a) the aims and objects of a criminal code for England and Wales
 - (b) its nature and scope
 - (c) its content, structure, lay-out and the inter-relation of its parts
 - (d) the method and style of its drafting and
- (2) to formulate, in a manner appropriate to such a code,
 - (a) the general principles which should govern liability under it
 - (b) a standard terminology to be used in it
 - (c) the rules which should govern its interpretation."

1.10 The Code team submitted their Report to the Law Commission in November 1984.¹⁹ Together with a short introduction by the Commission, it was published in March 1985.²⁰

1.11 The Code team's Report contained the draft of Part I (general principles of liability) of a Criminal Code Bill. It consisted of fifty-five clauses covering such matters as jurisdiction, proof, external elements of offences, fault, parties to offences, mental disorder and incapacity, defences and preliminary offences (e.g., incitement, conspiracy and attempt). In order to illustrate how the substantive law creating criminal offences might look when enacted as part of a criminal code, the Report included as part of Part II of the draft Bill, twenty-six clauses setting out the offences against the person (derived from recommendations made in the Fourteenth Report of the Criminal Law Revision Committee)²¹ and nine clauses relating to offences of damage to property (derived from the Criminal Damage Act 1971).

The nature and value of the scrutiny

1.12 The Commission decided that the Code team's Report should be published, not only to inform the profession and the public, but also to canvass the views of those with current, day-to-day, practical experience in the working of the criminal law. The first and most fundamental issue upon which these views were sought was whether codification was an objective which should continue to be pursued. The Commission's own enthusiasm for codification had been increased by publication of the Report. Obviously, however, if codification was not an aim which continued to command any substantial support, it was necessary that the Commission should reconsider whether its resources should in future be devoted to it. Secondly, it was necessary for every part of the draft Code Bill to be examined in detail in order to see whether the words chosen were the best which could be chosen.

1.13 Shortly after receiving their Report, steps were put in hand to establish groups of lawyers around the country who would be asked to scrutinise in detail some particular part of the draft Code Bill and report back to the Commission with views both on the detail and on the general principle of codification. Eight circuit "scrutiny groups" were established,²² each

¹⁸Mr. Glazebrook withdrew from the Code team in January 1984.

¹⁹As we acknowledged then (see *op. cit.*, next note, para. 27), to have completed their Report in just over three years was a considerable achievement in itself, bearing in mind that the Code team prepared it in their spare time and only needed to take one sabbatical term from their respective universities to complete it.

²⁰Criminal Law: Codification of the Criminal Law. A Report to the Law Commission (1985), Law Com. No. 143.

²¹Offences against the Person (1980), Cmnd. 7844.

²²It had originally been envisaged (see Law Com. No. 143, para. 25) that only one scrutiny group would be established. However, it was felt that the task might have been too much for one body and would have unduly delayed the project.

headed by a circuit judge and comprising representatives of those who would be likely to be professional users of a code.²³ In addition, a special group,²⁴ headed by Lord Justice Lawton, considered the draft clauses intended to give effect to the recommendations in the Criminal Law Revision Committee's Fourteenth Report on Offences against the Person. Reports were received from each of these groups and we subsequently held meetings to discuss their contents with representatives of several of them. The Commission is extremely grateful to the many judges, barristers, solicitors, academic lawyers, justices' clerks and others who gave so freely of their time and assisted us by subjecting the draft Code to their close scrutiny from the point of view of its use in practice.

1.14 Apart from this form of detailed scrutiny, we received more than sixty responses from individuals and bodies to our general invitation for comments.²⁵ The publication of the draft Code also stimulated a great deal of debate by way of lectures, conferences and articles in legal journals.²⁶ The comments which we received from all these sources have been enormously valuable to us in the formulation of the revised and expanded draft Criminal Code Bill in this Report.

The preparation of the present Report and draft Bill

1.15 In the light of the substantial support from the scrutiny groups and many others for the principle of codification of the criminal law which publication of the Code team's Bill stimulated,²⁷ we decided that it was important, as the next stage of this project, to present to the public and Government a Bill which is sufficiently comprehensive to be recognisable as a criminal code. To help us to accomplish the task of producing a revised and expanded Criminal Code Bill and a commentary on it,²⁸ we invited the Code team to assist with the redrafting of their Bill and with the drafting of the additional offences for the expanded Part II. The team's first task was to prepare a thorough analysis of the detailed comments on their draft Bill in a series of papers which identified all the policy issues requiring to be settled by the Commission. Only once these policy issues had been settled at meetings of the Commission, attended and advised by the Code team, were the team able to begin their work of drafting the Criminal Code Bill appended to this Report.

1.16 It has been an immense advantage for this project that we have had the Code team acting as both our advisers *and* draftsmen. The style and presentation of the Code team's Bill had attracted very favourable comment on consultation. We were therefore more than pleased to accept the suggestion that the Code team, who have been intimately concerned with the project throughout, continue to act as draftsmen of the Criminal Code Bill. The style and form of drafting adopted by the Code team is eminently well-suited to furthering the aims of codification (discussed more fully in the next part), particularly in relation to making the criminal law more accessible, comprehensible, consistent, and certain.

Acknowledgments

1.17 It will already be apparent that the Commission owes a great debt not only to the Society of Public Teachers of Law for their original initiative but also to the members of the Code team for their sustained and invaluable efforts without which the publication of a Criminal Code could not have been achieved for many years to come. We are glad to take this opportunity to express our gratitude to the Code team for bringing to the project their unrivalled knowledge of the criminal law and the determination and industry which was essential to complete it. Within their mandate they have produced an incomparably clear and systematic statement of the principles of the criminal law; we trust that their efforts will lead to early enactment of a Criminal Code for England and Wales with all the subsequent benefits for those whose duty it is to consider and apply the criminal law. Then the real value of the work of Professor John Smith C.B.E., Q.C., Professor Edward Griew and Professor Ian Dennis will be justly appreciated and the debt owed to them universally acknowledged.

²³The names of the Chairmen and members are listed in Appendix E.

²⁴See *ibid.*

²⁵The names of those responding are set out in Appendix D.

²⁶See, e.g., J.C. Smith, *Codification of the Criminal Law*, The Child & Co. Lecture 1986; A.T.H. Smith, Bennion, Ashworth, Wells, "Codification of the Criminal Law" (1) The Case for a Code, (2) The Technique of Codification, (3) The Draft Code, Complicity and The Inchoate Offences, (4) Restatement or Reform", [1986] Crim. L.R. 285 - 323; Temkin, "Pre-natal Injury, Homicide and the Draft Criminal Code", [1986] C.L.J. 414; "Codification of the Criminal Law: Statute Law Society's Working Party Report", [1986] Stat. L.R. 162; *Stone's Justices Manual* 1986, 118 ed., Preface, p. vii *et seq.*; N.A. McKittrick, "Codification — The Magistrates' Court Dimension", [1986] Crim. L. J. 171; Dennis (ed.), *Criminal Law and Justice: Essays from the W.G. Hart Workshop* 1986 (1987); Williams, "What should the Code do about omissions?", (1987) 7 Legal Studies 92.

²⁷See further Part 2 below, "The Case for a Criminal Code", where the arguments for codification are considered.

²⁸See Report, Vol. 2 (Parts 4 to 18).

PART 2

THE CASE FOR A CRIMINAL CODE

A. Why codify the criminal law? — The aims of codification

2.1 The Code team identified the aims of codification at the present time as being to make the criminal law more accessible, comprehensible, consistent and certain.¹ These aspirations have a number of theoretical and practical aspects which we examine in more detail below. We believe, however, that there are also fundamental constitutional arguments of principle in favour of codification which we consider first.

1. *The constitutional arguments for codification*

2.2 The constitutional arguments relating to codification were not stressed in the Code team's Report but were mentioned by some commentators on consultation as important arguments in favour of codifying the criminal law. These arguments were developed, in particular, by Professor A.T.H. Smith² and were conveniently summarised (as well as being endorsed) by the Society of Public Teachers of Law in their submission to us as follows:

"The virtues and advantages of a Code that [the Code team's Report] identifies (accessibility, comprehensibility, consistency and certainty) relate to essentially lawyerly concerns: what needs to be stressed is that they serve the more profound aspirations of due notice and fair warning characteristic of a system that seeks to adhere to the principle of legality. In the *first* place, a Code is the mechanism that will best synthesise the criminal law's conflicting aims of social protection and crime prevention with concern for legality and due process. As Professor Wechsler, principal draftsman of the Model Penal Code, has put it,³ a Code demonstrates that, 'when so much is at stake for the community and the individual, care has been taken to make law as rational and just as law can be.' A Code will, *secondly*, provide what the mix of common law and legislation never can, one fixed starting point for ascertaining what the law is. *Thirdly*, because a Criminal Code makes a symbolic statement about the constitutional relationship of Parliament and the courts, it requires a judicial deference to the legislative will greater than that which the courts have often shown to isolated and sporadic pieces of legislation. Far from it being 'a possible disadvantage of codification' that it places 'limitations upon the ability of the courts to develop the law in directions which might be considered desirable',⁴ we believe that for the criminal law this is one of its greatest merits. Then, *fourthly*, codification will make it possible to effect many much needed and long-overdue reforms in both the General and the Special Parts of the criminal law, that have already been adumbrated in the reports of official bodies..."

With much of this we agree. "Due notice" or "fair warning" — by which is meant the idea that the law should be known in advance to those accused of violating it — should clearly be regarded as a principle of major importance in our criminal justice system. While there is room for argument as to how much or how little of the content of the criminal law should be left to be developed by the common law, codification provides the opportunity for ensuring that this principle is followed over a substantial part of the criminal law. Moreover, since the criminal law is arguably the most direct expression of the relationship between a State and its citizens, it is right as a matter of constitutional principle that the relationship should be clearly stated in a criminal code the terms of which have been deliberated upon by a democratically elected legislature.

2.3 We shall return to consider some of the arguments in the passage above in more detail later, for example, the third and fourth arguments concerning codification and the role of the court and the relationship between restatement and reform. Suffice it to note here that we endorse them, subject to the considerations mentioned later.⁵ The second argument (that a code will provide a fixed starting point for ascertaining what the law is) relates to accessibility which is considered next.

¹See Law Com. No. 143, paras. 1.3 - 1.9.

²"Codification of the Criminal Law: (1) The Case for a Code", [1986] Crim. L.R. 285, esp. 289-290.

³See "The Challenge of a Model Penal Code", (1952) 65 Harv.L.Rev 1097.

⁴Law Com. No. 143, Introduction by the Law Commission, para. 20.

⁵See paras. 2.19 and 2.14 and paras. 3.28 - 3.35 below.

2. *Accessibility and comprehensibility*

2.4 If the terms of the criminal law are set out in one well-drafted enactment in place of the present fluctuating mix of statute and case-law,⁶ the law must necessarily become more accessible and comprehensible to everyone concerned with the interests of criminal justice. Accessibility and comprehensibility are important values for a number of reasons.

2.5 A large and growing number of people are now involved in administering and advising upon the criminal law. One reason for this is that the volume of work in the criminal courts has hugely increased in recent years. To meet this rise, there has been a substantial increase in the numbers of Crown Court judges, recorders and assistant recorders appointed. Many of these judges are recruited from outside the ranks of specialist criminal practitioners. In the magistrates' courts, magistrates depend upon their clerks for advice on the law: in this area too the number of court clerks has risen to try to meet the increased workload. The position of the common law in criminal matters, and in particular the interface between common law and statutory provisions, undoubtedly contributes to making the law obscure and difficult to understand for everyone concerned in the administration of justice, whether a newly-appointed assistant recorder or magistrates' clerk. Obscurity and mystification may in turn lead to inefficiency: the cost and length of trials may be increased because the law has to be extracted and clarified, and there is greater scope for appeals on misdirections on points of law. Moreover, if the law is not perceived by triers of fact to be clear and fair, there is a risk that they will return incorrect or perverse verdicts through misunderstanding or a deliberate disregard of what they are advised the law is. Finally, the criminal law is a particularly public and visible part of the law. It is important that its authority and legitimacy should not be undermined by perceptions that it is intelligible only to experts.

2.6 Codification would help to meet all these dangers. One of its main aims would be to provide a single clear agreed text, published under the authority of Parliament. The law would immediately become more accessible; all users would have an agreed text as a common starting-point and the scope for dispute about its terms and application should be reduced. The source of the general principles of criminal liability would be found in little more than fifty sections of an Act of Parliament instead of many statutes, thousands of cases and the extensive commentaries on them to be found in the textbooks. While much criminal law would remain outside the Criminal Code Act, the law relating to most of the gravest crimes could be brought within it so that the reader would find it within one volume. Of course, no code or statute on a single subject can ever be truly comprehensive. The interpretive role of the judiciary will continue to be important; indeed, during the early years of legislation on a subject the judges' interpretive role is more crucial than at any time thereafter.⁷ Nor do we pretend that codification will make the law accessible to Everyone in the sense that he can pick up one volume and in it find the answer to whatever his problem is.⁸

2.7 It is impossible to quantify the potential savings in time and costs which could be brought about by codification, but they could be substantial. The impact of presenting the criminal law in clear, modern and intelligible terms should be felt at all stages of the criminal process, from operational decisions by police officers to appeals to the higher courts. Practitioners should be assisted in advising clients and preparing for trial, trial judges should find the task of directing juries on the law easier and quicker and the length of time spent arguing points of law on appeal should be reduced.

3. *Consistency*

2.8 The Code team commented in their Report that:⁹

"The haphazard development of the law through the cases, and a multiplicity of statutes inevitably leads to inconsistencies, not merely in terminology but also in

⁶See paras. 1.3 and 1.4 above.

⁷The expected increase in appeals during the early years after a code came into force was a ground upon which some objected to the introduction of a code at all: see further para. 2.24 below.

⁸There is some force, therefore, in the following comment by Professor Hogan:

"I am not sure, whether by codification or otherwise, that law can be made all that accessible to the ordinary man. Still less do I think that the criminal law, say, becomes more understandable the more detailed it is. The ordinary man gets by with knowing, in an imprecise but substantially correct way, that it is an offence to kill, maim, rape, steal and so on. What is important is that the law should be understandable by lawyers and that it should operate efficiently, fairly and well."

See "Some Reflections on Law Reform", in *Crime, Justice and Codification: Essays in Commemoration of Jacques Fortin* (1986), 65 at 71.

⁹*Ibid.*, para. 1.8.

substance. Codification must seek to remove these. If two rules actually contradict one another they cannot both be the law. The codifier cannot rationally restate both. He must restate one and abolish the other or propose some third rule to replace both. More frequently, the inconsistency is one of principle and policy rather than of mutual contradiction..."

Inconsistency both in terminology and substance is a serious problem in English criminal law. A notable example is the use of the word "reckless". Recklessness is a central element of fault requirements but it has four different meanings depending on whether it is used in the context of non-fatal offences against the person, criminal damage and manslaughter, rape or driving offences.¹⁰ This is impossible to defend. It makes the law unnecessarily complex and less intelligible, and it results in difficulty and embarrassment in directing juries and advising magistrates. Two such offences may well be involved in the same trial when it is clearly undesirable that the law should be seen to be laying down inconsistent tests of liability without any clear policy justification. Another example concerns combinations of preliminary offences (attempt to incite, incitement to conspire, conspiracy to attempt and so on). Some combinations constitute offences known to the law, others do not.¹¹ No policy can be found to support these distinctions, and the scrutiny group examining the provisions of the draft Code Bill dealing with preliminary offences agreed that in this topic the present law is an irrational mess.

2.9 This kind of inconsistency across a range of offences is not in practice remediable by use of the common law. It is most unlikely, for example, that cases will arise which raise the issue of recklessness in *all* the relevant offences in an appropriate form. In relation to the preliminary offences it would be impossible for the courts to reintroduce forms of liability which have been expressly abolished by statute. Codification alone, pursuing a conscious policy of the elimination of inconsistency, can deal adequately with this kind of problem. Elimination of inconsistency will also help to ensure that the offence of one accused is dealt with fairly in relation to other offences by other accused. Unjustifiable disparity of treatment can thus be avoided.

4. *Certainty*

2.10 In some areas of the criminal law there is substantial uncertainty as to its scope. Uncertainty can arise where the accidents of litigation and piecemeal legislation leave gaps, so that there is no law at all on a particular point. Alternatively, a statute or case may state the law obscurely, so that it is impossible to be certain as to the law to be applied to a particular problem. Uncertainty is an impediment to the proper administration of criminal justice since it may discourage the bringing of prosecutions where there is a colourable case to answer, and tend to increase the number of unmeritorious but successful submissions of "no case to answer" if charges are brought. In either event respect for the law may be diminished. Certainty is very important to prevent unwarranted prosecutions being brought at all or prosecutions collapsing or convictions being quashed on appeal. Lack of certainty may also cause difficulties for defence lawyers advising their clients and for judges directing juries.

2.11 The common law method of resolving uncertainty by "retrospective" declaration of the law is objectionable in principle. It may lead to the conviction of a defendant on the basis of criminal liability not known to exist in that form before he acted. Much criticism was directed at the decision of the House of Lords in *DPP v. Shaw*¹² where this was generally perceived to have happened.¹³ On the other hand, the effect of an appeal may be to narrow the law retrospectively, either by acknowledging the existence of a defence to criminal liability which was not previously recognised or by altering the definition of a criminal offence. In the recent cases of *Moloney*¹⁴ and *Hancock*¹⁵ the House of Lords restated the meaning of "intention" as the mental element for murder.¹⁶ In doing so, the House

¹⁰See further Report, Vol. 2, paras. 8.17 *et seq.* The Road Traffic Law Review (the North Report) recommended the reform of driving offences involving "recklessness" so as to avoid use of this term: (1988), Chapters 4 and 5, esp. para. 5.13. The Government has accepted this recommendation: see *The Road User and the Law: The Government's Proposals for Reform of Road Traffic Law* (1989), Cm. 576, paras. 2.2 - 2.13.

¹¹See Report, Vol. 2, paras. 13.13 - 13.16 and 13.48.

¹²[1962] A.C. 220.

¹³However, some members of the House of Lords in *Knulier v. DPP* [1973] A.C. 435 said that there is no longer power in the courts to create new offences: see Report, Vol. 2, para. 4.8.

¹⁴[1985] A.C. 905.

¹⁵[1986] A.C. 455.

¹⁶The effect of these decisions (as explained by the Court of Appeal in *Nedrick* [1986] 1 W.L.R. 1025, [1986] 3 All E.R. 1) is that, when a jury is sure that a person accused of murder knew that death (or grievous bodily harm) was a virtual certainty as a result of his actions, they may infer (possibly as a matter of irresistible inference) that he intended to kill (or cause grievous bodily harm): see further Report, Vol. 2, para. 8.16.

disapproved the terms of a direction to a jury given ten years earlier in the leading case of *Hyam*.¹⁷ Such a change may give rise to a suggestion not only that the conviction in the earlier case was unsafe but also cast doubt on the validity of the convictions in other cases during the intervening ten year period which had been based on the terms of the direction approved in the earlier case.¹⁸ Such suggestions, which are inherent in the development of the law on a case by case basis,¹⁹ must undermine confidence in this important branch of the law. Statutory changes, on the other hand, do not have retrospective effect. They come into force only after full Parliamentary debate with the commencement of the provisions of the statute. Earlier cases are unaffected.

B. The weight of opinion on consultation

2.12 We have argued above that codification of the criminal law is desirable as a matter of constitutional principle and also because it offers instrumental benefits in the way of greater accessibility, comprehensibility, consistency and certainty. Our view that these arguments point strongly to the desirability of codification has been reinforced by the weight of opinion revealed on consultation. A very substantial majority of the responses to the Code team's Report and draft Bill supported the proposal to codify the criminal law. This support has come in particular from those who are directly involved in the administration of the criminal justice system, including members of the judiciary (Law Lords, Judges of the Supreme Court, Circuit Judges, Magistrates), practising barristers and solicitors, court officers and academic lawyers specialising in this field. Only four consultees (three individuals, one body) in fact argued against it. The scrutiny groups were unanimously in favour of the principle, although naturally they and other respondents had reservations about some of the details.

2.13 However, this report might be regarded as one-sided if we did not set out the arguments which have been made against codification. These arguments have been distilled from the four adverse responses received.

C. Arguments against codification

1. Codification and reform

2.14 Several commentators referred to the relationship between codification and reform. Arguments concerning the inclusion of particular reforms are not, in our view, arguments against codification in principle. They are arguments against a code (or a part of it) taking one form or another and will be returned to later.²⁰

2. Codification and comprehensiveness

2.15 Some commentators doubted the feasibility of producing a comprehensive code. However, we regard codification as a process of replacing the common law and existing legislation with statute law arranged in the form of a code. While we recognise that in some other legal systems a code must be comprehensive, this need not be the case initially (or eventually) in this country. Codification is still desirable even if this process does not result in all of the common law being replaced. The desirability in principle of codification is not, in our view, dependent on codification resulting in a comprehensive statement of our criminal law to the exclusion of *all* common law principles or even offences.²¹

3. Codification and immutability

2.16 One commentator wrote to us saying:

"The outstanding defect of codes is that, unless they are stated in terms so general as to be unacceptable to the modern codifier, they must inevitably lead to ossification of the

¹⁷[1975] A.C. 55.

¹⁸A point made by Professor Smith in *Codification of the Criminal Law*, The Child & Co. Lecture 1986, p. 15.

¹⁹See, e.g., The Lord Mackay of Clashfern L.C., The Maccabaeon Lecture in Jurisprudence, "Can Judges Change the Law?", *Proceedings of the British Academy*, LXXIII, 1987, 285-308, at 302: "I do not think judges should be taken to task if they are reluctant in some cases to change the law, for in every case where the judge overrules or modifies an earlier decision this has retrospective effect...". Lord Mackay later considers (at 302 *et seq.*) the technique of "prospective overruling" adopted by judges in other jurisdictions (e.g. U.S., Canada, European Court of Justice) but concludes (at 308) that on balance "[it] would not be a useful addition to our Constitution".

²⁰See paras. 3.28 - 3.35 below.

²¹See further paras. 3.36 - 3.38 below.

law and to the perpetuation of error... (T)he very virtues of codification propounded in the Report, especially consistency and certainty, have (as might be expected) their own correlative vice. This is that, for the law to be stated in a form which aspires to consistency and certainty, it must be imprisoned within a framework of principle which is rigid and is also immutable in the sense that it is incapable of gradual development in the light of practical experience ... (A) complete and perfect statement of principle is impossible...".

2.17 Although there is force in this view, we feel that it is based on several misconceptions. First, a Code can, whenever necessary, be updated, and made subject to textual amendments.²² Secondly, the criticism presupposes that the present law is always capable of "gradual development in the light of practical experience". Yet a glance in any criminal law textbook or journal will show that this is not true. The common law often has to struggle on with flaws and "perpetuation of error" until a suitable set of facts arises or until some party decides to take a case to the House of Lords. Moreover, as we indicated above,²³ the common law technique of amendment of the criminal law is objectionable in principle. A third point is that it is arguable that, as a matter of general constitutional principle, "gradual development" of the criminal law is a task for Parliament and not the judges, at least as far as the creation of new forms of liability are concerned.²⁴ Moreover, there is relatively little common law of crime left. Only a few common law offences of any importance survive; and the general principles of criminal liability at common law have already been much eroded by statute. Codification can therefore be seen as merely the logical conclusion to a process of gradual change from common law to statute law which has been continuing for more than a century.

2.18 Thus, while we appreciate the arguments in favour of the flexibility of the common law, we are not convinced that a codified criminal law would be as rigid as has been suggested.

4. *Codification and the role of the court*

2.19 It has also been suggested that codification would reduce the role of the courts. The role of the courts in developing new offences has already been relinquished,²⁵ but it will still be the function of the court to interpret the codified law and to apply it to differing circumstances. Although the primary result of codification would be to change the source of some parts of the criminal law from common law to statute, there would still be many occasions on which the courts would need to have recourse to precedent.

5. *Codification and other legal systems*

2.20 In our introduction to the Code team's Report, we asked "whether it can credibly be asserted that, of all common law countries, England and Wales alone is unsuited to have a code of criminal law".²⁶ It has since been suggested that in other countries codification was prompted by lack of uniformity and development in the existing law, considerations which do not exist in England and Wales today. Although we take this point, we do not think it is an argument of principle against codification. The further reasons which made codification attractive in other countries may not exist here but this does not detract from the basic advantages and arguments in favour of codification.

2.21 Similarly we are not impressed by the argument that, since no codification of Scottish law is proposed, it should not be attempted for England and Wales. The criminal law of Scotland is wholly distinct from the criminal law of England and Wales, both in content and in theoretical and practical tradition. There is not only a different system of criminal procedure²⁷ and a separate appeal system, but the substantive law is substantially different. Unlike in Scotland, most of our substantive law is already statutory. We can only make

²²See further paras. 3.49 - 3.52.

²³See para. 2.11.

²⁴See para. 2.2 above.

²⁵See *Knulier v. DPP* [1973] A.C. 435 and n.13 above.

²⁶Law Com. No. 143, para. 6. As we noted in the Report (*ibid.*, n.10), the other common law countries without codes of criminal law include Scotland (see further para. 2.21 below), the Republic of Ireland and the Australian states of South Australia and Victoria.

²⁷Scottish criminal procedure is in fact codified (see Criminal Procedure (Scotland) Act 1975 and Criminal Justice (Scotland) Act 1980), whereas English procedure is not.

proposals for codification of the criminal law of England and Wales and are not in a position to judge whether codification would be desirable in Scotland.²⁸

6. *Objections to codification which apply equally to other legislation*

2.22 Some commentators raised practical objections to codification based, for example, on the difficulties of ensuring that the courts interpret the codifying statute in accordance with the intentions of Parliament. Just as we cannot claim that a code will rid us of the need to rely on precedent, we cannot claim that a code will solve this problem which is inherent in all statutory interpretation.²⁹ Our objective, however, has been to ensure that the Criminal Code Bill has been drafted with sufficient clarity to reduce difficulties of interpretation as far as is reasonably possible. The present draft Bill takes account of the detailed scrutiny given to the Code team's Bill by members of the judiciary, practising and academic lawyers, the scrutiny groups and others.

7. *Objections to learning how to "interpret codes"*

2.23 One commentator referred to the difficulties of learning how to interpret a code as an objection to codification.

"It is all very well to talk about the success of the Code Napoleon and the like ... But it will take half a century to retrain English lawyers and especially English criminal lawyers to alter their approach to these problems. English lawyers have enough trouble with English statutes based on international conventions in other branches of the law. I do not believe they will ever learn to interpret codes as do their continental counterparts."

We believe that the reference to English lawyers having to "learn to interpret codes as do their continental counterparts" reveals a misunderstanding of the nature of the Criminal Code. There will be nothing special about the interpretation of the proposed Criminal Code Act as an English statute. English lawyers are already used to dealing with many new and sometimes lengthy statutes and "mini-codes".³⁰ The use of the term "code" ought not to conjure up the concept of a "continental code" if that term implies a method of interpretation and a judicial function characteristic of a legal tradition different from our own.

8. *Objections to relearning the law*

2.24 Others have objected to codification on the ground that those who have learnt the law once ought not to have to learn it again. For our part, we do not agree that English lawyers are so unwilling or unable to relearn as is suggested. A new approach will certainly be necessary: for example, there will be a need to be familiar with the way in which the Criminal Code Act is laid out and to read it as a whole; it will be necessary to analyse by reference to statutory text problems that were formerly analysed on the basis of imprecise case law; and, in so far as the Code implements law reform proposals, learning that new law. These difficulties were part of the "painful short-term consequences" to which the Code team referred³¹ and will be borne in mind no doubt when deciding the way in which to implement the Code Bill.³²

9. *The creation of confusion and new appeals*

2.25 An objection related to that of relearning the law is that the introduction of a code will be likely to cause confusion in law thereby wasting time and giving rise to an increased number of appeals. We do not think that this will be the case. Even if there were to be an increase in appeals due to the introduction of the Code, it will only be temporary and in the long term time will significantly be saved.³³ Moreover, the saving of time will apply not only to the courts, but also in other respects throughout the criminal justice system.

²⁸The Scottish Law Commission have indicated in their annual reports that they are keeping our codification project under review and are continuing to consider the possible implications for Scotland: see, e.g., Nineteenth Annual Report 1983-1984, (1985) Scot. Law Com. No. 89, para. 3.3.

²⁹See paras. 3.14 *et seq.* below.

³⁰E.g., the Theft Acts 1968 and 1978, the Misuse of Drugs Act 1971 and the Police and Criminal Evidence Act 1984; and, in a non-criminal context, the 1925 property legislation, the Companies Act 1985 and the Income and Corporation Taxes Act 1988.

³¹Law Com. No. 143, para. 2.28(i).

³²See paras. 3.45 *et seq.* below.

³³A saving of time should, of course, lead to a saving in costs: see para. 2.7 above.

10. *Implementing a Code*

2.26 As many have pointed out, a substantial obstacle to codification, however desirable it may be in principle, would be the difficulty in securing sufficient Parliamentary time for enacting a Criminal Code Bill. This is a problem of which we have been aware throughout the project. If we had thought that there was little or no prospect of implementation at some stage in the future, we would not have wished to devote our own resources to the continuation of this project in the form that we have done³⁴ or invited the Code team to help us to prepare this Report and draft Bill. However, the problem of implementation is not an objection in principle to codification. That is not say it can be ignored. We consider the matter further in the next part.³⁵

D. Conclusion and recommendation

2.27 We believe that codification of the criminal law of England and Wales would be desirable. We respect the views of those who are opposed to it in principle but are unable to accept that their arguments outweigh the strong arguments in favour of codification.

2.28 Accordingly, we *recommend* that there should be a Criminal Code for England and Wales.

³⁴We did consider a number of possible alternative courses to the production of a Report with a draft Criminal Code Bill, namely the production of (i) a Report without draft legislation (ii) a Report together with a Restatement of the Criminal Law (iii) a Report with an outline of a Model Penal Code or (iv) a Report together with several draft Bills or several reports each with a draft Bill (i.e. reform with a view to codification later). Each of these courses seemed to us to involve serious disadvantages.

³⁵See paras. 3.45 *et seq.*

PART 3

THE CONTENTS OF THE CODE

A. A comprehensive Criminal Code

3.1 Before outlining in general terms the contents of the Criminal Code Bill appended to this Report, it may be helpful to explain how a more comprehensive Code than we have prepared might eventually look. The Code team proposed¹ that the Criminal Code should eventually embrace as much as is practicable of the whole of the law relating to the criminal process. They envisaged that it would comprise four parts:

Part I General Principles of Liability.

Part II Specific Offences.

Part III Evidence and Procedure.

Part IV Disposal of Offenders.

1. *Part I: General Principles of Liability*

3.2 The Code team proposed that "Part I of the Code should state all the principles which are applicable to offences generally".² We agree with their proposal. We recognise that not all drafters of codes accept the need for a "general part". There is, for example, no general part in the Indian Penal Code.³ However, consultation on the Code team's Report and scrutiny of the draft Bill suggest that there is considerable agreement here that a general part would be essential to codification of the criminal law of England and Wales. It is, after all, in relation to this part of the criminal law that the difficulties⁴ arising from the interface between common law and statutory provisions are most apparent. Provision of a largely, statutory-based general part would help to alleviate many of those difficulties.

2. *Part II: Specific Offences*

3.3 The Code should be as comprehensive a statement of the criminal law as is practicable;⁵ but, as the Code team recognised, there are overwhelming reasons for excluding many offences from it — though not from the application of Part I. There are several thousand offences⁶ and a code that contained all of them would be impossibly bulky. As the team pointed out, there are other considerations besides bulk. A great many offences are contained in legislation which is not primarily penal in character but which regulates activities in a variety of ways (e.g. licensing), as well as by the provision of criminal sanctions. The Code team were convinced that the governing principle should be "the convenience of the users of the legislation — that an offence should be incorporated in Part II only if the balance of convenience so dictates".⁷ It is obviously true of much regulatory legislation that its typical users — those governed by it and those enforcing it — will wish to be able to consult the legislation as a whole rather than have to go to the Criminal Code Act for the offences it creates and to a more general Act for the larger context. Moreover, many offence-creating provisions, standing alone, would be meaningless. The team pointed out that incorporation of these in Part II of the Code would require either the repetition in the Code of technical matters from other legislation (where it would also have to remain for other purposes) or elaborate cross-referencing that would in any case throw the user back to the other legislation. We agree with the Code team that these types of inconvenience are to be avoided.

The problem illustrated: road traffic offences.

3.4 The Code team illustrated the problem of the borderline case by considering the more

¹Law Com. No. 143, para. 2.1.

²*Ibid.*, para. 2.2.

³This was drafted by Lord Macaulay between 1835 and 1837, enacted in 1860 and is now in force in many of the Asiatic countries that are or were members of the Commonwealth as well as in parts of Africa: see Sir Rupert Cross, "The Making of English Criminal Law: (5) Macaulay", [1978] Crim. L.R. 519.

⁴See para. 2.5 above.

⁵Law Com. No. 143, para. 2.10.

⁶A Committee of JUSTICE found over 7,200 offences and thought there were probably many more. They concluded that "it is now impossible to ascertain the entire content of the criminal law at any given time": *Breaking the Rules* (1980), p.53.

⁷Law Com. No. 143, para. 2.10.

serious driving offences.⁸ They suggested that it was obviously tempting to place causing death by reckless driving in the Code alongside other homicides; to place with it reckless driving, careless and inconsiderate driving and the corresponding cycling offences; and perhaps to add other "bad driving" offences and offences evincing serious irresponsibility (the drink-driving offences; driving while disqualified; using a motor vehicle without third party insurance). The team thought that not everyone who wished to see serious road traffic offences in the Code would contend for the whole of that list; but that every item in the list would have its champions. No-one, however, would claim that *all* road traffic offences should be in the Code. Apart from the triviality of many of them, there are some which depend upon the most detailed technical regulations. But, as the team pointed out, serious difficulties would attend a division of offences between the Code and the Road Traffic Act. The two most obvious difficulties are, first, that the serious offences which, taken alone, are suitable for the Code, share with some of the other offences complex provisions relating to disqualification from driving and the endorsement of licences, and, secondly, that offences in the former class are commonly associated with other road traffic offences in a group of charges made together. We agree with the team that it would not be satisfactory to enact the disqualification and endorsement provisions in two places; on the other hand, if resort to the Road Traffic Act is going to be necessary to find them, there seems little point in placing the offences anywhere else. Similarly, we agree that it must be doubtful whether prosecutor, defendant or court should be required to look to two statutes for the full range of offences relating to the same subject-matter. Because they thought the case of causing death by reckless driving, if no other, would be controversial, the Code team placed "some offences under the Road Traffic Act 1972"⁹ in the list of borderline cases.¹⁰ Our own view coincides with that of the Code team and respondents, namely that none of these offences ought to be designated for inclusion in the Criminal Code Act.

3.5 The Code team stressed that the process of incorporating into Part II all of those offences which will properly find a place there is one that must last some time. Before it can begin there will necessarily be consultations as to what offences ought to be designated for inclusion in Part II in the long run. The Code team sketched out the possible contents of Part II in its eventual form and a scheme for arranging the offences. They gave examples of offences which they believed would have to stay outside the Criminal Code Act on the principle of convenience: these included, for example, offences contained in the Companies Act 1985 and the Misuse of Drugs Act 1971.¹¹ Finally, they suggested, again by way of example only, some borderline cases — that is, some Acts in relation to which powerful arguments might be made either way on the question whether the offences they create should in due course be separated from them and placed in the Code or should remain in their parent legislation. We thought it would be helpful to include an Appendix in this Report¹² setting out the scheme of a more comprehensive Code as we envisage it at the present time. This follows, with modifications, the Code team's suggested scheme.

3.6 We should stress at this point that we regard completion of the Code by the addition of further offences not contained in the present draft Criminal Code Bill as desirable, but by no means essential, for the fulfilment of the aims of codification described earlier in Part 2. Enactment of the present draft Bill and no more would be sufficient in itself.¹³ However, we envisage that it would in many cases be a relatively straightforward process for offences created after the present Bill has been enacted to be incorporated in the Criminal Code Act.

3. *Parts III and IV: Evidence and Procedure; Disposal of Offenders*

3.7 The Code team were unable to give any detailed consideration to the structure and

⁸*Ibid.*, para. 2.11. Since the Code team reported to us, road traffic legislation has been consolidated in the Road Traffic Act 1988 (which includes the road traffic offences), the Road Traffic Offenders Act 1988 (which includes provisions relating to sentencing of road traffic offenders) and the Road Traffic (Consequential Provisions) Act 1988. Road traffic law has also been the subject of a wide-ranging review: see the Road Traffic Law Review Report (1988) and the Government's White Paper with proposals for legislation (see para. 2.8, n.10 above). However, none of these developments affects the illustration in the text.

⁹Now consolidated in the Road Traffic Act 1988: see last note.

¹⁰See Law Com. No. 143, para. 2.11 and Appendix A.

¹¹The 1971 Act (and now also the Drug Trafficking Offences Act 1986) contains some very serious criminal offences, in some cases carrying liability to a maximum penalty of life imprisonment. However, these offences form part of a broader scheme regulating the misuse of drugs and we agree they ought not to find their way into the Criminal Code. Moreover, there are other serious offences in Customs and Excise legislation controlling the importation of controlled drugs which it would be inappropriate to remove from their parent legislation for similar reasons. The fact that none of these offences will appear in the Code should not be taken as in any way diminishing their importance.

¹²Appendix C.

¹³See further paras. 3.25 - 3.26 below.

contents of Parts III and IV of the Code. This was because, as they pointed out,¹⁴ the intimate relationship which must exist between Parts I and II does not extend to Parts III and IV. The team suggested that, subject to their proposals about burden of proof, the specification of permissible sentences for offences and the various procedural matters covered in Part I, work on these parts could proceed independently. We ourselves have not yet undertaken any work on Parts III and IV.¹⁵ The enactment of Parts I and II as contained in our Bill need not await the drafting of Parts III and IV, still less their implementation.

B. The present draft Criminal Code Bill

3.8 The draft Bill appended to this Report does not comprehend all the matters which we suggest might eventually find their way into a Criminal Code Act,¹⁶ nor as we have just pointed out does it need to.¹⁷ In this section, we summarise what has been included and explain why certain matters have been omitted.

1. Part I

3.9 Part I of our draft Bill covers the following matters:

Preliminary provisions: clauses 1 to 6

Prosecution and punishment: clauses 7 to 12

Proof: clauses 13 and 14

External elements of offences: clauses 15 to 17

Fault: clauses 18 to 24

Parties to offences: clauses 25 to 32

Incapacity and mental disorder: clauses 33 to 40

Defences: clauses 41 to 46

Preliminary offences: clauses 47 to 52.

3.10 Part I is intended to give effect to the Code team's proposal to include a general part in the Code.¹⁸ As explained later, some clauses of Part I will apply to all offences whenever committed,¹⁹ other clauses will apply to all offences committed after the Criminal Code Act has come into effect,²⁰ and still others will apply to all offences except pre-Code offences²¹ — that is offences wholly or partly defined in pre-Code legislation and subsisting common law offences. The characteristic of Part I is the generality of its application. It does not create specific offences — except the offences of incitement, conspiracy and attempt to commit crime.²² They are appropriately placed in Part I because the principles of liability governing them are general in the sense that they operate on all the offences specifically defined in Part II and other legislation.²³ As explained below,²⁴ Part I also includes certain procedural and evidential matters.

3.11 The general contents of Part I are in most respects similar to those of the Code team's Bill. In the light of the detailed scrutiny of their draft clauses, there are of course some areas where we have taken a different view on policy from that originally proposed by the Code team. There have also been many drafting revisions. Any significant changes are explained in the commentary on the individual clauses (in Volume 2 of this Report). The more important omissions are considered here.

¹⁴Law Com. No. 143, para. 2.13.

¹⁵The statute law revision team of the Commission has made a preliminary study of the statute law governing criminal procedure in England and Wales in order to assess the practicability of preparing a comprehensive *consolidation*. Although the drafting resources which would be needed to undertake this major project are not at present available, the work already done has identified possibilities for smaller consolidations in areas where the law is particularly in need of being brought together in a coherent manner: see Twenty-Second Annual Report 1986-1987 (1988), Law Com. No. 169, para.2.79.

¹⁶See para. 3.5 and Appendix C.

¹⁷See para. 3.6 above.

¹⁸See para. 3.2 above.

¹⁹See Appendix A, cl. 2(2) and Report, Vol. 2, para. 4.4.

²⁰See *ibid.*, para. 4.3.

²¹See *ibid.*, para. 4.6 and Appendix A, cl. 2(3) below. See cl. 6 for the formal definition of "pre-Code offence".

²²See Appendix A, cl. 47 - 52.

²³See Report, Vol. 2, para. 13.2.

²⁴See para. 3.27.

2. *Matters omitted from Part I of the draft Bill*

3.12 There are only three major topics in Part I of the Code team's Bill which do not appear in the present draft Bill. The first concerns the jurisdiction of the criminal courts, the second relates to provisions dealing with the construction of the Code and the third concerns liability for omissions. The last topic is more conveniently discussed in the commentary on clause 16,²⁵ but the other two are discussed here.

(a) *Jurisdiction of the criminal courts*

3.13 The Code team thought that the Code must contain general provisions relating to the jurisdiction of the criminal courts, that is to say, the definition of the territory of "England and Wales" for criminal law purposes; and that Part I was the appropriate place for them. The team's clauses²⁶ were based on (part of) the draft Criminal Jurisdiction Bill appended to our Report on the Territorial and Extraterritorial Extent of the Criminal Law.²⁷ We have not included these provisions in the draft Bill for two reasons. First, we agree with the Working Party of the Statute Law Society that these provisions would be better placed in the procedural part of the Code (Part III). Secondly, the Home Office have consulted other Departments on the recommendations in our earlier Report and it seems likely that some changes would be required before effect could be given to them and these have yet to be fully worked out. We saw little advantage to be gained by including provisions which would inevitably require reconsideration.

(b) *Provisions dealing with the construction of the Code*

3.14 The Code team's terms of reference²⁸ required them to consider and make proposals in relation to the rules which should govern the interpretation of the Code. In response to this, their Report proposed that special provisions relating to the construction of the Code should be incorporated in the Code itself.²⁹ Clause 3 of the Code team's Bill was intended to give effect to this proposal and provided as follows:

- 3.— (1) The provisions of this Act shall be interpreted and applied according to the ordinary meaning of the words used read in the context of the Act, except insofar as a definition or explanation of any word or phrase for the purposes of the Act or any provision of it requires a different meaning.
- (2) The context of the Act includes —
 - (a) the illustrations contained in Schedule 1; and
 - (b) the long title, cross-headings and side-notes.
- (3) Where a provision, read in the context of the Act, is reasonably capable of more than one meaning, regard may be had —
 - (a) to the Report of the Law Commission on the Codification of the Criminal Law (Law Com. No. -) and any other document referred to therein; and
 - (b) to the law in force before the passing of this Act.

The "illustrations" in Schedule 1 were provided for by clause 4 which provided as follows:

- 4.— (1) Schedule 1 has effect for illustrating the operation of the Act.
- (2) The illustrations contained in Schedule 1 are not exhaustive.
- (3) In the case of conflict between Schedule 1 and any other provision of this Act, that other provision shall prevail.
- (4) The Secretary of State may by order amend Schedule 1 by adding further illustrations or in any other way.

These two clauses together proved to be perhaps the most contentious parts of the Code team's Bill.

²⁵See Report, Vol. 2, paras. 7.9 *et seq.*

²⁶See Law Com. No. 143, cl. 8 - 10.

²⁷(1978), Law Com. No. 91.

²⁸See para. 1.9 above.

²⁹Law Com. No. 143, Chapter 3.

(i) *Clause 3*

3.15 A number of respondents questioned the desirability of clause 3. Four main arguments were deployed against the concept of the clause. First, it was felt that provisions on interpretation were unnecessary insofar as they restate general principles of construction. The general law will apply. Some went further and suggested that the provisions were subversive because they cause issues to be raised about the drafting of other legislation which does not include such provisions. Secondly, it was suggested that, even if provisions on interpretation were desirable in a criminal code, it was unwise to attempt to draft a comprehensive set of provisions. They would unbalance the Code and produce their own difficulties of interpretation. On the other hand, it was said that the clause would cause uncertainty in practice precisely because it is an incomplete statement of the present principles of construction. It did not, for example, say anything about the principle of strict construction of penal statutes.³⁰ Thirdly, critics suggested that the clause was objectionable insofar as it introduced innovations such as clause 3(3)(a) which would be likely to arouse professional and Parliamentary opposition. A special case for including them in the Criminal Code (but not for other legislation) had not, they thought, been made out. Finally, it was said that subsection (1), which formed the basis of clause 3, would not work in the sense that it would not prevent courts from straining the meaning of provisions in the Code if they were minded to.

3.16 We asked all the scrutiny groups to examine this clause (and clause 4). So far as clause 3 was concerned, not all provided clear recommendations. Some were firmly opposed while others welcomed it. This division of opinion was reflected by other respondents.

3.17 One or two commentators thought that if rules of interpretation were to appear in the Code the rule of strict construction of penal statutes ought to be included. We are, however, sceptical whether such a principle really exists. It is of course often referred to by the courts, but it is rarely applied in practice.³¹ This is because the "principle" cannot sensibly be used as a rule for the resolution of all ambiguities. We do not think it would be acceptable for the Code to provide in effect that wherever some arguable point of doubt arose about the interpretation of an offence the point should automatically be resolved in favour of the accused.

3.18 We are not persuaded that it would be necessary or even desirable to retain the provision in clause 3(2)(b). Parliamentary procedure does not presently permit amendments to cross-headings and side-notes after a Bill has been enacted. If they were expressly made part of the enacting words of the Act this rule would have to be changed.³²

3.19 Subsection (3) of clause 3 also attracted particular criticisms. In relation to sub-paragraph (a), a majority of respondents were opposed to the provision in principle. It was pointed out that where the draft Bill scheduled to the Law Commission's Report was amended before enactment the Report might not be a safe guide to the meaning of the Act. In such a case if reference were to be made at all it would have to be to the full Parliamentary history. Practitioners were also concerned that the provision would open the floodgates to a mass of other documents. It was clear that, even if the reference to "any other document referred to therein" were amended or deleted, substantial anxiety would remain about this departure from the present rule concerning use of such reports. This rule makes pre-Parliamentary materials admissible as evidence of the mischief against which statutory words are aimed but inadmissible as evidence of the meaning of the words in their application to the case before the court.³³

3.20 The fundamental question seems to us to be whether it would be helpful to include a power to refer to this Report, and in particular the commentary on the clauses in Volume 2, for the purpose of resolving ambiguities in provisions of the Criminal Code Act. In our view, such a provision would be unlikely to offer any significant help in many cases and we have therefore concluded that this provision should not remain in the Code. The normal rule for consulting Law Commission reports will continue to apply.

3.21 The provision in sub-paragraph (b) was criticised as unnecessary — because recourse

³⁰See further para. 3.17 below.

³¹As Professor Smith pointed out in *Codification of the Criminal Law*, The Child & Co. Lecture 1986, p.9.

³²As to the importance attached to side-notes as an aid to the reader of the Code, see para. 3.40 below.

³³See *Assam Railways and Trading Co. Ltd. v. Inland Revenue Commissioners* [1935] A.C. 445 and *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg AG* [1975] A.C. 591.

to the previous law is usual in cases of doubt and ambiguity; as undesirable — insofar as it directs attention to the previous law and seems to invite a search for ambiguity; and as misconceived — insofar as it suggests that recourse to previous law may be had *only* in cases of ambiguity. In connection with the last comment, it was argued that it would prevent reference to earlier case law even where that law is part of the background assumed by the Code — for example, the law of property. We are unconvinced by this argument. However, we believe there is some force in the claims that the provision is unnecessary and potentially dangerous. One of the scrutiny groups commented that:

“The Code, instead of being a self-propelled vehicle bearing a minimum of new case-law, would be made to carry a larger and increasing case-load, and to draw behind it a heavy trailer of pre-Code decisions and statutes, as well as the Report and ancillary documents.”

This point can perhaps be over-stressed given that the provision does no more than restate the principle from *Bank of England v. Vagliano Bros.*³⁴ In view of the anxiety about the effect of highlighting the principle in the Code and in view of the lack of any clear advantage in including the principle, we concluded again that it may be better to leave it out of the Code.

(ii) *Clause 4*

3.22 Clause 4, together with Schedule 1, made provision for a series of illustrations of the functioning of the clauses of the Code where the Code team thought it would be helpful to the reader, in particular to practitioners. On consultation, opinion was divided over whether the illustrations should form part of the Criminal Code Act. Virtually all academic commentators were in favour of keeping the illustrations as part of the Code. The majority of members of the scrutiny groups and others who commented on them would prefer that they be left out. The practitioners who opposed the inclusion of illustrations were concerned about the likelihood of arguments from the facts of the illustrations. They were also concerned about the resolution of conflicts between the illustrations and the text of the Code. For example, if there were an irreconcilable conflict between an example and the provision exemplified, it is likely that the courts would give priority to the main text. In such a case, the example would be falsified by the judicial decision, but it would remain in the Code, a trap for any but the most expert reader. Anxiety was also expressed about the risk of the jury being distracted by the illustrations from decision of the real issues. In theory, however, the jury should not be distracted by them, because the judge should not allow the illustrations to be misused or the jury misled. There were other points raised which concerned matters likely to create difficulty in practice.

3.23 Since the illustrations were being offered by the Code team largely as an aid to practitioners in working with the Code, it would seem foolish to ignore the majority view that they are not wanted as an integral part of the Act. On the other hand, there was strong support for the inclusion of illustrations in a non-statutory document such as this Report. Several of those opposed to their appearance in the Code itself commented that they found the illustrations useful and would like to see them in a form in which they could be referred to by users in an appropriate case. We agree. We also think that there would be some educational value for all concerned by retaining them in some form, outside the Code. Appendix B of this Report accordingly sets out “examples” to illustrate the operation of clauses in Part I of the Code. (We did not think it necessary to provide examples in relation to any of the specific offences in Part II.) It should be borne in mind, however, that including the examples in the Report rather than in the Code itself will enable them only safely to be used to understand what our Report was supposed to mean, and not to illuminate the meaning of the eventual Act, unless the reader has carefully compared the statute as enacted with the Bill appended to the Report.³⁵

3.24 For all the reasons given above, therefore, our draft Bill does not reproduce any of the provisions in clauses 3 and 4 of the Code team’s Bill.

³⁴[1891] A.C. 107.

³⁵Cf. para. 3.19 above.

3. *Part II*

3.25 Part II of the present draft Bill contains clauses dealing with specific offences and is divided into the following Chapters:

- Chapter I: Offences against the Person
- Chapter II: Sexual Offences
- Chapter III: Theft, Fraud and Related Offences
- Chapter IV: Other Offences relating to Property
- Chapter V: Offences against Public Peace and Safety.

The first two Chapters are based on recommendations for reform of the existing law made by the Criminal Law Revision Committee.³⁶ The remaining three Chapters largely comprise a restatement of existing legislation incorporating changes required for consistency with the style and terminology of the Code as a whole. The contents of each Chapter are explained in the relevant parts of Volume 2 of this Report.³⁷

3.26 Comparison of these five Chapter headings with the scope of Part II of the more comprehensive Code as described in Appendix C shows that we have been selective in what we have included in Part II of our Bill. We took the view that the Criminal Code Bill would only be seen as useful if judges, practitioners and all who might have to use the Code could see how advantageous it would be to have the criminal law in one coherent piece of legislation. However, accomplishment of this aim did not seem to us to require that we provide a draft of a comprehensive code. We thought it would be sufficient if as many as possible of the indictable offences which regularly have to be considered in the Crown Court and in the Magistrates' Courts were to be included in the present Part II. The five groups of offences listed above include the most frequently encountered indictable offences and together would, we believe, encompass 90-95 per cent of the work of the criminal courts in relation to such offences.³⁸ Thus, we believe that enactment of the present draft Criminal Code Bill alone would represent a very substantial advance on the present position. We would not wish its enactment to be delayed merely to enable a more comprehensive Code Bill (which would itself probably take longer to enact) to be drafted.³⁹

4. *Procedural and evidential matters in the Bill*

3.27 In addition to enunciating the general principles of liability, Part I includes certain procedural and evidential matters. In some cases this is because they are matters without which Part II could not function at all. Into this class fall some of the matters concerning prosecution and punishment contained in clause 7. In other cases it is because they embody fundamental principles which should be stated at an early point in the Code, such as the provisions against double jeopardy (clause 11) and the burden of proof (clause 13). Other procedural provisions are conveniently placed here because they are closely related to those mentioned above (for example, clause 8, alternative verdicts, and clause 12, multiple convictions) or are particularly applicable to general principles — like the special procedural provisions relating to accessories or to preliminary offences.

C. *Restatement and reform*

3.28 In their Report to the Commission, the Code team said:⁴⁰

"An assumption underlying this project is that codification is a different process from law reform. This was the basis of the submission made to the Law Commission by the committee of the Society of Public Teachers of Law which led to our appointment. Codification does not have to wait until the whole of the criminal law has been reconsidered and, if necessary, reformed. If it did, it would never happen."

In our Introduction to their Report, we said:⁴¹

"Codification, as the Criminal Code team points out, is a process which differs from law reform. It is essentially a task of restating a given branch of the law in a single, coherent, consistent, unified and comprehensive piece of legislation. Codification does

³⁶But see our general note of reservation in para. 3.34 below.

³⁷See Report, Vol. 2, Parts 14 to 18.

³⁸Based on statistics taken from the Criminal Statistics for England and Wales in recent years.

³⁹See paras. 3.5 and 3.6 above.

⁴⁰Law Com. No. 143, para. 1.10.

⁴¹*Ibid.*, para. 16.

not necessitate reconsideration of the relevant law with a view to reform: it may entail no more than a restatement of existing principles.”

3.29 Our introduction reflected a general view in England and Wales of codification (at least in relation to the criminal law) as the process by which common law and statute law are replaced as the mixed sources of a given branch of the law by statute law designed as a coherent whole. This is of course not the only form of codification. Sometimes, as in the case of tax law, there is no pre-existing common law to be replaced by the new statutory code. On other occasions a new code may be designed as a model to replace existing inconsistent legislation in different jurisdictions in a federal state. Where statute law does replace a body of common law rules in a single jurisdiction such as England and Wales it may aim simply to restate the principles of the law it replaces. No significant changes may be made to the common law rules. Alternatively the legislation may incorporate a substantial measure of law reform. For example, replacing the common law rules on insanity with statutory provisions could be classed as codification whether the provisions embodied the *M'Naghten Rules* or the recommendations of the Butler Committee on Mentally Abnormal Offenders.⁴² In many cases codification will be neither a total restatement nor a complete reform of the existing law. It will consist rather of statutory expression of the existing principles, modified in respect of some matters of detail in order to achieve the general aims of codification, discussed above.⁴³

3.30 A substantial part of the draft Bill appended to this Report limits itself to a restatement of existing principles. The Code team's assertion⁴⁴ that “[t]he fundamental principles of the law are well settled and it would be neither politically feasible nor desirable to depart from them” is, in our view, correct. As they argued,⁴⁵ however, there are several reasons why the proposed Code Bill cannot be a mere restatement and the draft clauses embody a substantial body of proposed reform.

3.31 The Code cannot reproduce inconsistencies. Where the inconsistency represents a conflict of policies, a choice has to be made to produce a coherent law. The controversy over the concept of “recklessness” to which we have already referred⁴⁶ well illustrates the point. This is not the place to go into the details of that controversy. Put very broadly,⁴⁷ it is between those who say that a person is reckless only if he is aware that he is taking a risk which it is in fact unreasonable to take (the “subjectivists”) and those who say that he is reckless if that risk is one of which any reasonable person would have been aware (the “objectivists”). In the law of offences against the person, the subjectivist view prevails. In the law of criminal damage, the objectivist rule has been firmly stated. Even if this distinction were to be maintained, at the very least a different term would have to be selected to express the different definitions of recklessness. In fact, we have proposed that the same rule should apply to both and that it should be the subjective rule. But, if another opinion should prevail,⁴⁸ the draft Code Bill could be amended accordingly. We agree with the Code team that codification affords the opportunity to introduce consistency and coherence instead of the current confusion.

3.32 There are in the present law a few rules of an arbitrary nature fulfilling no rational purpose and explicable, if at all, only on historical grounds. An example of such a rule is the provision that the offence of conspiracy does not extend to agreements between spouses. The effect of clause 48 of our draft Bill is to remove this exemption.⁴⁹

3.33 We have already stated our view that it is not essential that the Code be comprehensive.⁵⁰ Where there are points to which the answer is not known in the law at present, it may be desirable to try to answer them in the Code in *some* cases; an example of

⁴²Report (1975), Cmnd. 6244.

⁴³See Part 2.

⁴⁴Law Com. No. 143, para. 1.10.

⁴⁵*Ibid.*, paras. 1.11-1.14.

⁴⁶See paras. 2.7-2.8 above. See further Report, Vol. 2, paras. 8.17 *et seq.*

⁴⁷And ignoring for present purposes the additional complication that the concept has two other meanings in rape and in serious driving offences, although this concept would cease to be used in these cases if recommendations of the Criminal Law Revision Committee (Fifteenth Report: Sexual Offences (1984), Cmnd. 9213, Recommendation 4) and the Road Traffic Law Review (Report (1988), Recommendation 18 which has been accepted by the Government: see para. 2.8, n. 10 above) were implemented.

⁴⁸It has been suggested by some that the law is right to impose stricter requirements when convicting someone for an offence against the person than for an offence against property. An alternative view is that the law should not, as it does at present, afford a greater protection to a person's property than to his person.

⁴⁹See Report, Vol. 2, para. 13.30.

⁵⁰See para. 2.15 above.

such a case in the draft Code Bill concerns the criminal liability of corporations.⁵¹ In other cases it may be better that they be left to the common law to develop.⁵²

3.34 More importantly, we have thought it right, as the Code team did,⁵³ to incorporate into the Code recommendations for the reform of the law made in recent years by official bodies such as the Criminal Law Revision Committee and ourselves, and ad hoc committees such as the Butler Committee on Mentally Abnormal Offenders, which have not yet been implemented by legislation. Where the law has been scrutinised, found to be defective and reforms recommended, it would be wrong to recommend the perpetuation of the existing law. So, for example, we have not restated the *M'Naghten Rules* which have been accepted as laying down the law of England and Wales as to insanity at the time of the alleged offence, but have codified the recommendations of the Butler Committee which would replace them, albeit with some important modifications;⁵⁴ and we have acted on the recommendations of the Criminal Law Revision Committee in respect of intoxicated offenders, self-defence, offences against the person, sexual offences and other matters. However, inclusion of these recommendations made by other Committees implies neither assent nor dissent; we are merely recording in statutory form, in some instances with modifications, what others have recommended.

3.35 In all these respects the draft Criminal Code Bill departs from the existing law and would represent, if enacted in the form presented here, a substantial reform of the law. Particularly is this so, for example, in the case of mental disorder, offences against the person and sexual offences.

D. The Code and the common law

3.36 One of the objectives of codification is to define offences authoritatively and as precisely as possible. Hitherto, it has been the policy of the Commission to try to eliminate common law offences, a policy which has met with some success.⁵⁵ However, the abolition of *all* common law offences should not be regarded as a necessary pre-condition of the enactment of the Code. Just as the Code can co-exist with offences in other enactments, so it could co-exist with some surviving common law offences. Codes sometimes provide expressly that all offences are to be found in the Code itself or in other legislation and nowhere else. The draft Bill has not gone so far. Clause 3 provides that no offence shall be created except by, or under the authority of, an Act of Parliament, and this merely restates the accepted law.⁵⁶ Other provisions of the draft Bill allow for the possible continuation of common law offences for some time after its enactment. Many of the provisions of Part I could be applied to common law offences no less readily than to statutory crimes — for example, the law relating to proof, parties, mental disorder, intoxication and many other matters. On the other hand, provisions relating to the meaning of particular words — for example, fault terms (clause 18) assume the existence of an enactment and could not apply; but these will not apply to pre-Code statutory offences either so there is no significant difference. The abolition of common law offences has sometimes proved to be a difficult and protracted business. The fact that the process will not have been completed should not be regarded as a bar to the enactment and operation of the Code.

3.37 The draft Bill contains a number of provisions directly concerned with its impact on the common law. First, certain common law offences which are being replaced by Code offences will need to be abolished and this is provided for by clause 4(1) and Schedule 8. Secondly, it is stated that rules and principles of the common law corresponding to or inconsistent with provisions of the Code are abrogated for all purposes not relating to acts done before the commencement of the Code: clause 4(2). Thirdly, as is explained more fully in the commentary on clause 45,⁵⁷ it is impossible to specify in the Code all those circumstances which amount to defences because they justify or excuse the doing of acts that would otherwise be offences. The Code makes clear that the specification of a limited number of general defences that are well-developed or capable of being closely defined is not an exhaustive statement of defences and that other circumstances of justification and excuse continue to apply.

⁵¹See Report, Vol. 2, para. 10.3.

⁵²See further para. 3.38 below.

⁵³Law Com. No. 143, para. 1.14.

⁵⁴See Report, Vol. 2, para. 11.9.

⁵⁵See the statutes cited in para. 1.6, n.12 and para. 1.7, n.15.

⁵⁶See Report, Vol. 2, para. 4.8.

⁵⁷See *ibid.*, paras. 12.38 *et seq.*

3.38 It follows from dealing with the effect of the Code on the common law in this way that those parts of the common law not abrogated by the Code will continue to exist; this is expressly provided for in the Code in clause 4(4). We believe that this is both inevitable and right. It is inevitable because the Code could not supply all the answers to all the problems which arise in practice, and it would be foolish to pretend otherwise. The creative role of the judge will therefore continue to play a part in cases where the legislation does not provide an answer. Unless the Code is to confer expressly a power to decide such cases — in which case it might be necessary to specify relevant principles or guidelines — it is right that the judge should fall back on the common law. But in reaching his decision on a particular point, the judge will be operating within the broad framework of the Code rather than of the case-law. One example outside the area of justification and excuse (covered by clause 45) concerns the criminal liability of unincorporated associations. For reasons which we give elsewhere,⁵⁸ we do not think it would be right to devise a new statutory regime to govern this liability; the possible need eventually to develop relevant principles exemplifies the desirability of retaining a residual role for the common law.

E. The style and language of the Code

3.39 In the preparation of our draft Bill we have adopted, as to method and language, the policy which the Code team described in some detail in their Report.⁵⁹ That policy is the use of as lucid and economical a mode of statement as the subject-matter permits. It is worth stressing the care which it has been felt necessary to take to ease the task of the ordinary user of the Code in grappling with quite complex material. The Code team mentioned, as we do in our turn, the high value that they put upon clarity of lay-out, simplicity of style, and what they called “a conscious policy of communicativeness”. Among the “ordinary” users of the Code, we include the jury (who of course are not lawyers). If the words of the statute are used by the judge when instructing the jury, as in most cases we expect they will be,⁶⁰ there is a reasonable likelihood of the jury understanding the position and coming to the right conclusion. Adoption of the Code team’s policy therefore reinforces the arguments in favour of codification to which we referred earlier.⁶¹ As we have already indicated,⁶² the style and presentation of the team’s Bill attracted very favourable comment on consultation.

1. *Side-notes*

3.40 Our draft Bill, like that of the Code team, contains many marginal notes to the text — not simply conventional notes to sections (printed in roman type, as is usual), but also subsidiary notes to most subsections and even, in some cases, to paragraphs (italicised, to distinguish them visually from the principal notes). These are intended to facilitate the user’s grasp of the contents and meaning of the Code’s provisions, particularly of long sections, and to assist him in finding what he is looking for. We ourselves found this device very helpful in our work on the Bill.

2. *Communicativeness*

3.41 Side-notes are one way of communicating generously with the user of the Code. Another is the use of cross-references, commonly with a parenthetical indication of the subject-matter of the provision referred to. A third is the occasional inclusion, for the user’s convenience or for the avoidance of doubt or error, of a phrase, or even a whole provision, that could be omitted without detriment to the legal effect of the Bill.⁶³

3. *Use of the present tense*

3.42 Our draft Bill will be found to state the substantive criminal law in terms of the legal effect of a person’s conduct at the time when that conduct, or its relevant result, occurs. This may seem obvious; but the Code team were able to point to a tendency, even in modern drafting, to state substantive matters from the point of view of their effect at trial.⁶⁴ Section 2 of the Homicide Act 1957 (diminished responsibility) provides that a person “shall not be

⁵⁸See *ibid.*, para. 10.24.

⁵⁹Law Com. No. 143, paras. 2.14-2.24.

⁶⁰See further para. 3.43 below.

⁶¹See paras. 2.2 *et seq.* above.

⁶²See para. 1.16 above.

⁶³The Code team (Law Com. No. 143, para. 2.17(ii)) gave as an example the equivalent in their Bill of clause 30(1) (liability of corporations for offences not requiring fault). Another example is clause 45(c), which in relation to its subject-matter duplicates clause 4(4).

⁶⁴See Law Com. No. 143, para. 2.19.

convicted of murder if he was suffering from" an appropriate abnormality of mind, rather than that a person who kills when suffering from such an abnormality is not guilty of murder. Section 5(2) of the Criminal Damage Act 1971 states conditions under which a person "charged with an offence" is to be "treated as having a lawful excuse", rather than providing that, those conditions being satisfied, a person has a lawful excuse when he does an act that would otherwise be an offence.⁶⁵ We accept the team's view that "matters of substance should be kept as distinct as possible from matters of process". A person is (subject to any defence) guilty of an offence when he behaves in a specified way or causes a specified result; he has a defence if specified circumstances exist at the time of his conduct. Accordingly, Parts I and II of the draft Bill, in stating the general principles of criminal liability and the elements of specific offences, are written in the present tense wherever that can conveniently be done.⁶⁶

F. Coping with complex provisions

3.43 In their Report, the Code team specifically drew attention to two practical implications of reducing the present law into the form of the proposed Code. One was for the need for a generous period between enactment of the Code Bill and its coming into force, so that its professional users may familiarise themselves with it. We consider the question of implementation below⁶⁷ and point out that the period for enactment may take some time. If this is the case, the Code team's point may very likely be met (as we think it should be) in any event. The second point was put as follows:⁶⁸

"The Code, the judge and the jury. An objection to draft criminal legislation that is sometimes voiced is: "How can a jury be expected to understand that?" Another is: "That provision has many ingredients, upon all of which in every case the judge would have to direct the jury; there are too many." If objections such as these were well-founded in principle, our draft clauses, like much other legislation, must fail. But the objections are misconceived. The answer to both of them is the same. The judge stands as mediator between the Code and the jury. He filters, translates and renders concrete the rules that the jury must apply. He filters by troubling the jury only with those ingredients of a complex provision that he identifies as raising issues for their consideration in the case in hand, having regard to the state of the evidence. He translates, partly by applying to the controlling provision any other provisions of the Code (such as an interpretation provision) that affect its meaning or application, and partly by adopting a means of expressing its concepts that will suit his particular lay audience in the context of the case. And he renders concrete by reducing abstract language (such as "omission") to the terms of the case (as by referring to the defendant's alleged failure to do a particular act). In the result he may or may not use in addressing the jury the very words of the controlling provisions. Most often, of course, he will; for commonly the statutory language will be simple and untechnical. But the kinds of objections mentioned at the beginning of this paragraph are not raised when such language is used; and the fact is that the technical and the complex are not always avoidable. (What is said here of judge and jury applies also to the justices' clerk and his bench.)"

The essential points made in this passage have been urged on trial judges by the Court of Appeal on more than one occasion in recent times.⁶⁹ We think that the Code team's reasoning in this passage is sound and we endorse it.

G. The incomplete condition of the draft Criminal Code Bill

3.44 The draft Bill is not as complete as are those which are usually included in our reports. It does not, for example, contain schedules of enactments to be repealed or amended in consequence of the enactment of the Code. The substantial task of identifying

⁶⁵For Code provisions corresponding to the Homicide Act 1957, s.2, and the Criminal Damage Act 1971, s.5(2), respectively, see Appendix A, cl. 56(1) and cll. 184 and 185.

⁶⁶It is not always convenient; see Appendix A, cl. 35, where the defence of severe mental disorder is stated in a provision requiring a particular form of verdict.

⁶⁷See paras. 3.45 *et seq.* below.

⁶⁸Law Com. No. 143, para. 2.28(ii).

⁶⁹In *Lloyd* [1985] Q.B. 829, for example, the Lord Chief Justice cited (at pp. 835-836) with approval a passage to similar effect from Glanville Williams' *Textbook of Criminal Law* 2nd ed., (1983), at p. 719: the complex provision in question was s. 6(1) of the Theft Act 1968 (reproduced in cl. 145 of our draft Bill). See also *Shadrokh-Cigari* [1988] Crim.L.R. 465 where the court emphasised that the technical points of law concerning the right to trace and recover property are matters of legal reasoning which generally do not concern the jury. Contrast *McVey* [1988] Crim.L.R. 127.

the enactments to be listed in the Schedules has not been undertaken. If it were decided to enact a Criminal Code Bill along the lines of the Bill appended to this Report, further drafting work would be required to complete the Bill before it could be introduced into Parliament.⁷⁰ It is to the legislative process and the question of enactment that we now turn.

H. The legislative process: enacting the Criminal Code Bill

3.45 While the codification project received very considerable support on consultation, a number of consultees raised with us the question of implementation and referred to the difficulties likely to be encountered in enacting a Criminal Code Bill.

3.46 We appreciate that any Government might have difficulty in finding the necessary legislative time to introduce a Bill of the size of our draft Criminal Code Bill. The realities are such that the competing demands for new, and in some cases necessarily substantial, pieces of legislation from many different quarters are intense. The case for implementing a Criminal Code Bill therefore has to be convincing. We hope that we will have demonstrated by this Report that it is. However, we think it is possible to overstate the difficulties of enactment. Insofar as they do exist, we believe that it will be possible to overcome them without the need to devise any special Parliamentary procedure as has been suggested.⁷¹ Nevertheless, we do not think it is part of our function at this stage to offer suggestions as to precisely how the draft Bill should proceed from its present form to the stage of final enactment. Officials in the relevant Government Departments may be in a better position than us to advise Ministers on this matter.

3.47 While it is important to stress that the Criminal Code Bill appended to this Report has been drafted as a coherent whole, we believe that its contents fall into three separate and quite distinct categories. This division may have a bearing on the manner in which the Bill could be enacted. The first category is the codification of the general part (Part I): this broadly aims to state the existing mix of common law and statutory rules in a coherent statutory form, though it necessarily carries with it some element of reform. The second consists of a statement of existing statutory offences in Code style, with very little reform of the law involved (Part II, Chapters III, IV, and V). The third part, by contrast, aims to give effect to some fairly substantial reforms recommended by the Criminal Law Revision Committee (Part II, Chapters I and II).

3.48 Because of the different nature of these three parts of the Bill, it may in fact be desirable that the Bill should be enacted in stages over the course of more than one session with a view to consolidation into one enactment — the Criminal Code Act — at a later date. If this were to be done, we would regard the minimum enactment which should be undertaken as comprising the whole of Part I, together with as much as possible of Part II. We recognise, however, that it may be necessary to make decisions regarding the implementation of those parts of Part II containing a substantial element of reform separately from the other parts of the Code.

J. Machinery for monitoring and revision

3.49 It is inevitable that the construction of the Criminal Code Act will generate a new body of case-law. If this is allowed to accumulate indefinitely the relevance of the Code becomes progressively less and many of the advantages of codification are lost.

3.50 There is of course always a risk that rules developed through precedent will come to conflict with any ordinary meaning of the words used in the Code. This process can be observed in relation to modern English statutes. When it occurs, the words of the Code are misleading and a trap for the unwary or uninformed. To remedy this, it may well be necessary, as the Code team thought, to provide machinery for the regular scrutiny, up-dating and reform of the Code. The Code team suggested that a body might be established under the aegis of the Law Commission whose function it would be to propose amending legislation from time to time so as to ensure that the Code continues to be an

⁷⁰Another area requiring further drafting work is the Schedule of Disposals after mental disorder verdict: see Appendix A, cl. 39 and Sched. 2 and Report, Vol. 2, paras. 11.34-11.36.

⁷¹The special procedures adopted in the past in relation to the attempt to enact Stephen's draft Code of Criminal Law and Procedure in 1878-1882, and the enactment of the Sale of Goods Act 1893 drafted by Chalmers were mentioned in our Introduction to Law Com. No. 143, at para. 26 as possible precedents to follow for the purpose of enacting a draft Criminal Code Bill.

up-to-date and accurate statement of the law as applied by the courts and to remedy any defects which have emerged in its operation.

3.51 We ourselves have not considered in any detail the question of establishing machinery for monitoring and revising the Code, nor who would be responsible for the task. We think that these are not matters which it is appropriate to examine at this stage. In principle, however, we believe that some form of formal monitoring would be desirable.

3.52 In this connection, we again draw attention to the fact that Part II of our draft Bill incorporates a number of offences restated from the existing law. These have been amended, if at all, in the main only for the purpose of bringing the drafting style into line with the style of the rest of the Code. These offences have not been reconsidered from the point of view of whether their content requires to be reformed. Some of the offences included have been enacted only recently and it is unlikely that they will need to be reconsidered for some time. On the other hand, others are beginning to show signs of age and it may well be necessary that these offences should in due course be reviewed.

K. Commentary on the draft Criminal Code Bill

3.53 As we stated at the outset, our commentary on the clauses in the draft Bill is contained in a separate volume to this Report. We have divided the Report into two volumes so that the Bill itself, and the commentary on it, can be read side by side. The fact that our signatures appear immediately following this paragraph should not therefore be taken as an indication that the Report concludes here: the commentary is as much a part of our Report as is the material contained in this Volume. It is appropriate also to draw attention to the Table of Derivations preceding the draft Bill which has been provided as a convenient summary of the sources of the clauses in the draft Bill.

(Signed) ROY BELDAM, *Chairman*
TREVOR M. ALDRIDGE
BRIAN DAVENPORT
JULIAN FARRAND
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
30 December 1988

APPENDIX A

CRIMINAL CODE BILL

TABLE OF DERIVATIONS

This Table shows alongside each clause in the draft Bill (i) relevant statutory provisions, in cases where the effect of the clause is to repeat such provisions, with only minor modifications, (ii) references to relevant recommendations of the Law Commission or other bodies and (iii) references to the paragraphs in the Report discussing the source from which each clause in the draft Bill is derived.

Note: The following abbreviations are used in this Table:

Report	= A Criminal Code for England and Wales (Volumes 1 and 2) (1989), Law Com. No.177.
Law Com. No. 83	= Report on Defences of General Application (1977), Law Com. No. 83.
Law Com. No. 89	= Report on the Mental Element in Crime (1978), Law Com. No. 89.
Law Com. No. 143	= Criminal Law: Codification of the Criminal Law. A Report to the Law Commission (1985), Law Com. No. 143.
14th Report	= Criminal Law Revision Committee, Offences against the Person (1980), Cmnd. 7844.
15th Report	= Criminal Law Revision Committee, Sexual Offences (1984), Cmnd. 9213.
16th Report	= Criminal Law Revision Committee, Prostitution in the Street (1984), Cmnd. 9329.
17th Report	= Criminal Law Revision Committee, Prostitution: Off-Street Activities (1985), Cmnd. 9688.
Butler Report	= Report of the Committee on Mentally Abnormal Offenders (1975), Cmnd. 6244.

Clause of Bill

Source/Discussion

Part I. General Principles.

1	Report para.4.2.	
2	Report paras.4.3-4.7.	
3	Report para 4.8.	
4	Report paras.3.36-3.38, 4.9.	
5	Report para.4.10.	
6	Where the definition refers to a clause of the Bill see the derivation of that clause.	
	"Fault element"	see clause 20.
	"Included offence"	Criminal Law Act 1967, s.6(3). Report para.5.11.
	"Indictable offence"	Interpretation Act 1978, s.5 and Sched. 1.
	Offence triable either way"	Interpretation Act 1978, s. 5 and Sched.1.
	"Personal harm"	Report para. 14.35.
	"Pre-Code offence"	Report paras. 4.5-4.6.
	"Property"	para (a): Theft Act 1968, s.4(1), 4(4); para (b): Criminal Damage Act 1971, s.5(4).
	"Public place"	Public Order Act 1936, s.9.
	"Sentence"	Criminal Appeal Act 1968, s.50(1).
	"Summary offence"	Interpretation Act 1978, s.5 and Sched. 1.
	"Trade dispute"	Trade Union and Labour Relations Act 1974, s.29.

**Clause
of Bill****Source/Discussion**

- 7 Report paras.5.3-5.7.
8(1)(a) Report para.5.9.
(b) Criminal Law Act 1967, s.6(3). Report paras.5.10-5.11.
(c) Criminal Law Act 1967, s.6(3)-(4). Report para.5.12.
(d) Criminal Law Act 1967, s.4(2).
(2) Report para.5.14.
(3) Criminal Law Act 1967, s.6(7). Report para.5.15.
(4) 14th Report, paras.156, 161, 177, 182. Report para 5.16.
9 Criminal Law Act 1967, s.6(4). Report paras.5.19-5.22.
10 Interpretation Act 1978, s.18. Report para.5.23.
11(1)-(2) Law Com. No. 143, paras.5.25-5.34. Report para.5.24, 5.26, 5.27, 5.29, 5.30.
(1)(d) Report para.5.28.
(3) Report para.5.31.
(4) Report paras.5.32-5.33.
(5)-(7) Report paras.5.34-5.35.
12 Law Com. No. 143, paras.5.42-5.48. Report para.5.37.
13(1) Report para.6.1.
(2) Report para.6.1.
(3) Report para.6.2.
(4) Report para.6.3.
(5) Report para.6.3.
(6) Magistrates' Courts Act 1980, s.101. Report para.6.2.
14 Law Com. No. 89, para.97. Report paras.6.4.-6.5.
15 Report para.7.6.
16 Report paras.7.7-7.8.
17 Report paras.7.14-7.22.
18 Law Com. No. 89. Report paras.8.10-8.21.
19 Report paras.8.22-8.24.
20 Law Com. No. 89, para.89. Report paras.8.25-8.28.
21 Report paras.8.29-8.32.
22(1)(a) 14th Report, para.267(2). Report paras.8.25-8.36.
(b) 14th Report, para.277. Report para.8.39, 8.41.
(2) Report para.8.40.
(3) Report para.8.43.
(4)(a) 14th Report, para.268. Report para.8.44.
(b) Report para.8.45.
(5) Report para.8.46.
(6) Report paras.8.48-8.49.
(7) Report paras.8.50-8.51.
23 Report paras.8.52-8.55.
24 Report paras.8.56-8.61.
25 Law Commission Working Paper No. 43 (1972). Report paras.9.5-9.7.
26 Report paras.9.8-9.17.
27(1) Report paras.9.18, 9.24-9.28.
(2) Report para.9.20.
(3) Report paras.9.22-9.23.
(4) Report para.9.29.
(5) Law Commission Working Paper No. 43 (1972), Proposition 7(2)(c). Report paras.9.30-9.31.
(6) Law Commission Working Paper No.43 (1972), Proposition 7(1). Report paras.9.32-9.37.
(7) Report paras.9.38-9.40.
(8) Report paras.9.41-9.42.
28 Accessories and Abettors Act 1861, s.8. Report paras.9.43-9.46.
29 Report paras.9.47-9.50.
30 Law Commission Working Paper No. 44 (1972). Report paras.10.1-10.18.
31 Report paras.10.19-10.22.
32(1) Children and Young Persons Act 1933, s.50(as amended by the Children and Young Persons Act 1963, s.16.). Report para.10.26.
(2) Report paras.10.27-10.28.
33 Report paras.11.1-11.6.

Clause of Bill	Source/Discussion
34	Law Com. No. 143, para. 12.20 (ii). Butler Report, paras.18.20, 18.30-18.36. Report paras.11.17-11.19, 11.26-11.28.
35	Butler Report, para. 18.26. Report paras.11.15-11.16.
36	Butler Report, para. 18.20. Report paras. 11.23-11.25.
37	Butler Report, para.18.50. Report para.11.30.
38	Butler Report, para.18.48. Report paras. 11.31-11.33.
39	Report paras.11.34-11.36.
40	Butler Report, para.18.38. Report para. 11.37.
41	Report paras. 12.6-12.10.
42	Law Com No. 83. Report paras.12.11- 12.19.
(2)	Report para. 12.13.
43	Report paras. 12.20-12.23.
44(1)(a)	Criminal Law Act 1967, s.3(1). Report para.12.27.
(1)(c)	14th Report, paras.119-121. Report para.12.27.
44(4)	Report para. 12.32.
(5)	Law Com. No. 143, para.13.44. Report para.12.33.
45	Report paras.12.38-12.41.
46	Statutory Instruments Act 1946, s.3(2). Report paras.12.42-12.43.
47(1)	Report paras.13.4-13.11.
(2)	Report paras.13.12-13.16
(3)	Report paras.13.17.
(4)	Report para.13.18.
(5)	Report para.13.19.
48(1)	Criminal Law Act 1977, s.1(1). Report paras.13.21-13.25.
(2)	Report para.13.26.
(3)	Criminal Law Act 1977, s.1(3),1(4). Report para.13.27.
(4)	Criminal Law Act 1977, s.2(1). Report para. 13.28.
(5)	Report para.13.33.
(6)	Report para.13.33.
(7)	Report para.13.34.
(7)(b)	Criminal Law Act 1977, s.1(1). Report para.13.36.
(8)	Report paras.13.37-13.41.
(8)(c)	Criminal Law Act 1977, s.5(8).
49(1)	Criminal Attempts Act 1981, s.1(1). Report para.13.43.
(2)	Report paras.13.44-13.45.
(3)	Report para.13.46.
(4)	Criminal Attempts Act 1981, s.4(3).
(5)	Criminal Attempts Act 1981, s.1(4)(c). Report para.13.48.
(6)	Criminal Attempts Act 1981, s.1(4)(b).
(6)(a)	Report para.13.49.
50	Criminal Law Act 1977, s.1(1)(b). Criminal Attempts Act 1981, s.1(2)and(3). Report paras.13.50-13.53.
51	Report paras.13.54-13.55.
52(1)-(3)	14th Report, para.303. Report para.13.56.
(4)	Report para.13.57.

Part II. Specific Offences.

Chapter I. Offences against the Person.

53(a)	14th Report, para.35, recommendation 2. Report paras. 14.2-14.3.
53(b)	14th Report, paras.39-40, recommendation 5. Report para.14.4.
54	14th Report, paras.19-30, recommendation 1. Report paras.14.5-14.9.
55	14th Report, paras.116-123, recommendation 26. Report paras.14.10-14.14.
56(1)	14th Report, para.93. Report para.14.15.
(2)	Mental Health Act 1983, s.1(2). 14th Report, paras.92-93, recommendation 14.
(3)	Report para.14.16.
57	Criminal Procedure (Insanity) Act 1964, s.6. 14th Report, paras.95-96, recommendation 16. Report para.14.17.

Clause of Bill	Source/Discussion
58	14th Report, paras.75, 80-83, 85-88, 90, recommendations 9-13. Report para.14.18
59	14th Report, recommendation 73. Report para.14.19.
60	14th Report, paras.298-301, recommendations 76-78. Law Com. No. 143, para.15.24, Illustration 62, p.234. Report para.14.20.
61	14th Report, para.302, recommendation 79. Report para.14.22.
62(1)-(2)	Homicide Act 1957, s.4. 14th Report, paras.129-132, 136, recommendation 29. Report para.14.23.
(3)	14th Report, para.133, recommendation 30. Report para.14.24.
63	Suicide Act 1961, s.2. 14th Report para.136, recommendation 32. Report para.14.25.
64	Infanticide Act 1938, s.1(1). 14th Report paras.36, 100-113, recommendations 18-24. Report paras.14.26-14.28.
65	Offences against the Person Act 1861, s.16. 14th Report paras.215-218, recommendation 63. Report para.14.29.
66	Offences against the Person Act 1861, s.58. Report para.14.31.
67	Offences against the Person Act 1861, s.58. Report para.14.32.
68	Offences against the Person Act 1861, s.59. Report para.14.33.
69	Infant Life (Preservation) Act 1929, s.1. Report para.14.34.
70	14th Report, paras.152-155, recommendation 39(1). Report paras.14.35-14.36.
71	14th Report, paras.152-155, recommendation 39(2).
72	14th Report, paras.152-155, recommendation 39(3). Report para.14.38.
73	14th Report, paras.185-188, recommendations 53-54. Report para.14.39.
74	Criminal Justice Act 1988, s.134. Report para.14.40.
75	14th Report, para.159, recommendation 42. Report paras.14.41-14.43.
76	14th Report, paras.170-172, recommendations 46-47. Report para.14.44.
77	14th Report, paras.181-182, recommendation 51. Report para.14.45.
78	Theft Act 1968, s.8(2). Report para.14.46.
79	Report para.14.51.
80	14th Report, paras.231-233, recommendation 65(a). Report paras.14.47-14.50 and 14.52.
81	14th Report, paras.235-238, recommendation 65(b). Report para.14.53.
82	Taking of Hostages Act 1982, s.1. Report para.14.54.
83	Child Abduction Act 1984, s.1. Report para.14.55.
84	Child Abduction Act 1984, s.2. Report para.14.56.
85	14th Report, paras.247-249, recommendation 65(c). Report para.14.57.
86	14th Report, paras.192-195, recommendation 56. Report para.14.58.

Part II

Chapter II. Sexual Offences.

87	Sexual Offences Act 1956, s.44, 46. 15th Report, paras.12.7, 2.47, 2.48, 2.85, recommendations 6, 7, 10, 63. 17th Report, para.3.13. Report paras.15.3-15.10.
88	Report para.15.11.
89(1)	15th Report, para.2.41, recommendation 4. Report para.15.12.
(2)	15th Report, paras.2.20-2.29, recommendations 2-3. Report paras.15.13-15.15.
(3)	See note on Schedule 4. Report para.15.16.
90	Sexual Offences Act 1956, s.2(1). 15th Report, para.2.107, recommendation 14. Report para.15.17.
91	Sexual Offences Act 1956, s.3(1). 15th Report, para.2.108, recommendation 15. Report para.15.18.
92	15th Report, para.2.109, recommendation 16. Report para.15.19.
93(1)	15th Report, paras.5.6, 5.17-5.18, recommendations 23, 25 and 26. Report para.15.20.
(2)	Sexual Offences Act 1956, s.25. Report para.15.21.

Clause of Bill	Source/Discussion
94(1)	15th Report, paras.5.6, 5.11-5.14, 5.18, recommendations 23-24, 26. Report para.15.22.
(2)	Sexual Offences Act 1956, s.26. Report para.15.22.
95	15th Report, paras.3.6-3.7, recommendation 18. Report para.15.23.
96	15th Report, paras.6.7, 6.10, 6.11, 6.15, 6.16, recommendations 30, 32. Report para.15.24.
97	15th Report, paras.6.7, 6.11, recommendation 31. Report para.15.25.
98	15th Report, para.6.15, recommendation 33. Report paras.15.26, 15.32.
99	15th Report, paras.6.13-6.14, recommendation 33. Report paras.15.27-15.29, 15.32.
100	Report paras.15.30, 15.26, 15.32.
101	15th Report, para.6.18, recommendation 35. Report paras.15.31-15.32.
102	Sexual Offences Act 1967, s.2. Sexual Offences Act 1956, s.12. Report para.15.33.
103(1)	15th Report, paras.8.22, 8.37, recommendations 44, 46. Report para.15.34.
(2)	15th Report, para.8.41, recommendation 47. Report para.15.36.
(3)	Criminal Law Act 1977, s.54. Report para.15.37.
(4)	15th Report para.8.28, recommendation 42. Report para.15.34.
104	15th Report, paras.8.22, 8.28, 8.37, recommendations 42, 44, 46. Report para.15.34.
105	15th Report, para.8.31, recommendation 45. Report para.15.38.
106(1)	15th Report, para.9.11, recommendation 53. Report paras.15.39, 15.40.
(2)	Sexual Offences Act 1956, s.27. 15th Report, para.9.11, recommendation 53. Report para.15.41.
107	15th Report, paras.9.6, 9.11, recommendations 50-53. Report para.15.42.
108	15th Report, paras.9.6, 9.11, recommendations 50-53. Report para.15.42.
109	15th Report, paras.13.11, 13.12, recommendations 67, 68. Report para.15.43.
110	Mental Health Act 1959, s.128 [as amended by the Sexual Offences Act 1967]. Report paras.15.44, 15.45.
111	15th Report, para.4.8, recommendation 19. Report para.15.46.
112	15th Report, paras.4.29, 4.30, recommendation 22.
113	Vagrancy Act 1824, s.4. Report para.15.48.
114	15th Report, paras.7.21-7.23, recommendation 38. Report para.15.49.
115	15th Report, paras.7.12, 7.21-7.23, 7.27, recommendations 37-39. Report para.15.50.
116	Protection of Children Act 1978, s.1. Report para.15.51.
(5)	See note on Schedule 5. Report para.15.52.
117	Criminal Justice Act 1988, s.160. Report para.15.51.
118	15th Report, para.12.7, recommendation 63. Report para.15.53.
119	15th Report, para.12.9, recommendation 64. Report para.15.53.
120	15th Report, paras.10.5, 10.21, recommendations 58, 59. Report paras.15.54-15.55.
121	Sexual Offences Act 1967, s.1(2)(b). 15th Report, para.10.26, recommendation 60.
122	16th Report, para.17 recommendation 1. 17th Report, para.1.4. Report para.15.57.
123	17th Report, paras.2.9-2.11, recommendation 2. Report para.15.58.
124	17th Report, paras.2.9-2.15, recommendation 2. Report para.15.59.
125	17th Report, para.2.18, recommendation 2(c). Report para.15.60.
126	17th Report, para.3.14. Report 15.61.
127	17th Report, para.3.13, recommendation 5(a). Report para.15.62.
128	17th Report, para.3.13, recommendation 5(b).
129	17th Report, para.3.13, recommendation 5(c). Report para.15.64.
130	17th Report, para.3.10, recommendation 6. Report para.15.65.
131	Sexual Offences Act 1956, s.22. 17th Report para.4.4 recommendation 10. Report para.15.66.
132	Sexual Offences Act 1956, s.23. 17th Report para.4.5 recommendation 11. Report para.15.67.
133	17th Report, paras.4.14-4.15, recommendations 12-13.

Clause of Bill	Source/Discussion
134	Street Offences Act 1959. Sexual Offences Act 1985. Report paras.15.70-15.72.
135	Street Offences Act 1959. Sexual Offences Act 1985. Report paras.15.70-15.72.
136	Street Offences Act 1959. Sexual Offences Act 1985. Report paras.15.70-15.72.
137	Street Offences Act 1959. Sexual Offences Act 1985. Report paras.15.70-15.72.
138	16th Report, para.55, recommendation 10. Report para 15.73

Part II

Chapter III. Theft, Fraud and Related Offences.

139	Theft Act 1968, ss.4(1), (4), 5(1), 34. Report para.16.6.
140	Theft Act 1968, s.1.
141	Theft Act 1968, s.2.
142	Theft Act 1968, s.3.
143	Theft Act 1968, s.4(2)and(3).
144	Theft Act 1968, s.5.
145	Theft Act 1968, s.6.
146	Theft Act 1968, s.8(1). Report para.16.7.
147	Theft Act 1968, s.9. Report para.16.8.
148	Theft Act 1968, s.10.
149	Theft Act 1968, s.11.
150	Theft Act 1968, s.12. Report paras.16.9-16.10.
151	Criminal Attempts Act 1981, s.9.
152	Theft Act 1968, s.13.
153	Theft Act 1978, s.3.
154	Theft Act 1968, s.21. Report para.16.11.
155	Theft Act 1968, s.15(4).
156	Theft Act 1968, s.15.
157	Theft Act 1978, s.1.
158	Theft Act 1978, s.2.
159	Theft Act 1968, s.16. Report para.16.12.
160	Theft Act 1968, s.17.
161	Theft Act 1968, s.19.
162	Theft Act 1968, s.20(1). Report para.16.13.
163	Theft Act 1968, s.20(2). Report para.16.13.
164(1)	Forgery and Counterfeiting Act 1981, s.8(1).
(2)	Forgery and Counterfeiting Act 1981, s.27(1).
(3)	Forgery and Counterfeiting Act 1981, s.8(3).
(4)	Forgery and Counterfeiting Act 1981, s.8(4).
165	Forgery and Counterfeiting Act 1981, s.9.
166	Forgery and Counterfeiting Act 1981, s.10.
167	Forgery and Counterfeiting Act 1981, s.1.
168	Forgery and Counterfeiting Act 1981, s.2.
169	Forgery and Counterfeiting Act 1981, s.3.
170	Forgery and Counterfeiting Act 1981, s.4.
171	Forgery and Counterfeiting Act 1981, s.5.
172	Theft Act 1968, s.22(1). Report paras.16.14, 16.15.
173	Theft Act 1968, s.23. Report para.16.16.
174	Theft Act 1968, s.24.
175	Theft Act 1968, s.25. Report para.16.17.
176	Theft Act 1968, s.14.
177	See note on Schedule 6, paras.1,2,4 and 5.

Part II

Chapter IV. Other Offences Relating to Property

178	Criminal Damage Act 1971, s.10(1). Report para.17.4.
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Clause of Bill	Source/Discussion
179	Criminal Damage Act 1971, s.10(2), (3), (4).
180	Criminal Damage Act 1971, s.1. Report paras.12.5, 17.5-17.8.
181	Criminal Damage Act 1971, s.2. Report paras.12.5, 17.7.
182	Criminal Damage Act 1971, s.3. Report paras.12.5, 17.7.
183	Criminal Damage Act 1971, s.5(1).
184	Criminal Damage Act 1971, s.5(2)(a). Report paras.12.5, 17.7, 17.9.
185	Criminal Damage Act 1971, s.5(2)(b). Report paras.12.5, 17.7, 17.10-17.11.
186	See note on Schedule 6, paras.3 and 5.
187	Criminal Law Act 1977, s.12(1), (2).
188	Criminal Law Act 1977, s.12(3)-(5).
189	Criminal Law Act 1977, s.12(6), (7).
190	Criminal Law Act 1977, s.6.
191	Criminal Law Act 1977, s.7.
192	Public Order Act 1986, s.39.
193	Criminal Law Act 1977, s.8.
194	Criminal Law Act 1977, s.9.
195	Criminal Law Act 1977, s.10. Report para. 17.13-17.14.
196	Protection from Eviction Act 1977, s.1. Housing Act 1988, s.29.

Part II

Chapter V. Offences against Public Peace and Safety.

197	Public Order Act 1986, ss.8, 29. Report para.18.4.
198	Public Order Act 1986, s.1. Report para.18.4.
199	Public Order Act 1986, s.2. Report para.18.4.
200	Public Order Act 1986, s.3. Report para.18.4.
201	Public Order Act 1986, s.4. Report para.18.4.
202	Public Order Act 1986, s.5. Report para.18.4.
203(1)	Public Order Act 1986, ss.17, 29.
(2)	Public Order Act 1986, s.19(3).
(3)	Public Order Act 1986, s.21(2).
204(1)	Public Order Act 1986, s.26(1).
(2)	Public Order Act 1986, s.26(2).
205	Public Order Act 1986, s.18.
206	Public Order Act 1986, s.19.
207	Public Order Act 1986, s.20.
(4)	Report para.18.7.
208	Public Order Act 1986, s.21.
209	Public Order Act 1986, s.22.
210	Public Order Act 1986, s.23.
211	Public Order Act 1936, s.9(1).
212	Public Order Act 1936, s.1.
213	Public Order Act 1936, s.2.
214	Public Meeting Act 1908, s.1(1),(3). Report para. 18.9.
215	Prevention of Crime Act 1953, s.1.
216	Criminal Justice Act 1988, s.139.
217	Restriction of Offensive Weapons Act 1959, s.1.
218	Criminal Law Act 1977, s.51.
219	Public Order Act 1986, s.38.
220	See note on Schedule 7.

Schedule of Bill.	Source/Discussion
1	[Prosecution, Punishment etc.]. Report paras.5.3-5.7.
2	[Disposal after return of mental disorder verdicts]. Report paras 11.34-11.36.
3	Child Abduction Act 1984, Schedule 1.
4	Sexual Offences (Amendment) Act 1976, ss.2-5 (as amended by Criminal Justice Act 1988, s.158).

Clause of Bill	Source/Discussion
5	Protection of Children Act 1978, ss.4-5.
6 Para.1	Forgery and Counterfeiting Act 1981, s.7.
Para.2	Theft Act 1968, s.26.
Para.3	Criminal Damage Act 1971, s.6.
Para.4	Theft Act 1968, s.27.
Para.5	Theft Act 1968, s.31(1).
7 Para.1(1)	Public Order Act 1986, ss.7(2),27(2).
Para.1(2)	Public Order Act 1986, s.7(4).
Para.2	Public Order Act 1986, s.24(1),(3),(4).
Para.3	Public Order Act 1986, s.25(1)-(3).
Para.4	Public Order Act 1936, s.1(2).
Para.5	Public Order Act 1936, s.2(5).
8	[Abolition of offences at common law]. Report para.4.9.
9	[Consequential amendments]. Report para.4.10.
10	[Repeals]. Report para.4.10.

Criminal Code Bill

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Schedule 9 — Consequential Amendments

Schedule 10 — Repeals

DRAFT
OF A
B I L L
TO

Codify and to revise in part the law of England and Wales as to A.D. 1989.
general principles of liability for offences and as to offences
against the person, sexual offences, theft, fraud and related
offences, offences of damage to property, other offences
relating to property, and offences against public peace and
safety; to repeal certain enactments relating to such principles
and to such offences; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and
with the advice and consent of the Lords Spiritual and Temporal,
and Commons, in this present Parliament assembled, and by the
authority of the same, as follows:—

5

PART I
GENERAL PRINCIPLES

Preliminary provisions

- 1.—(1) This Act may be cited as the Criminal Code Act 1989. Short title,
commencement
and extent.
(2) This Act shall come into force on 1st January 1991.
10 (3) This Act does not extend to Scotland or Northern Ireland.
- 2.—(1) Unless otherwise provided— Application of
this Act and
other penal
legislation.
(a) the provisions of this Act;
(b) any enactment, passed or made after this Act was passed,
creating or amending an offence,
- 15 shall have effect only in relation to offences committed wholly or
partly on or after the date when this Act or that enactment, as the
case may be, comes into force.
- (2) The following provisions of Part I have effect in proceedings Procedural
provisions.
taking place on or after the date when this Act comes into force in
20 respect of offences committed before such date:

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PART I	section 2(4) (law determining penalties); section 8(1) (alternative verdicts); section 9 (conviction of preliminary offence when ulterior offence completed); section 10 (act constituting two or more offences); section 11 (double jeopardy); section 12 (multiple convictions); section 13 (proof); section 14 (proof or disproof of states of mind).	5
<i>Provisions not applying to pre-Code offences.</i>	(3) Pre-code offences as defined in section 6 shall be interpreted and applied as if the following provisions of Part I had not been enacted: section 18 (fault terms); section 19 (degrees of fault); section 20 (general requirement of fault); section 31 (liability of officer of corporation); section 41 (belief in circumstance affording a defence).	10 15
<i>Law determining penalties.</i>	(4) The law relating to the sentence for an offence is the law in force at the time of its commission, save to the extent that less severe penalties may be provided by the law in force at the time of conviction.	20
<i>Creation of offences.</i>	3. No offence shall be created except by, or under the authority of, an Act of Parliament.	
<i>Effect on common law: Replaced offences. Superseded or inconsistent rules.</i>	4.—(1) The offences at common law mentioned in Schedule 8 are abolished for all purposes not relating to acts done before the commencement of this Act. (2) Rules of the common law corresponding to or inconsistent with the provisions of this Act are abrogated for all purposes not relating to acts done before the commencement of this Act.	25
<i>Statutory references.</i>	(3) Except as regards offences committed before the commencement of this Act, a reference in an enactment passed or made before this Act to an offence mentioned in Schedule 8 or to a rule of the common law replaced by a provision of this Act shall be construed as a reference to the corresponding provision of this Act.	30
<i>Saving for other rules.</i>	(4) This Act does not affect any rule of the common law not abrogated by subsection (2) or limit any power of the courts to determine the existence, extent or application of any such rule.	35
<i>Amendments and repeals.</i>	5.—(1) The enactments mentioned in Schedule 9 shall have effect subject to the amendments provided for in that Schedule. (2) The enactments mentioned in Schedule 10 are repealed to the extent specified in column 3 of that Schedule.	40

6. In this Act, unless the context otherwise requires—
- “accessory” shall be construed in accordance with section 27(1);
- “act”, “acting”, “does an act”, and related expressions, in
reference to an element of an offence, shall be construed in
5 accordance with sections 15 and 16;
- “appropriate” (as a verb) and “appropriation” shall be construed
in accordance with section 142;
- “assault” has the meaning given by section 75;
- “automatism” shall be construed in accordance with section 33;
- 10 “cause” and related words, in relation to a result which is an
element of an offence, shall be construed in accordance with
section 17;
- “controlling officer”, in relation to a corporation, has the meaning
given by section 30(3);
- 15 “corporation” does not include a corporation sole;
- “duress by threats” shall be construed in accordance with section
42;
- “duress of circumstances” shall be construed in accordance with
section 43;
- 20 “exempting circumstance” means a circumstance amounting to a
defence or to an element of a defence;
- “fault element” means an element of an offence consisting—
- (a) of a state of mind with which a person acts; or
- (b) of a failure to comply with a standard of conduct; or
- 25 (c) partly of such a state of mind and partly of such a
failure,
- and “fault”, “degree of fault”, and related expressions, shall
be construed accordingly;
- 30 “included offence”, in relation to an offence charged, means an
offence an allegation of which is included (expressly or by
implication) in the allegations in the indictment or infor-
mation;
- “indictable offence” means an offence which, if committed by an
adult, is triable on indictment, whether it is exclusively so
- 35 triable or triable either way;
- “intentionally” and related words (such as “intention”) shall be
construed in accordance with section 18;
- “intoxicant” has the meaning given by section 22(5)(a);
- 40 “knowingly” and related words (such as “knowledge”) shall be
construed in accordance with section 18;
- “mental disorder” has the meaning given by section 34;
- “mental disorder verdict” shall be construed in accordance with
section 35(1);
- 45 “offence triable either way” means an offence which, if
committed by an adult, is triable either on indictment or
summarily; and this definition shall be construed without
regard to the effect of any enactment (such as section 22 of
the Magistrates’ Courts Act 1980) prescribing the mode of

PART I

trial in a particular case or class of cases;

“personal harm” means harm to body or mind and includes pain and unconsciousness;

“pre-Code offence” means an offence any element of which is prescribed—

5

(a) in an Act, or in subordinate legislation made at any time under an Act, passed before this Act was passed; or

(b) at common law;

“property” means—

(a) property of every description, whether real or 10 personal including—

(i) money, things in action and other intangible property;

(ii) wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild 15 creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; and

(b) any right or interest in property or any privilege 20 over land, however created;

“public place” includes any highway and any premises or place to which the public have or are permitted to have access, whether on payment or otherwise;

“recklessly” and related words (such as “recklessness”) shall be 25 construed in accordance with section 18;

“return a mental disorder verdict” has the meaning given by section 34;

“sentence” shall be construed in accordance with section 50(1) of the Criminal Appeal Act 1968 (as amended);

30

“severe mental illness” has the meaning given by section 34;

“severe mental handicap” has the meaning given by section 34;

“state of automatism” shall be construed in accordance with section 33(1);

“summary offence” means an offence which, if committed by an 35 adult, is triable only summarily;

“trade dispute” has the meaning given by section 29(1) of the Trade Union and Labour Relations Act 1974 (as amended);

“voluntary intoxication” has the meaning given by section 22(5)(b).

40

Prosecution and punishment

Prosecution,
punishment and
miscellaneous
matters.

7.—(1) Schedule 1 has effect, in relation to each offence referred to in columns 1 and 2 of that Schedule, with respect to the matters mentioned in this section and in column 7 of that Schedule.

Mode of trial.

(2) Column 3 of Schedule 1 shows whether the offence is triable 45 only on indictment or only summarily or either way.

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(3) Column 4 of Schedule 1—

(a) in the case of conviction on indictment of an offence—

(i) specifies (except in the case of murder, to which section 54(2) applies) the longest term of imprisonment that may be imposed; and

(ii) makes any provision relating to the imposition of a fine that is specially applicable to the offence;

(b) in the case of summary conviction of an offence triable either way, specifies any maximum sentence of imprisonment or fine that may be imposed, if different from the maximum specified by subsection (4); and

(c) in the case of conviction of a summary offence, specifies the maximum sentence of imprisonment or fine that may be imposed.

(4) On summary conviction of an offence under this Act that is triable either way a person shall be liable to imprisonment for a term not exceeding six months (unless some other term is specified in column 4 of Schedule 1) or to a fine not exceeding the statutory maximum (unless some other sum is so specified) or both.

(5) Column 5 of Schedule 1 states—

(a) any requirement of the consent of any person to the institution or conduct of proceedings for an offence; and

(b) any time limit applicable to the institution of proceedings.

8.—(1) Where the jury finds a person not guilty of an offence charged in the indictment, it may find him guilty—

(a)—

(i) of any offence specified in column 6 of Schedule 1 in respect of the offence charged; or

(ii) of any offence of which any other enactment provides that he may be convicted on that indictment; or

(b) except where the offence charged is treason or murder, of any offence within the jurisdiction of the court—

(i) which is an included offence; or

(ii) of which he might be found guilty on an indictment charging him with an included offence; or

(c) of an attempt to commit—

(i) the offence charged; or

(ii) any other offence of which he might on that indictment be found guilty; or

(d) where the offence charged is an arrestable offence (as defined in section 24(1) of the Police and Criminal Evidence Act 1984) and the jury is satisfied that it (or some other arrestable offence of which he might on that indictment be found guilty) was committed, of an offence of assisting an offender guilty of the offence charged (or that other offence) under section 4(1) of the Criminal Law Act 1967.

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Penalties.

Penalties on summary conviction of either way offence.

Restriction on proceedings.

Alternative verdicts:

Specified alternatives.

Included offences.

Attempts.

Assisting an offender.

PART I

*Jury
disagreement.*

(2) Where the jury is discharged, on the ground of its disagreement, from returning a verdict in respect of an offence charged in the indictment, subsection (1) applies as though the jury had found the defendant not guilty of the offence, but this subsection does not limit any discretion of the court to discharge the jury from returning any verdict in such a case. 5

*Where more than
one count.*

(3) Subsection (1) applies to an indictment containing more than one count as if each count were a separate indictment.

*Alternative
conviction by
magistrates.*

(4) Where a magistrates' court finds a person not guilty of an offence charged in an information, it may find him guilty— 10

(a) where the offence charged is an offence under section 71 (reckless serious personal harm), of an offence under section 72 (intentional or reckless personal harm) or section 75 (assault); or

(b) where the offence charged is an offence under section 72 (intentional or reckless personal harm), 76 (assault on a constable) or 77 (assault to resist arrest), of an offence under section 75 (assault). 15

*Conviction of
preliminary
offence when
ulterior offence
completed.*

9.—(1) Where the offence charged in an indictment or information is an incitement, conspiracy or attempt to commit, or an assault or other act preliminary to, an offence, the defendant may be convicted of the offence charged although he is shown to be guilty of the completed offence. 20

*Discretion of
court.*

(2) Subsection (1) does not limit any discretion of the court to discharge the jury or itself with a view to the preferment of an indictment or the laying of an information for the completed offence. 25

*Act constituting
two or more
offences.*

10. Where an act constitutes two or more offences (whether under any enactment or enactments or at common law or both) the offender is liable, subject to sections 11 (double jeopardy) and 12 (multiple convictions), to be prosecuted and punished for any or all of those offences. 30

*Double
jeopardy:*

11.—(1) A person shall not be tried for an offence ("the offence now charged")—

(a) of which he has been convicted or acquitted; or

(b) of which he might (on sufficient evidence being adduced) have been convicted on an indictment or information charging him with another offence of which he has been convicted or acquitted; or 35

(c) which includes—

(i) an offence of which he has been acquitted; or 40

(ii) an offence of which he might (on sufficient evidence being adduced) have been convicted on an indictment or information charging him with another offence of which he has been acquitted; or

(d) which includes— 45

*Previous
conviction or
acquittal.*

*Previous
acquittal of
included offence.*

- (i) an offence of which he has been convicted; or
- (ii) an offence of which he might (on sufficient evidence being adduced) have been convicted on an indictment or information charging him with another offence of which he has been convicted,
- 5 except where an element of the offence now charged is alleged to have occurred after the day of the conviction; or
- (e) which a civil court is debarred from trying by section 133 of the Army Act 1955, section 133 of the Air Force Act 1955, section 129 of the Naval Discipline Act 1957, section 3 of the Visiting Forces Act 1952, or any other enactment.
- 10 (2) The words "which includes an offence" in subsection (1) shall be construed in accordance with the definition of "included offence" in section 6.
- 15 (3) For the purposes of subsection (1), an allegation that a person caused the death of another includes an allegation that he caused serious personal harm or personal harm to that other.
- (4)—
- 20 (a) "Convicted" and "acquitted" in subsection (1) relate to a subsisting conviction or acquittal by a court of competent jurisdiction—
- (i) in England and Wales; or
- (ii) (subject to paragraph (b)) elsewhere, including a conviction or acquittal of an offence substantially similar to that now charged and based on the same facts.
- 25 (b) If a person who has been convicted of an offence in his absence by a court outside the United Kingdom is not, because of his absence, in peril of suffering any punishment that that court has ordered or may order, the conviction shall be disregarded for the purposes of subsection (1).
- 30 (5) A person is convicted of an offence when the court of trial or a court of appeal records the conviction.
- (6) A person is acquitted of an offence—
- (a) when the court of trial records the acquittal; or
- 35 (b) when section 6(5) of the Criminal Law Act 1967 (plea of not guilty of the offence but guilty of another offence, and conviction on that plea) has effect in relation to it; or
- (c) (except where a retrial is ordered) when his conviction of it is reversed or quashed by a court of appeal or on judicial review.
- 40 (7) This section does not limit any power of a court to stay proceedings on the ground that they constitute an abuse of the process of the court.
12. Where a person is convicted of an offence charged in an indictment or information he may not on the same occasion be convicted of—

PART I

Previous conviction of included offence.

Previous conviction by court-martial.

"Included offence".

"Cause death" includes "cause personal harm".

"Convicted" and "acquitted".

Foreign conviction in absentia.

Time of conviction.

Time of acquittal.

Abuse of process.

Multiple convictions.

PART I

- (a) an included offence, whether or not it is charged in a distinct count or information; or
- (b) an attempt to commit the offence charged or an included offence.

Proof

5

Proof:

13.—(1) Unless otherwise provided—

Burden (offences).

- (a) the burden of proving every element of an offence and any other fact alleged or relied on by the prosecution is on the prosecution;

(defences).

- (b) where evidence is given (whether by the defendant or by the prosecution) of a defence or any other fact alleged or relied on by the defendant the burden is on the prosecution to prove that an element of the defence or such other fact did not exist.

Evidential burden.

- (2) Evidence is given of a defence or any other fact alleged or relied on by the defendant when there is such evidence as might lead a court or jury to conclude that there is a reasonable possibility that the elements of the defence or such other fact existed.

Burden on defendant.

- (3) The burden is on the defendant to prove any fact necessary to establish—

20

- (a) any plea made by him in bar to an indictment or any corresponding plea on summary trial;
- (b) the competence of any witness called by him; or
- (c) the admissibility of any evidence tendered by him.

Standards.

(4) Unless otherwise provided—

25

- (a) where the burden of proof is on the prosecution the standard of proof required is proof beyond reasonable doubt;
- (b) where the burden of proof is on the defendant the standard of proof required is proof on the balance of probabilities, except where subsection (5) applies.

30

Proof that another guilty.

- (5) Where an element of a defence is the fact that another person is guilty and liable to conviction of the offence in the same proceedings, the standard required for proof of that element is proof beyond reasonable doubt.

Defences—saving for contrary rules.

- (6) This section does not affect the application in relation to any pre-Code offence of section 101 of the Magistrates' Courts Act 1980 (burden of proving exceptions, etc.) or any corresponding rule of interpretation applying on trial on indictment.

35

Proof or disproof of states of mind.

- 14. A court or jury, in determining whether a person had, or may have had, a particular state of mind, shall have regard to all the evidence including, where appropriate, the presence or absence of reasonable grounds for having that state of mind.

40

External elements of offences

Use of "act".

- 15. A reference in this Act to an "act" as an element of an offence refers also, where the context permits, to any result of the act, and

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any circumstance in which the act is done or the result occurs, that is an element of the offence, and references to a person's acting or doing an act shall be construed accordingly.

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16. For the purposes of an offence which consists wholly or in part of an omission, state of affairs or occurrence, references in this Act to an "act" shall, where the context permits, be read as including references to the omission, state of affairs or occurrence by reason of which a person may be guilty of the offence, and references to a person's acting or doing an act shall be construed accordingly.

Offences of omission and situational offences.

17.—(1) Subject to subsections (2) and (3), a person causes a result which is an element of an offence when—

Causation.

(a) he does an act which makes a more than negligible contribution to its occurrence; or

(b) he omits to do an act which might prevent its occurrence and which he is under a duty to do according to the law relating to the offence.

(2) A person does not cause a result where, after he does such an act or makes such an omission, an act or event occurs—

Intervening act or event.

(a) which is the immediate and sufficient cause of the result;

(b) which he did not foresee, and

(c) which could not in the circumstances reasonably have been foreseen.

(3) A person who procures, assists or encourages another to cause a result that is an element of an offence does not himself cause that result so as to be guilty of the offence as a principal except when—

Exception for accessories.

(a) section 26(1)(c) applies; or

(b) the offence itself consists in the procuring, assisting or encouraging another to cause the result.

Fault

18. For the purposes of this Act and of any offence other than a pre-Code offence as defined in section 6 (to which section 2(3) applies) a person acts—

Fault terms:

(a) "knowingly" with respect to a circumstance not only when he is aware that it exists or will exist, but also when he avoids taking steps that might confirm his belief that it exists or will exist;

Knowledge.

(b) "intentionally" with respect to—

Intention.

(i) a circumstance when he hopes or knows that it exists or will exist;

(ii) a result when he acts either in order to bring it about or being aware that it will occur in the ordinary course of events;

(c) "recklessly" with respect to—

Recklessness.

(i) a circumstance when he is aware of a risk that it exists or will exist;

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(ii) a result when he is aware of a risk that it will occur;
and it is, in the circumstances known to him, unreasonable to
take the risk;

and these and related words (such as "knowledge", "intention",
"recklessness") shall be construed accordingly unless the context 5
otherwise requires.

Degrees of fault. 19.—(1) An allegation in an indictment or information of
knowledge or intention includes an allegation of recklessness.

(2) A requirement of recklessness is satisfied by knowledge or
intention. 10

(3) This section does not apply to pre-Code offences as defined in
section 6 (to which section 2(3) applies).

**General
requirement of
fault.**

20.—(1) Every offence requires a fault element of recklessness with
respect to each of its elements other than fault elements, unless
otherwise provided. 15

*Non-application
to pre-Code
offences.*

(2) Subsection 1 does not apply to pre-Code offences as defined in
section 6 (to which section 2(3) applies).

**Ignorance or
mistake of law.**

21. Ignorance or mistake as to a matter of law does not affect
liability to conviction of an offence except—

- (a) where so provided; or 20
(b) where it negatives a fault element of the offence.

Intoxication.

22.—(1) Where an offence requires a fault element of recklessness
(however described), a person who was voluntarily intoxicated shall be
treated—

- (a) as having been aware of any risk of which he would have been 25
aware had he been sober;
(b) as not having believed in the existence of an exempting cir-
cumstance (where the existence of such a belief is in issue) if
he would not have so believed had he been sober.

*Standard of care
or no fault
offence.*

(2) Where an offence requires a fault element of failure to comply 30
with a standard of care, or requires no fault, a person who was
voluntarily intoxicated shall be treated as not having believed in the
existence of an exempting circumstance (where the existence of such a
belief is in issue) if a reasonable sober person would not have so
believed. 35

*Intoxication and
reasonableness.*

(3) Where the definition of a fault element or of a defence refers,
or requires reference, to the state of mind or conduct to be expected
of a reasonable person, such person shall be understood to be one who
is not intoxicated.

*Exceptional
cases: murder,
mental disorder.*

- (4) Subsection (1) does not apply— 40
(a) to murder (to which section 55 applies); or
(b) to the case (to which section 36 applies) where a person's
unawareness or belief arises from a combination of mental

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disorder and voluntary intoxication.

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(5)—

(a) "Intoxicant" means alcohol or any other thing which, when taken into the body, may impair awareness or control. *"Intoxicant".*

5 (b) "Voluntary intoxication" means the intoxication of a person by an intoxicant which he takes, otherwise than properly for a medicinal purpose, knowing that it is or may be an intoxicant. *"Voluntary intoxication".*

10 (c) For the purposes of this section, a person "takes" an intoxicant if he permits it to be administered to him. *"Takes" an intoxicant.*

(6) An intoxicant, although taken for a medicinal purpose, is not properly so taken if—

(a)—

"Properly for a medicinal purpose".

(i) it is not taken on medical advice; or

15 (ii) it is taken on medical advice but the taker fails then or thereafter to comply with any condition forming part of the advice; and

20 (b) the taker is aware that the taking, or the failure, as the case may be, may result in his doing an act capable of constituting an offence of the kind in question;

and accordingly intoxication resulting from such taking or failure is voluntary intoxication.

25 (7) Intoxication shall be taken to have been voluntary unless evidence is given, in the sense stated in section 13(2), that it was involuntary.

Intoxication presumed voluntary.

23. Where it is an offence to be at fault in causing a result, a person who lacks the fault required when he does an act that causes or may cause the result nevertheless commits the offence if—

Supervening fault.

30 (a) he becomes aware that he has done the act and that the result has occurred and may continue, or may occur,

(b) with the fault required, he fails to do what he can reasonably be expected to do that might prevent the result continuing or occurring; and

(c) the result continues or occurs.

35 24.—(1) In determining whether a person is guilty of an offence, his intention to cause, or his recklessness whether he causes, a result in relation to a person or thing capable of being the victim or subject-matter of the offence shall be treated as an intention to cause or, as the case may be, recklessness whether he causes that result in relation to any other person or thing affected by his conduct.

Transferred fault and defences:

Fault.

(2) Any defence on which a person might have relied on a charge of an offence in relation to a person or thing within his contemplation is open to him on a charge of the same offence in relation to a person or thing not within his contemplation.

Defences.

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Parties to offences

Parties to offences.

25. Unless otherwise provided—

- (a) a person may be guilty of an offence as a principal or as an accessory;
- (b) defences apply to both principals and accessories.

5

Principals.

26.—(1) A person is guilty of an offence as a principal if, with the fault required for the offence—

- (a) he does the act or acts specified for the offence; or
- (b) he does at least one such act and procures, assists or encourages any other such acts done by another; or 10
- (c) he procures, assists or encourages such act or acts done by another who is not himself guilty of the offence because—
 - (i) he is under ten years of age; or
 - (ii) he does the act or acts without the fault required for the offence; or 15
 - (iii) he has a defence.

Person vicariously liable.

(2) A person guilty of an offence by virtue of the attribution to him of an element of the offence under section 29 (vicarious liability) is so guilty as a principal.

Act done by another—special cases.

(3) Subsection (1)(c) applies notwithstanding that the definition of the offence— 20

- (a) implies that the specified act or acts must be done by the offender personally; or
- (b) indicates that the offender must comply with a description which applies only to the other person referred to in subsection (1)(c). 25

Accessories.

27.—(1) A person is guilty of an offence as an accessory if—

- (a) he intentionally procures, assists or encourages the act which constitutes or results in the commission of the offence by the principal; and 30
- (b) he knows of, or (where recklessness suffices in the case of the principal) is reckless with respect to, any circumstance that is an element of the offence; and
- (c) he intends that the principal shall act, or is aware that he is or may be acting, or that he may act, with the fault (if any) 35 required for the offence.

Principal unaware of procurement or assistance.

(2) In determining whether a person is guilty of an offence as an accessory it is immaterial that the principal is unaware of that person's act of procurement or assistance.

Passive assistance or encouragement.

(3) Assistance or encouragement includes assistance or encouragement arising from a failure by a person to take reasonable steps to exercise any authority or to discharge any duty he has to control the relevant acts of the principal in order to prevent the commission of the offence. 40

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(4) Subject to subsection (5), a person may be guilty of an offence as an accessory although he does not foresee, or is not aware of, a circumstance of the offence which is not an element of it (for example, the identity of the victim or the time or place of its commission, where this is not an element of the offence).

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Ignorance of details.

(5) Notwithstanding section 24(1) (transferred fault), where a person's act of procurement, assistance or encouragement is done with a view to the commission of an offence only in respect of a specified person or thing, he is not guilty as an accessory to an offence intentionally committed by the principal in respect of some other person or thing.

Principal's departure.

(6) A person is not guilty of an offence as an accessory by reason of anything he does—

Exceptions from liability.

(a) with the purpose of preventing the commission of the offence; or

(b) with the purpose of avoiding or limiting any harmful consequences of the offence and without the purpose of furthering its commission; or

(c) because he believes that he is under an obligation to do it and without the purpose of furthering the commission of the offence.

(7) Where the purpose of an enactment creating an offence is the protection of a class of persons no member of that class who is a victim of such an offence can be guilty of that offence as an accessory.

Exemption for protected persons.

(8) A person who has encouraged the commission of an offence is not guilty as an accessory if before its commission—

Later steps to prevent offence.

(a) he countermanded his encouragement with a view to preventing its commission; or

(b) he took all reasonable steps to prevent its commission.

28.—(1) A person may be convicted of an offence whether he is charged as a principal or as an accessory if the evidence shows that—

Parties - procedural provisions:

(a) he was a principal; or

(b) he was an accessory; or

Evidence of participation.

(c) he was either a principal or an accessory.

(2) A person may be convicted of an offence as an accessory although—

Conviction of accessory.

(a) the principal has not been convicted of or charged with the offence or his identity is unknown; or

(b) the evidence shows that he did acts rendering him guilty of the offence other than the acts alleged in the indictment or information.

29.—(1) Subject to subsection (3), an element of an offence (other than a fault element) may be attributed to a person by reason of an act done by another only if that other is—

Vicarious liability:

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*Attribution of
external element.*

- (a) specified in the definition of the offence as a person whose act may be so attributed; or
- (b) acting within the scope of his employment or authority and the definition of the offence specifies the element in terms which apply to both persons.

5

*Attribution of
fault.*

(2) Subject to subsection (3), a fault element of an offence may be attributed to a person by reason of the fault of another only if the terms of the enactment creating the offence so provide.

*Delegation—
pre-Code
offences.*

(3) This section does not affect the application in relation to any pre-Code offence (as defined in section 6) of any existing rule whereby a person who has delegated to another the management of premises or of a business or activity may, in consequence of the acts and fault of the other, have the elements of the offence attributed to him.

10

Corporations:

30.—(1) A corporation may be guilty as a principal of an offence not involving a fault element by reason of—

*Liability for
offence not
requiring fault.*

- (a) an act done by its employee or agent, as provided by section 29; or
- (b) an omission, state of affairs or occurrence that is an element of the offence.

20

*Liability where
fault required.*

(2) A corporation may be guilty—

- (a) as a principal, of an offence involving a fault element; or
- (b) as an accessory, of any offence,

only if one of its controlling officers, acting within the scope of his office and with the fault required, is concerned in the offence.

25

*“Controlling
officer”.*

(3)—

- (a) “Controlling officer” of a corporation means a person participating in the control of the corporation in the capacity of a director, manager, secretary or other similar officer (whether or not he was, or was validly, appointed to any such office).
- (b) In this subsection “director”, in relation to a corporation established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a corporation whose affairs are managed by the members thereof, means a member of the corporation.

30

35

- (c) Whether a person acting in a particular capacity is a controlling officer is a question of law.

*“Concerned in an
offence”.*

(4) A controlling officer is concerned in an offence if he does, procures, assists, encourages or fails to prevent the acts specified for the offence.

40

*“Fails to
prevent”.*

(5) For the purposes of subsection (4), a controlling officer fails to prevent an act when he fails to take steps that he might take—

- (a) to ensure that the act is not done; or
- (b) where the offence may be constituted by an omission to do an act or by a state of affairs or occurrence, to ensure that the omission is not made or to prevent or end the state of affairs

45

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or occurrence.

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(6) A controlling officer does not act "within the scope of his office" if he acts with the intention of doing harm or of concealing harm done by him or another to the corporation.

Controlling officer acting to harm corporation.

(7) A corporation cannot be guilty of an offence that is not punishable with a fine or other pecuniary penalty.

Offence not punishable with fine.

(8) A corporation has a defence consisting of or including—

Availability of defences.

(a) a state of mind only if—

(i) all controlling officers who are concerned in the offence; or

(ii) where no controlling officer is so concerned, all other employees or agents who are so concerned,

have that state of mind;

(b) the absence of a state of mind only if no controlling officer with responsibility for the subject-matter of the offence has that state of mind;

(c) compliance with a standard of conduct required of the corporation itself only if it is complied with by the controlling officers with responsibility for the subject-matter of the offence.

31.—(1) Where a corporation is guilty of an offence, other than a pre-Code offence as defined in section 6 (to which section 2(3) applies), a controlling officer of the corporation who is not apart from this section guilty of the offence is guilty of it as an accessory if—

Liability of officer of corporation.

(a) knowing that or being reckless whether the offence is being or will be committed, he intentionally fails to take steps that he might take to prevent its commission; or

(b) the offence does not involve a fault element and its commission is attributable to any neglect on his part.

(2) Subsection (1) applies to a member of a corporation managed by its members as it applies to a controlling officer.

32.—(1) A child is not guilty of an offence by reason of anything he does when under ten years of age.

*Children:
Under ten.*

(2) A child is not guilty of an offence by reason of anything he does when under fourteen years of age unless, in addition to doing the acts specified for the offence with any fault required, he is aware that what he does is an offence or is seriously wrong.

Under fourteen.

Incapacity and mental disorder

33.—(1) A person is not guilty of an offence if—

(a) he acts in a state of automatism, that is, his act—

(i) is a reflex, spasm or convulsion; or

(ii) occurs while he is in a condition (whether of sleep, unconsciousness, impaired consciousness or otherwise)

*Automatism and physical incapacity:
Automatism.*

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depriving him of effective control of the act; and

- (b) the act or condition is the result neither of anything done or omitted with the fault required for the offence nor of voluntary intoxication.

Physical incapacity.

(2) A person is not guilty of an offence by virtue of an omission to act if— 5

- (a) he is physically incapable of acting in the way required; and
- (b) his being so incapable is the result neither of anything done or omitted with the fault required for the offence nor of voluntary intoxication. 10

Mental disorder: definitions.

34. In this Act—

“mental disorder” means—

“Mental disorder”.

- (a) severe mental illness; or
- (b) a state of arrested or incomplete development of mind; or 15
- (c) a state of automatism (not resulting only from intoxication) which is a feature of a disorder, whether organic or functional and whether continuing or recurring, that may cause a similar state on another occasion;

“Return a mental disorder verdict”.

“return a mental disorder verdict” means— 20

- (a) in relation to trial on indictment, return a verdict that the defendant is not guilty on evidence of mental disorder; and
- (b) in relation to summary trial, dismiss the information on evidence of mental disorder; 25

“Severe mental illness”.

“severe mental illness” means a mental illness which has one or more of the following characteristics—

- (a) lasting impairment of intellectual functions shown by failure of memory, orientation, comprehension and learning capacity; 30
- (b) lasting alteration of mood of such degree as to give rise to delusional appraisal of the defendant’s situation, his past or his future, or that of others, or lack of any appraisal;
- (c) delusional beliefs, persecutory, jealous or grandiose; 35
- (d) abnormal perceptions associated with delusional misinterpretation of events;
- (e) thinking so disordered as to prevent reasonable appraisal of the defendant’s situation or reasonable communication with others; 40

“Severe mental handicap”.

“severe mental handicap” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.

35.—(1) A mental disorder verdict shall be returned if the defendant is proved to have committed an offence but it is proved on the balance of probabilities (whether by the prosecution or by the defendant) that he was at the time suffering from severe mental illness or severe mental handicap.

PART I
Case for mental disorder verdict: defence of severe disorder.

(2) Subsection (1) does not apply if the court or jury is satisfied beyond reasonable doubt that the offence was not attributable to the severe mental illness or severe mental handicap.

Offence not attributable to disorder.

(3) A court or jury shall not, for the purposes of a verdict under subsection (1), find that the defendant was suffering from severe mental illness or severe mental handicap unless two medical practitioners approved for the purposes of section 12 of the Mental Health Act 1983 as having special experience in the diagnosis or treatment of mental disorder have given evidence that he was so suffering.

Finding of severe disorder.

(4) Subsection (1), so far as it relates to severe mental handicap, does not apply to an offence under section 106(1), 107 or 108 (sexual relations with the mentally handicapped).

Exception.

36. A mental disorder verdict shall be returned if—

Case for mental disorder verdict: evidence of disorder.

(a) the defendant is acquitted of an offence only because, by reason of evidence of mental disorder or a combination of mental disorder and intoxication, it is found that he acted or may have acted in a state of automatism, or without the fault required for the offence, or believing that an exempting circumstance existed; and

(b) it is proved on the balance of probabilities (whether by the prosecution or by the defendant) that he was suffering from mental disorder at the time of the act.

37. A defendant may plead “not guilty by reason of mental disorder”; and

Plea of “not guilty by reason of mental disorder”.

(a) if the court directs that the plea be entered the direction shall have the same effect as a mental disorder verdict; and

(b) if the court does not so direct the defendant shall be treated as having pleaded not guilty.

38.—(1) Whether evidence is evidence of mental disorder or automatism is a question of law.

Evidence of mental disorder and automatism.

(2) The prosecution shall not adduce evidence of mental disorder, or contend that a mental disorder verdict should be returned, unless the defendant has given or adduced evidence that he acted without the fault required for the offence, or believing that an exempting circumstance existed, or in a state of automatism, or (on a charge of murder) when suffering from mental abnormality as defined in section 57(2).

Restrictions on prosecution evidence.

(3) The court may give directions as to the stage of the proceedings at which the prosecution may adduce evidence of mental disorder.

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Disposal after
mental disorder
verdict.

39. Schedule 2 has effect with respect to the orders that may be made upon the return of a mental disorder verdict, to the conditions governing the making of those orders, to the effects of those orders and to related matters.

Further effect of
mental disorder
verdict.

40. A defendant shall not, when a mental disorder verdict is returned in respect of an offence and while that verdict subsists, be found guilty of any other offence of which, but for this section, he might on the same occasion be found guilty—

(a) on the indictment, count or information to which the verdict relates; or

(b) on any other indictment, count or information founded on the same facts.

Defences

Belief in circum-
stance affording
a defence.

41.—(1) Unless otherwise provided, a person who acts in the belief that a circumstance exists has any defence that he would have if the circumstance existed.

Non-application
to pre-Code
offences.

(2) Subsection (1) does not apply in respect of a defence specially provided for a pre-Code offence as defined in section 6 (to which section 2(3) applies).

Proof or disproof
of belief.

(3) Any requirement as to proof or disproof of a defence applies to proof or disproof of a belief mentioned in subsection (1).

Duress by
threats.

42.—(1) A person is not guilty of an offence [to which this section applies] when he does an act under duress by threats.

Excluded
offences.

[(2) This section applies to any offence other than murder or attempt to murder.]

Elements of
defence.

(3) A person does an act under duress by threats if—

(a) he does it because he knows or believes—

(i) that a threat has been made to cause death or serious personal harm to himself or another if the act is not done; and

(ii) that the threat will be carried out immediately if he does not do the act or, if not immediately, before he or that other can obtain official protection; and

(iii) that there is no other way of preventing the threat being carried out; and

(b) the threat is one which in all the circumstances (including any of his personal circumstances that affect its gravity) he cannot reasonably be expected to resist.

(4) It is immaterial that the person doing the act believes, or that it is the case, that any official protection available in the circumstances will or may be ineffective.

Voluntary
exposure to risk
of duress.

(5) Subsection (1) does not apply to a person who has knowingly and without reasonable excuse exposed himself to the risk of such a threat.

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(6) A wife has no defence (except under this section) by virtue of having done an act under the coercion of her husband.

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*No separate
defence of
marital coercion.*

43.—(1) A person is not guilty of an offence [to which this section applies] when he does an act under duress of circumstances.

*Duress of
circumstances.*

5 (2) A person does an act under duress of circumstances if—

*Elements of
defence.*

(a) he does it because he knows or believes that it is immediately necessary to avoid death or serious personal harm to himself or another; and

10 (b) the danger that he knows or believes to exist is such that in all the circumstances (including any of his personal characteristics that effect its gravity) he cannot reasonably be expected to act otherwise.

(3) This section—

*Application of
section:
Murder.*

15 [(a) applies to any offence other than murder or attempt to murder;]

(b) does not apply—

(i) to a person who uses force for any of the purposes referred to in section 44(1) or 185; or

*Use of force in
public or private
defence.*

20 (ii) to a person who acts in the knowledge or belief that a threat of a kind described in section 42(3)(a)(i) has been made; or

*Acts done under
duress by threats.*

(iii) to a person who has knowingly and without reasonable excuse exposed himself to the danger.

*Voluntary
exposure to
danger.*

25 44.—(1) A person does not commit an offence by using such force as, in the circumstances which exist or which he believes to exist, is immediately necessary and reasonable—

*Use of force in
public or private
defence:*

(a) to prevent or terminate crime, or to effect or assist in the lawful arrest of an offender or suspected offender or of a person unlawfully at large;

*Prevention of
crime and
effecting arrest.*

30 (b) to prevent or terminate a breach of the peace;

*Prevention of
breach of the
peace.*

(c) to protect himself or another from unlawful force or unlawful personal harm;

*Defence of
person.*

(d) to prevent or terminate the unlawful detention of himself or another;

*Prevention of
unlawful
detention.*

35 (e) to protect property (whether belonging to himself or another) from unlawful appropriation, destruction or damage; or

*Defence of
property.*

(f) to prevent or terminate a trespass to his person or property.

*Prevention of
trespass.*

(2) In this section, except where the context otherwise requires, “force” includes, in addition to force against a person—

“Force”.

40 (a) force against property;

(b) a threat of force against person or property; and

(c) the detention of a person without the use of force.

(3) For the purposes of this section, an act is “unlawful” although a person charged with an offence in respect of it would be acquitted on
45 the ground only that—

“Unlawful”.

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- (a) he was under ten years of age; or
- (b) he lacked the fault required for the offence or believed that an exempting circumstance existed; or
- (c) he acted in pursuance of a reasonable suspicion; or
- (d) he acted under duress, whether by threats or of circumstances; 5
or
- (e) he was in a state of automatism or suffering from severe mental illness or severe mental handicap.

Force against a constable in the execution of his duty.

(4) Notwithstanding subsection (1), a person who believes circumstances to exist which would justify or excuse the use of force under 10 that subsection has no defence if—

(a) he knows that the force is used against a constable or a person assisting a constable; and

(b) the constable is acting in the execution of his duty, unless he believes the force to be immediately necessary to prevent 15 personal harm to himself or another.

Preparatory acts.

(5) A person does not commit an offence by doing an act immediately preparatory to the use of such force as is referred to in subsection (1).

Self-induced occasions for the use of force.

(6) Subsection (1) does not apply where a person causes unlawful 20 conduct or an unlawful state of affairs with a view to using force to resist or terminate it; but subsection (1) may apply although the occasion for the use of force arises only because he does anything he may lawfully do, knowing that such an occasion may arise.

Opportunity to retreat.

(7) The fact that a person had an opportunity to retreat before 25 using force shall be taken into account, in conjunction with other relevant evidence, in determining whether the use of force was immediately necessary and reasonable.

Reasonable threats.

(8) A threat of force may be reasonable although the use of the 30 force would not be.

Saving for other defences.

(9) This section is without prejudice to the generality of section 185 (criminal damage: protection of person or property) or any other defence.

Acts justified or excused by law.

45. A person does not commit an offence by doing an act which is 35 justified or excused by—

- (a) any enactment; or
- (b) any “enforceable Community right” as defined in section 2(1) of the European Communities Act 1972; or
- (c) any rule of the common law continuing to apply by virtue of 40 section 4(4).

Non-publication of statutory instrument.

46.—(1) A person is not guilty of an offence consisting of a contravention of a statutory instrument if—

- (a) at the time of his act the instrument has not been issued by Her Majesty’s Stationery Office; and 45

- (b) by that time reasonable steps have not been taken to bring the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of that person.
- (2) The burden of proving the matter referred to in subsection (1)(a) is on the defendant.

Burden of proof.

Preliminary offences

- 47.—(1) A person is guilty of incitement to commit an offence or offences if—
- 10 (a) he incites another to do or cause to be done an act or acts which, if done, will involve the commission of the offence or offences by the other; and
- (b) he intends or believes that the other, if he acts as incited, shall or will do so with the fault required for the offence or offences.
- 15 (2) Subject to section 52(1), “offence” in this section means any offence triable in England and Wales.
- (3) Where the purpose of an enactment creating an offence is the protection of a class of persons, no member of that class who is the intended victim of such an offence can be guilty of incitement to
- 20 commit that offence.
- (4) A person may be convicted of incitement to commit an offence although the identity of the person incited is unknown.
- (5) It is not an offence under this section, or under any enactment referred to in section 51, to incite another to procure, assist or
- 25 encourage as an accessory the commission of an offence by a third person; but—
- (a) a person may be guilty as an accessory to the incitement by another of a third person to commit an offence; and
- 30 (b) this subsection does not preclude a charge of incitement to incite (under this section or any other enactment), or of incitement to conspire (under section 48 or any other enactment), or of incitement to attempt (under section 49 or any other enactment), to commit an offence.

Incitement to commit an offence.

“Offence”.

Exemption for protected persons.

Identity of person incited.

Incitement and accessories.

- 48.—(1) A person is guilty of conspiracy to commit an offence or
- 35 offences if—
- (a) he agrees with another or others that an act or acts shall be done which, if done, will involve the commission of the offence or offences by one or more of the parties to the agreement; and
- 40 (b) he and at least one other party to the agreement intend that the offence or offences shall be committed.

Conspiracy to commit an offence.

- (2) For the purposes of subsection (1) an intention that an offence shall be committed is an intention with respect to all the elements of the offence (other than fault elements), except that recklessness with
- 45 respect to a circumstance suffices where it suffices for the offence itself.

Intention.

PART I
"Offence".

(3) Subject to section 52, "offence" in this section means any offence triable in England and Wales; and

(a) it extends to an offence of murder which would not be so triable; but

(b) it does not include a summary offence, not punishable with imprisonment, constituted by an act or acts agreed to be done in contemplation of a trade dispute. 5

Exemption for protected persons.

(4) Where the purpose of an enactment creating an offence is the protection of a class of persons, no member of that class who is the intended victim of such an offence can be guilty of conspiracy to commit that offence. 10

Subsistence of conspiracy.

(5) A conspiracy continues until the agreed act or acts is or are done, or until all or all save one of the parties to the agreement have abandoned the intention that such act or acts shall be done.

Becoming party to conspiracy.

(6) A person may become a party to a continuing conspiracy by joining the agreement constituting the offence.

Conspiracy and accessories.

(7) It is not an offence under this section, or under any enactment referred to in section 51, to agree to procure, assist or encourage as an accessory the commission of an offence by a person who is not a party to such an agreement; but— 20

(a) a person may be guilty as an accessory to a conspiracy by others; and

(b) this subsection does not preclude a charge of conspiracy to incite (under section 47 or any other enactment) to commit an offence. 25

Conviction.

(8) A person may be convicted of conspiracy to commit an offence although—

(a) no other person has been or is charged with such conspiracy;

(b) the identity of any other party to the agreement is unknown;

(c) any other party appearing from the indictment to have been a party to the agreement has been or is acquitted of such conspiracy, unless in all the circumstances his conviction is inconsistent with the acquittal of the other; or 30

(d) the only other party to the agreement cannot be convicted of such conspiracy (for example, because he was acting under duress by threats (section 42), or he was a child under ten years of age (section 32(1)) or he is immune from prosecution). 35

Attempt to commit an offence.

49.—(1) A person who, intending to commit an indictable offence, does an act that is more than merely preparatory to the commission of the offence is guilty of attempt to commit the offence. 40

Intention.

(2) For the purposes of subsection (1), an intention to commit an offence is an intention with respect to all the elements of the offence other than fault elements, except that recklessness with respect to a circumstance suffices where it suffices for the offence itself. 45

"Act".

(3) "Act" in this section includes an omission only where the offence intended is capable of being committed by an omission.

(4) Where there is evidence to support a finding that an act was more than merely preparatory to the commission of the offence intended, the question whether that act was more than merely preparatory is a question of fact.

PART I
Issues of law and fact.

5 (5) Subject to section 52(1), this section applies to any offence which, if it were completed, would be triable in England and Wales as an indictable offence, other than an offence under section 4(1) (assisting offenders) or 5(1) (accepting or agreeing to accept consideration for not disclosing information about an arrestable offence) of
10 the Criminal Law Act 1967.

Offences which may be attempted.

(6) It is not an offence under this section, or under any enactment referred to in section 51, to attempt to procure, assist or encourage as an accessory the commission of an offence by another; but—

Attempt and accessories.

15 (a) a person may be guilty as an accessory to an attempt by another to commit an offence; and

(b) this subsection does not preclude a charge of attempt to incite (under section 47 or any other enactment), or of attempt to conspire (under section 48 or any other enactment), to commit an offence.

20 50.—(1) A person may be guilty of incitement, conspiracy or attempt to commit an offence although the commission of the offence is impossible, if it would be possible in the circumstances which he believes or hopes exist or will exist at the relevant time.

Impossibility and preliminary offences.

(2) Subsection (1) applies—

25 (a) to offences under sections 47, 48 and 49;
(b) to any offence referred to in section 51(1).

30 (3) Subsection (1) does not render a person guilty of incitement, conspiracy or attempt to commit an offence of which he is not guilty because circumstances exist which, under section 45 or any other provision of this or any other Act, justify or excuse the act he does.

Acts justified or excused.

35 51.—(1) Sections 47 to 49 apply in determining whether a person is guilty of an offence, created by an enactment other than those sections, of incitement, conspiracy or attempt to commit a specified offence, with, in the case of an attempt, the substitution in section 49 of a reference to the specified offence for the words “an indictable offence”.

Preliminary offences under other enactments.

(2) Conviction of an offence—

40 (a) under section 47, 48 or 49; or
(b) under another enactment referred to in subsection (1),
is not precluded by the fact that the conduct in question constitutes an offence both under section 47, 48 or 49 and under that other enactment.

45 52.—(1) A person may be guilty of incitement, conspiracy or attempt to commit an offence specified in subsection (3) although the act incited, agreed upon or attempted is intended to be done outside the ordinary limits of criminal jurisdiction, provided that that act, if

Jurisdiction and preliminary offences: Ulterior offence abroad.

PART I

*Preliminary
offence abroad.*

done within those limits, would constitute such an offence.

(2) A person may be guilty of incitement, conspiracy or attempt to commit an offence specified in subsection (3) although the incitement, conspiracy or attempt occurs outside the ordinary limits of criminal jurisdiction, provided that the act incited, agreed upon or attempted is intended to be done within those limits and, if so done, would constitute such an offence. 5

*Specified
offences for
above purposes.*

(3) The offences referred to in subsections (1) and (2) are murder (section 54), manslaughter (section 55), intentional serious personal harm (section 70), causing an explosion likely to endanger life or property (section 2 of the Explosive Substances Act 1883) and kidnapping (section 81). 10

*Conspiracy
entered into
abroad.*

(4) A person may be guilty of conspiracy to commit an offence although the agreement is made outside the ordinary limits of criminal jurisdiction, if — 15

(a) the offence is to be committed within those limits; and

(b) while the agreement continues an act in pursuance of it is done within those limits; and entering within those limits for any purpose connected with the agreement is an act in pursuance of it. 20

PART II

SPECIFIC OFFENCES

CHAPTER I

OFFENCES AGAINST THE PERSON

Interpretation.

53. For the purposes of this Chapter — 25

(a) "another" means a person who has been born and has an existence independent of his mother and, unless the context otherwise requires, "death" and "personal harm" mean the death of, or personal harm to, such a person;

(b) a person does not cause death unless the death occurs within a year after the day on which any act causing it was done by that person or on which any fatal injury resulting from such an act was sustained, or (where the fatal injury was done to an unborn child) within a year after the day on which he was born and had an independent existence. 30 35

Homicide

Murder.

54.—(1) A person is guilty of murder if he causes the death of another —

(a) intending to cause death; or

(b) intending to cause serious personal harm and being aware that he may cause death, 40

unless section 56, 58, 59, 62 or 64 applies.

*Penalty for
murder.*

(2) A person convicted of murder shall be sentenced to life imprisonment, except that, where he appears to the court to have been under the age of eighteen years at the time the offence was 45

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committed, he shall be sentenced to detention in such place and for such period and subject to such conditions as to release as the Secretary of State may determine.

PART II CHAPTER I

55. A person is guilty of manslaughter if—
- 5 (a) he is not guilty of murder by reason only of the fact that a defence provided by section 56 (diminished responsibility), 58 (provocation) or 59 (use of excessive force) applies; or *Voluntary manslaughter.*
- 10 (b) he is not guilty of murder by reason only of the fact that, because of voluntary intoxication, he is not aware that death may be caused or believes that an exempting circumstance exists; or *Involuntary manslaughter.*
- (c) he causes the death of another—
- (i) intending to cause serious personal harm; or
- 15 (ii) being reckless whether death or serious personal harm will be caused.
- 56.—(1) A person who, but for this section, would be guilty of murder is not guilty of murder if, at the time of his act, he is suffering from such mental abnormality as is a substantial enough reason to reduce his offence to manslaughter. *Diminished responsibility.*
- 20 (2) In this section “mental abnormality” means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind, except intoxication. *“Mental abnormality”.*
- (3) Where a person suffering from mental abnormality is also intoxicated, this section applies only where it would apply if he were not intoxicated. *Mental abnormality and intoxication.*
- 25 (3) Where a person suffering from mental abnormality is also intoxicated, this section applies only where it would apply if he were not intoxicated.
- 57.—(1) Whether evidence is evidence of mental abnormality is a question of law. *Evidence of mental abnormality.*
- (2) Where on a charge of murder or attempted murder the defendant has given or adduced evidence of mental disorder, severe mental handicap or automatism, the prosecution may adduce evidence of mental abnormality; but the court may give directions as to the stage of the proceedings at which it may do so. *Evidence adduced by prosecution.*
- 30 (2) Where on a charge of murder or attempted murder the defendant has given or adduced evidence of mental disorder, severe mental handicap or automatism, the prosecution may adduce evidence of mental abnormality; but the court may give directions as to the stage of the proceedings at which it may do so.
- (3) Where a person is charged with murder (or attempted murder) the prosecution may, with his consent, adduce evidence of mental abnormality at the committal proceedings, whereupon the magistrates’ court may commit him for trial for manslaughter (or attempted manslaughter). *Evidence at committal proceedings.*
- 35 (3) Where a person is charged with murder (or attempted murder) the prosecution may, with his consent, adduce evidence of mental abnormality at the committal proceedings, whereupon the magistrates’ court may commit him for trial for manslaughter (or attempted manslaughter).
- (4) Where the defendant has been committed for trial for murder (or attempted murder) the prosecution may, with the consent of the defendant, serve notice in accordance with Rules of Court of evidence of mental abnormality and indict him for manslaughter (or attempted manslaughter). *Notice of evidence after committal.*
- 40 (4) Where the defendant has been committed for trial for murder (or attempted murder) the prosecution may, with the consent of the defendant, serve notice in accordance with Rules of Court of evidence of mental abnormality and indict him for manslaughter (or attempted manslaughter).

PART II
CHAPTER I
Provocation.

58. A person who, but for this section, would be guilty of murder is not guilty of murder if—

- (a) he acts when provoked (whether by things done or by things said or by both and whether by the deceased person or by another) to lose his self-control; and
- (b) the provocation is, in all the circumstances (including any of his personal characteristics that affect its gravity), sufficient ground for the loss of self-control.

5

Use of excessive force.

59. A person who, but for this section, would be guilty of murder is not guilty of murder if, at the time of his act, he believes the use of the force which causes death to be necessary and reasonable to effect a purpose referred to in section 44 (use of force in public or private defence), but the force exceeds that which is necessary and reasonable in the circumstances which exist or (where there is a difference) in those which he believes to exist.

15

Jurisdiction over murder and manslaughter.

60. A person is guilty of murder or manslaughter (where section 54 or 55 applies) if—

- (a) he causes a fatal injury to another to occur within the ordinary limits of criminal jurisdiction, whether his act is done within or outside and whether the death occurs within or outside those limits;
- (b) he causes the death of another anywhere in the world by an act done within the ordinary limits of criminal jurisdiction; or
- (c) being a British citizen, he causes the death of another anywhere in the world by an act done anywhere in the world.

25

Attempted manslaughter.

61. A person who attempts to cause the death of another, where section 56, 58 or 59 would apply if death were caused, is not guilty of attempted murder but is guilty of attempted manslaughter.

Suicide pact killing.

62.—(1) A person who, but for this section, would be guilty of murder is not guilty of murder but is guilty of suicide pact killing if his act is done in pursuance of a suicide pact between himself and the person killed.

30

"Suicide pact".

(2) "Suicide pact" means an agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

35

Attempt to carry out suicide pact.

(3) A person acting in pursuance of a suicide pact between himself and another is not guilty of attempted murder but is guilty of attempted suicide pact killing if he attempts to cause the death of the other.

40

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63. A person is guilty of an offence if he procures, assists or encourages suicide or attempted suicide committed by another.

PART II
CHAPTER I
Complicity in
suicide.

64.—(1) A woman who, but for this section, would be guilty of murder or manslaughter of her child is not guilty of murder or manslaughter, but is guilty of infanticide, if her act is done when the child is under the age of twelve months and when the balance of her mind is disturbed by reason of the effect of giving birth or of circumstances consequent upon the birth.

Infanticide.

(2) A woman who in the circumstances specified in subsection (1) attempts to cause the death of her child is not guilty of attempted murder but is guilty of attempted infanticide.

Attempted
infanticide.

(3) A woman may be convicted of infanticide (or attempted infanticide) although the jury is uncertain whether the child had been born or whether it had an existence independent of her when its death occurred (or, in the case of an attempt, when the act was done).

Conviction where
birth uncertain.

65. A person is guilty of an offence if he makes to another a threat to cause the death of, or serious personal harm to, that other or a third person, intending that other to believe that it will be carried out.

Threats to kill or
cause serious
personal harm.

Abortion and Child Destruction

66. A person is guilty of an offence if he intentionally causes the miscarriage of a woman otherwise than in accordance with the provisions of the Abortion Act 1967.

Abortion.

67.—(1) A pregnant woman is guilty of an offence if she intentionally causes her own miscarriage otherwise than in accordance with the provisions of the Abortion Act 1967.

Self-abortion.

(2) Notwithstanding section 50 (impossibility) a woman who is not pregnant cannot be guilty of an attempt to commit an offence under this Act.

Non-pregnant
woman.

68. A person is guilty of an offence if he supplies or procures any article or substance knowing that it is to be used with the intention of causing the miscarriage of a woman otherwise than in accordance with the provisions of the Abortion Act 1967, whether the woman is pregnant or not.

Supplying article
for abortion.

69.—(1) A person is guilty of child destruction if he intentionally causes the death of a child capable of being born alive before the child has an existence independent of his mother, unless the act which causes death is done in good faith for the purpose only of preserving the life of the mother.

Child
destruction.

(2) The fact that a woman had at any material time been pregnant for twenty-eight weeks or more is *prima facie* proof that she was at

Proof.

PART II
CHAPTER I
*Conviction where
birth uncertain.*

that time pregnant of a child capable of being born alive.

(3) A person who is found not guilty of murder or manslaughter (or attempted murder or manslaughter) of a child by reason only of the fact that the jury is uncertain whether the child had been born or whether he had an existence independent of his mother when his death occurred (or, in the case of an attempt, when the act was done) shall be convicted of child destruction (or attempted child destruction).

Causing personal harm and assault

Intentional
serious personal
harm.

70.—(1) A person is guilty of an offence if he intentionally causes serious personal harm to another.

(2) A person may be guilty of an offence under subsection (1) if either—

(a) the act causing serious personal harm is done; or

(b) the serious personal harm occurs, within the ordinary limits of criminal jurisdiction.

Reckless serious
personal harm.

71. A person is guilty of an offence if he recklessly causes serious personal harm to another.

Intentional or
reckless personal
harm.

72. A person is guilty of an offence if he intentionally or recklessly causes personal harm to another.

Administering a
substance
without consent.

73.—(1) A person is guilty of an offence if he administers to, or causes to be taken by, another without his consent any substance which he knows to be capable of interfering substantially with the other's bodily functions.

(2) For the purposes of this section a substance capable of inducing unconsciousness or sleep is capable of interfering substantially with bodily functions.

Torture.

74.—(1) A public official or person acting in an official capacity, whatever his nationality, is guilty of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) is guilty of torture, whatever his nationality, if—

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence

(i) of a public official; or

(ii) of a person acting in an official capacity; and—

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission

Criminal Code

of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is inflicted by an act or an omission.

(4) A person is not guilty of an offence under this section by reason of any conduct for which he had lawful authority, justification or excuse.

(5) For the purposes of this section "lawful authority, justification or excuse" means—

(a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;

(b) in relation to pain or suffering inflicted outside the United Kingdom—

(i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom, or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

(ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and

(iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) The burden of proving a defence provided by subsection (4) is on the defendant.

75. A person is guilty of assault if he intentionally or recklessly—

(a) applies force to or causes an impact on the body of another; or
(b) causes another to believe that any such force or impact is imminent,

without the consent of the other or, where the act is likely or intended to cause personal harm, with or without his consent.

76. A person is guilty of an offence if he assaults a constable acting in the execution of his duty, or anyone assisting a constable so acting, knowing that, or being reckless whether the person assaulted or the person being assisted is a constable, whether or not he is aware that the constable is or may be acting in the execution of his duty.

77. A person is guilty of an offence if he assaults another, intending to resist, prevent or terminate the lawful arrest of himself or a third person.

78. A person is guilty of an offence if he assaults another, intending to rob him or a third person.

PART II

CHAPTER I

By act or omission.

Defence.

"Lawful authority, justification or excuse".

Proof.

Assault.

Assault on a constable.

Assault to resist arrest.

Assault to rob.

PART II
CHAPTER I
Interpretation.

Detention and Abduction

79. For the purposes of sections 80 to 85 —

- (a) a person takes another if he causes the other to accompany him or a third person or causes him to be taken;
- (b) a person detains another if he causes the other to remain 5 where he is;
- (c) a person sends another if he causes the other to be sent; and
- (d) a person acts without the consent of another if he obtains the other's consent—
 - (i) by force or threat of force; or 10
 - (ii) by deception causing the other to believe that he is under legal compulsion to consent.

Unlawful
detention.

80.—(1) A person is guilty of unlawful detention if he intentionally or recklessly takes or detains another without that other's consent.

(2) A person is not guilty of an offence under this section if the 15 person taken or detained is, or he believes him to be, a child under the age of sixteen and—

- (a) he has, or believes he has, lawful control of the child; or
- (b) he has, or believes he has, the consent of a person who has, or whom he believes to have, lawful control of the child, or he 20 believes that he would have that consent if the person were aware of all the relevant circumstances.

Kidnapping.

81. A person is guilty of kidnapping if he intentionally or recklessly takes or detains another without that other's consent, 25 intending—

- (a) to hold him to ransom or as a hostage; or
- (b) to send him out of the United Kingdom; or
- (c) to commit an arrestable offence.

Hostage-taking.

82. A person, whatever his nationality, is guilty of hostage-taking if, in the United Kingdom or elsewhere, he intentionally or 30 recklessly—

- (a) takes or detains another and
- (b) in order to compel a State, international government organi- sation or person to do or abstain from doing any act, threatens to cause the death of, or personal harm to, that 35 other or to continue to detain him.

Abduction of
child by parent
etc.

83.—(1) A person connected with a child under the age of sixteen is guilty of an offence if he takes or sends the child out of the United Kingdom without the appropriate consent.

Person
"connected with"
child.

(2) A person is connected with a child for the purposes of this 40 section if—

- (a) he is a parent or guardian of the child; or

- (b) there is in force an order of a court in England or Wales awarding custody of the child to him, whether solely or jointly with any other person; or
- 5 (c) in the case of an illegitimate child, there are reasonable grounds for believing that he is the father of the child.

(3) In this section "the appropriate consent", in relation to a child means—

"Appropriate consent".

- (a) the consent of each person—
- (i) who is a parent or guardian of the child; or
- 10 (ii) to whom custody of the child has been awarded (whether solely or jointly with any other person) by an order of a court in England or Wales; or
- (b) if the child is the subject of such a custody order, the leave of the court which made the order; or
- 15 (c) the leave of the court granted on an application for a direction under section 7 of the Guardianship of Minors Act 1971 or section 1(3) of the Guardianship Act 1973.

(4) In this section—

"Guardian" and custody order.

- 20 (a) "guardian" means a person appointed by deed or will or by order of a court of competent jurisdiction to be the guardian of a child; and
- (b) a reference to a custody order or an order awarding custody includes a reference to an order awarding legal custody and a reference to an order awarding care and control.

25 (5) In the case of a custody order made by a magistrates' court, subsection (3)(b) above shall be construed as if the reference to the court which made the order included a reference to any magistrates' court acting for the same petty sessions area as that court.

30 (6) A person does not commit an offence under this section by doing anything without the consent of another person whose consent is required under the foregoing provisions if—

Defences.

- (a) he does it in the belief that the other person—
- (i) has consented; or
- (ii) would consent if he was aware of all the relevant
- 35 circumstances; or
- (b) he has taken all reasonable steps to communicate with the other person but has been unable to communicate with him; or
- (c) the other person has unreasonably refused to consent,
- 40 but paragraph (c) does not apply where what is done relates to a child who is the subject of a custody order made by a court in England or Wales, or where the person who does it acts in breach of any direction under section 7 of the Guardianship of Minors Act 1971 or section 1(3) of the Guardianship Act 1973.

45 (7) This section has effect subject to the provisions of Schedule 3 in relation to a child who is in the care of a local authority or voluntary organisation or who is committed to a place of safety or who is the subject of custodianship proceedings or proceedings or an

**PART II
CHAPTER I**

**Abduction of
child by other
persons.**

order relating to adoption.

84.—(1) A person not falling within section 83(2)(a) or (b) is guilty of an offence if, without lawful authority or reasonable excuse, he takes or detains a child under the age of sixteen—

- (a) so as to remove him from the lawful control of any person 5
having lawful control of the child; or
- (b) so as to keep him out of the lawful control of any person
entitled to lawful control of the child.

Defences.

(2) A person does not commit an offence under this section by reason of anything he does— 10

- (a) in the belief that the child has attained the age of sixteen; or
- (b) where the child is illegitimate, with reasonable grounds for believing himself to be the child's father.

Burden of proof.

(3) The burden of proving a defence provided by subsection (2) is on the defendant. 15

**Aggravated
abduction.**

85. A person is guilty of an offence if he intentionally or recklessly takes or detains a child under the age of sixteen—

- (a) so as to remove him from the lawful control of any person
having lawful control of the child; or
- (b) so as to keep him out of the lawful control of any person 20
entitled to lawful control of the child—

intending—

- (i) to hold the child to ransom or as a hostage; or
- (ii) to commit an arrestable offence; or
- (iii) (except in the case of a person falling within section 25
83(2)(a) or (b)) to send him out of the United Kingdom.

Endangering traffic

**Endangering
traffic.**

86.—(1) A person is guilty of an offence if he—

- (a) intentionally places any dangerous obstruction upon a railway,
road, waterway or aircraft runway, or interferes with any 30
machinery, signal, equipment or other device for the
direction, control or regulation of traffic thereon, or
interferes with any conveyance intended to be used thereon;
and
- (b) is or ought to be aware that injury to the person or damage to 35
property may be caused thereby.

*“Conveyance”
and “waterway”.*

(2) In this section—

- (a) “conveyance” means any conveyance constructed or adapted
for the carriage of a person or persons or of goods by land,
water or air; 40
- (b) “waterway” means any route upon water regularly used by any
conveyance.

CHAPTER II
SEXUAL OFFENCES

PART II

General provisions

87. In this Chapter, unless the context otherwise requires—

Interpretation.

5 “buggery” means anal intercourse between a man and another person and is complete on penetration, whether or not there is an emission of seed, and continues until the man’s penis is withdrawn; and “commit buggery” means take part in an act of buggery either as agent or as patient;

10 “man” includes boy (whether under the age of fourteen or not) and “woman” includes girl;

“premises” includes any vehicle or vessel;

15 “sexual intercourse” means vaginal intercourse between a man and a woman and is complete on penetration, whether or not there is an emission of seed, and continues until the man’s penis is withdrawn; but references to “sexual intercourse” in this Chapter are, except in section 120, references only to—

(a) sexual intercourse between a man and a woman who are not husband and wife; or

20 (b) sexual intercourse between husband and wife when—

(i) a decree of divorce or nullity or a judicial separation order in respect of the marriage subsists; or

25 (ii) an injunction granted by a court that the husband shall not, or an undertaking given by him to a court that he will not, molest his wife is in force; or

30 (iii) an injunction granted, or order made, by a court that the husband shall, or an undertaking by him to a court that he will, leave the matrimonial home or not return to it is in force; or

35 (iv) an order made by a magistrates’ court under section 16(2) of the Domestic Proceedings and Magistrates’ Courts Act 1978 is in force; or

(v) a deed of separation executed by them is in force; or

(vi) they are not living with each other in the same household.

40 88. In this Chapter, where an element of an offence is the absence of a specified belief or where belief in a specified circumstance is a defence, a person who was voluntarily intoxicated shall be treated as not having held that belief if he would not have so believed had he been sober.

Intoxication.

45 *Rape and related offences*

89.—(1) A man is guilty of rape if he has sexual intercourse with a woman without her consent and—

Rape.

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*Consent and
threat or
deception.*

- (a) he knows that she is not consenting; or
- (b) he is aware that she may not be, or does not believe that she is, consenting.

(2) For the purposes of this section a woman shall be treated as not consenting to sexual intercourse if she consents to it— 5

- (a) because a threat, express or implied, has been made to use force against her or another if she does not consent and she believes that, if she does not consent, the threat will be carried out immediately or before she can free herself from it; or 10

- (b) because she has been deceived as to—

(i) the nature of the act; or

(ii) the identity of the man.

*Proceedings for
"rape offence".*

(3) The provisions of Schedule 4 shall have effect in proceedings for a "rape offence" as defined in paragraph 5 of the Schedule. 15

*Procurement of
woman by
threats.*

90. A person is guilty of an offence if he procures a woman by threats or intimidation to have sexual intercourse in any part of the world.

*Procurement of
woman by
deception.*

91. A person is guilty of an offence if he procures a woman by deception to have sexual intercourse in any part of the world. 20

*Use of article to
overpower for
sexual purposes.*

92. A person is guilty of an offence if he applies or administers to, or causes to be taken by, another any article or substance, intending to stupefy or overpower that other in order to enable himself or a third person to have sexual intercourse with, or to commit buggery with, or to commit an act of gross indecency with, that other. 25

*Intercourse with
girl under
thirteen.*

93.—(1) A man is guilty of an offence if he has sexual intercourse with a girl under the age of thirteen unless—

- (a) he believes her to be his wife; or

- (b) he believes her to be aged sixteen or above. 30

*Permitting girl
under thirteen to
use premises for
intercourse.*

(2) A person is guilty of an offence if, being the owner or occupier of, or acting or assisting in the management of, premises, he induces or permits a girl under the age of thirteen to resort to or be on those premises for the purpose of having sexual intercourse, unless he believes her to be aged sixteen or above. 35

*Intercourse with
girl under
sixteen.*

94.—(1) A man is guilty of an offence if he has sexual intercourse with a girl under the age of sixteen unless—

- (a) he believes her to be his wife; or

- (b) he believes her to be aged sixteen or above.

*Permitting girl
under sixteen to
use premises for
intercourse.*

(2) A person is guilty of an offence if, being the owner or occupier of, or acting or assisting in the management of, premises, he induces 40

or permits a girl under the age of sixteen to resort to or be on those premises for the purpose of having sexual intercourse, unless he believes her to be aged sixteen or above.

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CHAPTER II

Buggery and gross indecency

- 5 95.—(1) A man is guilty of an offence if he commits buggery with any person without that person's consent and—
- (a) he knows that that person is not consenting; or
- (b) he is aware that that person may not be or does not believe that he is consenting.
- 10 (2) For the purposes of this section a person shall be treated as not consenting to buggery if he consents to it—
- (a) because a threat, express or implied, has been made to use force against him or another if he does not consent and he believes that, if he does not consent, it will be carried out
- 15 immediately or before he can free himself from it; or
- (b) because he has been deceived as to—
- (i) the nature of the act; or
- (ii) the identity of the man.
- 20 96. A man is guilty of an offence if he commits buggery with a child under the age of thirteen unless—
- (a) in the case of a girl, he believes her
- (i) to be his wife; or
- (ii) to be aged sixteen or above; or
- 25 (b) in the case of a boy, he believes him to be aged eighteen or above.
97. A man is guilty of an offence if he commits buggery with a girl under the age of sixteen unless—
- (a) he believes her to be his wife; or
- (b) he believes her to be aged sixteen or above.
- 30 98. A man aged eighteen or above is guilty of an offence if he commits buggery with a boy under the age of eighteen, unless he believes the boy to be aged eighteen or above.
99. A man is guilty of an offence if he commits buggery with another man where either man is, or both are, under the age of
- 35 eighteen unless he is aged eighteen or above and he believes the other to be aged eighteen or above.
100. A man aged eighteen or above is guilty of an offence if he commits an act of gross indecency with a boy under the age of eighteen, unless he believes the boy to be aged eighteen or above.

Non-consensual buggery.

Consent and threat or deception.

Buggery with child under thirteen.

Buggery with girl under sixteen.

Buggery by man with boy under eighteen.

Buggery with boy under eighteen.

Indecency by man with boy under eighteen.

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Indecency with
boy under
eighteen.

101. A man is guilty of an offence if he commits an act of gross indecency with another man where either man is, or both are, under the age of eighteen, unless he is aged eighteen or above and he believes the other to be aged eighteen or above.

Homosexual acts
on merchant
ships:
Buggery.

102.—(1) A man is guilty of an offence if, being a member of the crew of a United Kingdom merchant ship, he commits buggery on that ship, wherever it may be, with another man who is a member of the crew of that or any other United Kingdom merchant ship. 5

Indecency.

(2) A man is guilty of an offence if, being a member of the crew of a United Kingdom merchant ship, he commits an act of gross indecency on that ship, wherever it may be, with another man who is a member of the crew of that or any other United Kingdom merchant ship. 10

(3) In this section—

“member of the crew” in relation to a ship, includes the master of the ship and any apprentice to the sea service serving in the ship; 15

“United Kingdom merchant ship” means a ship registered in the United Kingdom habitually used or used at the time of the act charged for the purposes of carrying passengers or goods for reward. 20

Incest

Incest by a man.

103.—(1) A man is guilty of incest if he has sexual intercourse with a woman whom he knows to be—

(a) his grand-daughter or daughter; or 25

(b) his sister unless—

(i) both he and his sister are aged twenty-one or above; or

(ii) he is aged twenty-one or above and he believes her to be aged twenty-one or above; 30

or

(c) his mother (unless he is under the age of twenty-one).

Aggravated
incest.

(2) A man who commits incest with a girl under the age of thirteen is guilty of aggravated incest.

Inciting
incestuous
intercourse.

(3) A man is guilty of inciting incestuous intercourse if he incites to have sexual intercourse with him a girl under the age of sixteen whom he knows to be his grand-daughter, daughter or sister, unless he believes her to be aged sixteen or above. 35

(4) For the purposes of this section, “daughter” includes adopted daughter and “sister” includes half-sister. 40

Incest by a
woman.

104.—(1) A woman is guilty of incest if she has sexual intercourse with a man whom she knows to be—

(a) her son; or

(b) her brother unless—

(i) both she and her brother are aged twenty-one or above; or

5 (ii) she is aged twenty-one or above and she believes him to be aged twenty-one or above;

or

(c) her father or grandfather (unless she is under the age of twenty-one).

10 (2) For the purposes of this section, "son" includes adopted son and "brother" includes half-brother.

105. A person is guilty of an offence if he has sexual intercourse with his step-child under the age of twenty-one, unless he believes the step-child to be aged twenty-one or above.

Intercourse with step-child under twenty-one.

Sexual relations with the mentally handicapped

15 106.—(1) A man is guilty of an offence if he has sexual intercourse with a woman who is severely mentally handicapped unless—

Intercourse with mentally handicapped woman.

(a) he is severely mentally handicapped; or

(b) he believes that the woman is not suffering from any mental handicap.

20 (2) A person is guilty of an offence if, being the owner or occupier of, or acting or assisting in the management of, premises, he induces or permits a woman who is severely mentally handicapped to resort to or be on the premises for the purpose of having sexual intercourse unless he believes that the woman is not mentally handicapped.

Permitting mentally handicapped woman to use premises for intercourse.

25 107. A man is guilty of an offence if he commits buggery with a person who is severely mentally handicapped unless—

Buggery with mentally handicapped person.

(a) he is severely mentally handicapped; or

(b) he believes that that person is not suffering from any mental handicap.

30 108. A person is guilty of an offence if he commits an act of gross indecency with a person who is severely mentally handicapped unless—

Indecency with mentally handicapped person.

(a) he is severely mentally handicapped; or

35 (b) he believes that that person is not suffering from any mental handicap.

40 109. A person is guilty of an offence if he takes or detains a severely mentally handicapped person so as to remove him from or keep him out of the care of his parent or guardian intending that he shall have sexual intercourse or take part in an act of buggery or gross indecency with any person unless he believes that the person taken or detained is not suffering from any mental handicap.

Abduction of mentally handicapped person.

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CHAPTER II
Sexual relations
with mentally
disordered
patient:
Officer with
in-patient.

110.—(1) A man is guilty of an offence if he is an officer on the staff of, or is otherwise employed in, or is one of the managers of, a hospital or mental nursing home and—

(a) he has sexual intercourse with a woman, or

(b) he commits buggery or an act of gross indecency with a man or a woman— 5

who is receiving treatment for mental disorder in that hospital or home.

(2) A man is guilty of an offence if he is an officer on the staff of, or is otherwise employed in, or is one of the managers of, a hospital or mental nursing home and, on the premises of which the hospital or home forms part— 10

(a) he has sexual intercourse with a woman, or

(b) he commits buggery or an act of gross indecency with a man or woman— 15

who is receiving treatment there for mental disorder as an out-patient.

Guardian, etc.
with patient.

(3) A man is guilty of an offence if—

(a) he has sexual intercourse with a woman, or

(b) he commits buggery or an act of gross indecency with a man or woman— 20

who is a mentally disordered patient and who is subject to his guardianship under the Mental Health Act 1983 or is otherwise in his custody or care under that Act or in pursuance of arrangements under Part III of the National Assistance Act 1948 or the National Health Service Act 1977 or as a resident in a residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act 1983. 25

Defence.

(4) A man is not guilty of an offence under this section if he believes that the woman with whom he has sexual intercourse or the man or woman with whom he commits buggery or an act of gross indecency is not a mentally disordered patient. 30

(5) In this section “mental disorder”, “mentally disordered”, and “patient” are to be construed in accordance with the Mental Health Act 1983.

Indecent assault and related offences 35

Indecent assault.

111. A person is guilty of an indecent assault if he assaults another in such a manner, of which he is aware, or in such circumstances, of which he is aware, as are—

(a) indecent, whatever the purpose with which the act is done; or

(b) indecent only if the act is done with an indecent purpose and he acts with such a purpose. 40

Procurement of
gross indecency
by threats.

112. A person is guilty of an offence if he procures another by threats or intimidation to commit an act of gross indecency with himself or a third person.

Criminal Code

113. A man is guilty of indecent exposure if he exposes his penis to a woman intending, or being aware that he is likely, to cause her alarm or distress.

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CHAPTER II
Indecent exposure.

114. A person is guilty of an offence if he commits an act of gross indecency with or towards a child under the age of thirteen or if he incites a child under that age to commit such an act with him or another, unless—

Indecency with child under thirteen.

- (a) he believes that he or that other is married to the child; or
- (b) he believes the child to be aged sixteen or above.

115. A person is guilty of an offence if he commits an act of gross indecency with or towards a child under the age of sixteen or if he incites a child under that age to commit such an act with him or another unless—

Indecency with child under sixteen.

- (a) he believes that he or that other is married to the child; or
- (b) he believes the child to be aged sixteen or above.

116.—(1) A person is guilty of an offence if—

Indecent photographs of children.

- (a) he takes or permits to be taken an indecent photograph of a child under the age of sixteen; or
- (b) he distributes or shows such a photograph; or
- (c) he has in his possession such a photograph with a view to its being distributed or shown by himself or others; or
- (d) he publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such photographs or intends to do so.

(2) For the purposes of this section and, so far as it is relevant, of section 117—

- (a) a person distributes an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person;
- (b) a child is to be taken as having been under the age of sixteen at any material time if it appears from the evidence as a whole that he was then under the age of sixteen;
- (c) “indecent photograph” includes an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;
- (d) a photograph (including any comprised in a film), if it shows a child and is indecent, is an indecent photograph of a child;
- (e) references to a photograph include the negative as well as the positive version; and
- (f) “film” includes any form of video-recording.

(3) A person is not guilty of an offence under subsection (1)(b) or (c) if—

Defences.

- (a) he has a legitimate reason for distributing or showing the photograph or (as the case may be) having it in his

PART II	possession; or	
CHAPTER II	(b) he has not himself seen the photograph and does not know, and has no reason to suspect, it to be indecent.	
<i>Burden of proof.</i>	(4) The burden of proving a defence provided by subsection (3) is on the defendant.	5
<i>Ancillary provisions.</i>	(5) The provisions of Schedule 5 (seizure and forfeiture of indecent photographs of children) shall have effect.	
Possession of indecent photographs of children.	117.—(1) A person is guilty of an offence if he has an indecent photograph of a child under the age of sixteen in his possession.	
<i>Defence.</i>	(2) A person is not guilty of an offence if—	10
	(a) he has a legitimate reason for having the photograph in his possession; or	
	(b) he has not himself seen the photograph and does not know, and has no reason to suspect, it to be indecent; or	
	(c) the photograph was sent to him without any request by him or on his behalf and he does not keep it for an unreasonable time.	15
<i>Burden of proof.</i>	(3) The burden of proving a defence provided by subsection (2) is on the defendant.	
	<i>Bestiality</i>	20
Bestiality.	118. A person is guilty of bestiality if he has anal or vaginal intercourse with an animal.	
Procuring bestiality.	119. A person is guilty of an offence if he procures the commission of an act of bestiality by another person.	
	<i>Public decency</i>	25
Sexual acts in public.	120.—(1) In this section “sexual intercourse” means sexual intercourse between any two persons (whether married or not).	
	(2) A person is guilty of an offence if he has sexual intercourse with, or performs an act of buggery or gross indecency with, another—	30
	(a) in a public place; or	
	(b) in a place visible from a public place or from premises other than that place; or	
	(c) in the premises of a club or other place of common resort, in such circumstances that the act is likely to be seen by members of the public, and he knows that the act is likely to be seen by them.	35
	(3) For the purposes of this section—	
	(a) “public place” has the meaning given in section 6, except that it does not include a theatre licensed under the Theatres Act 1968; and	40
	(b) “members of the public” includes occupiers of premises referred to in subsection (2)(b) and persons admitted to a	

Criminal Code

building constituting the premises of a club or other place of common resort, whether on payment or otherwise.

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121. A man is guilty of an offence if he performs an act of buggery or gross indecency with another man in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

Acts in public lavatories.

Prostitution

122. For the purposes of sections 123 to 131 and 135 to 137, "prostitute" means a person who, for gain, offers his body for sexual purposes to others or offers to do sexual acts to their bodies, whether or not he selects those to whom he makes his services available; and "prostitution" shall be construed accordingly.

Meaning of "prostitute".

123. A person is guilty of an offence if, for gain, he organises the services or controls the activities of more than one prostitute.

Organising prostitution.

124. A person is guilty of an offence if, for gain, he controls the activities of a prostitute.

Controlling a prostitute.

125. A person is guilty of an offence if, for gain, he does any act intending thereby to facilitate a meeting between a prostitute and another person for the purpose of prostitution, unless—

Facilitating prostitution.

(a) he does so in the ordinary course of a trade, business or profession which does not include the facilitation of prostitution; and

(b) he does not charge a price exceeding that which he would charge if the meeting were not for the purpose of prostitution.

Use of premises for prostitution

126. In sections 127 to 130 "premises" includes, where parts of a building are separately occupied, any two or more of such parts as are occupied by prostitutes (whether one or more in each part) carrying on prostitution under common direction or control.

Meaning of "premises".

127. A person is guilty of an offence if he manages, or assists in the management of, premises in connection with their use, in whole or in part, for the purpose of prostitution by more than one prostitute.

Managing premises used for prostitution.

128. A person is guilty of an offence if—

Letting premises for prostitution.

(a) he lets premises knowing that it is intended to use them, in whole or in part, for the purpose of prostitution by more than one prostitute; or

(b) being the lessor of premises, he knowingly permits such use to continue.

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CHAPTER II
Permitting use of
premises for
prostitution.

129. A person is guilty of an offence if, being the tenant or occupier or person in charge of any premises, he knowingly permits their use, in whole or in part, for the purpose of prostitution by more than one prostitute.

Use of premises
for prostitution
involving
personal harm.

130. A person is guilty of an offence if he provides, occupies, manages or assists in the management of, premises which he knows to be equipped for the purpose of prostitution involving the infliction of personal harm.

Procurement

Procurement of
woman to
become
prostitute.

131. A person is guilty of an offence if—
(a) he procures a woman to become, in any part of the world, a prostitute; or
(b) he procures a woman to leave the United Kingdom, intending her to become an inmate of, or to frequent, premises used for prostitution by two or more prostitutes in any part of the world; or
(c) he procures a woman to leave her usual place of abode in the United Kingdom, intending her to become an inmate of, or to frequent, for the purpose of prostitution, premises which are used for prostitution by two or more prostitutes in any part of the world.

Procurement of
woman under
twenty-one.

132. A person is guilty of an offence if he procures a woman under the age of twenty-one to have sexual intercourse in any part of the world with a third person, unless he believes her to be aged twenty-one or above.

Procurement of
homosexual acts.

133. A person is guilty of an offence if he procures a man to commit buggery or an act of gross indecency with another man (not being the procurer).

Soliciting for prostitution or sexual purposes

Meaning of
"street".

134. For the purposes of sections 135 to 138, "street" includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street, and any ground adjoining and open to a street, shall be treated as forming part of the street.

Woman
prostitute
loitering or
soliciting.

135.—(1) A woman is guilty of an offence if, being a prostitute, she loiters or solicits in a street or public place for the purpose of prostitution.

Power of arrest.

(2) A constable may arrest without warrant anyone he finds in a street or public place and suspects with reasonable cause to be committing an offence under this section.

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136.—(1) A man is guilty of an offence if he solicits a woman (or different women) for the purpose of obtaining her, or their, services as a prostitute, or prostitutes—

- (a) from a motor vehicle while it is in a street or public place; or
5 (b) in a street or public place while in the immediate vicinity of a motor vehicle which he has just got out of or off,
persistently or in such manner or in such circumstances as to be likely to cause annoyance to the woman, or any of the women, solicited, or nuisance to other persons in the neighbourhood.

- 10 (2) In this section “motor vehicle” has the same meaning as in the Road Traffic Act 1988.

137. A man is guilty of an offence if in a street or public place he persistently solicits a woman (or different women) for the purpose of obtaining her, or their, services as a prostitute, or prostitutes.

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CHAPTER II
Kerb-crawling.

Persistent
soliciting of
women for
purposes of
prostitution.

- 15 138. A man is guilty of an offence if in a street or public place he persistently solicits another man or men for sexual purposes.

Soliciting by man
for homosexual
purposes.

CHAPTER III

THEFT, FRAUD AND RELATED OFFENCES

139.—(1) In this Chapter, unless the context otherwise requires—

- 20 “goods” includes money and every other description of property except land, and includes things severed from the land by stealing;

“property” has the meaning given in paragraph (a) of the definition of “property” in section 6.

- 25 (2) For the purposes of this Chapter, property “belongs to” any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

- 30 (3) For the purposes of this Chapter, “gain” and “loss” mean gain and loss (whether temporary or permanent) in money or other property, including—

- (a) a gain by keeping what one has, as well as a gain by getting what one has not; and
35 (b) a loss by not getting what one might get, as well as a loss by parting with what one has.

Interpretation.

“Goods”.

“Property”.

“Belonging to”.

“Gain” and
“loss”.

Theft

140.—(1) A person is guilty of theft if he dishonestly appropriates property belonging to another, intending to deprive the other permanently of it; and “thief” and “steal” shall be construed accordingly.

Basic definition
of theft.

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(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

"Dishonesty".

141.—(1) A person's appropriation of property belonging to another is not dishonest—

- (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or 5
- (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or 10
- (c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

Willingness to pay.

(2) A person's appropriation of property belonging to another may be dishonest although he is willing to pay for the property. 15

"Appropriates".

142.—(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner. 20

Bona fide purchaser.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring amounts to theft of the property by reason of any defect in the transferor's title. 25

Theft of land and growing things.

143.—(1) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except—

- (a) when he is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or 30
- (b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or 35
- (c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

Wild plants.

(2) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose. 40

Interpretation.

(3) For the purposes of this section— 45

- (a) "land" does not include incorporeal hereditaments;
- (b) "mushroom" includes any fungus;
- (c) "plant" includes any shrub or tree;
- 5 (d) "tenancy" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and "let" shall be construed accordingly.

144. For the purposes of section 140(1)—

- 10 (a) where property is subject to a trust, the persons to whom it belongs include any person having a right to enforce the trust, and an intention to defeat the trust is accordingly an intention to deprive of the property any person having that right;
- 15 (b) where a person receives property from or on account of another and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds belongs (as against him) to the other;
- 20 (c) where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds belongs (as against him) to the person entitled to restoration,
- 25 and an intention not to make restoration is accordingly an intention to deprive that person of the property or proceeds;
- (d) property of a corporation sole belongs to the corporation notwithstanding a vacancy in the corporation.

Extended
meaning of
"belonging to
another".

- 145.—(1) A person appropriating property belonging to another
- 30 without meaning the other permanently to lose the thing itself is nevertheless to be regarded as intending to deprive the other permanently of it if he intends to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is
 - 35 for a period and in circumstances making it equivalent to an outright taking or disposal.

"Intending to
deprive the other
permanently".

- (2) Without prejudice to the generality of subsection (1), where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to
- 40 its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.

Offences related to theft

- 45 146. A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then

Robbery.

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and there subjected to force.

Burglary.

147.—(1) A person is guilty of burglary if—

(a) he enters a building or part of a building as a trespasser, intending to commit in the building or part of a building in question an offence of—

(i) theft;

(ii) causing serious personal harm;

(iii) rape; or

(iv) destroying or damaging the building or any property therein; or

(b) having entered a building or part of a building as a trespasser, he commits in the building or part of a building in question an offence of—

(i) theft or attempted theft; or

(ii) causing, or attempting to cause, serious personal harm.

Inhabited vehicle or vessel.

(2) References in subsection (1) to a building apply also to an inhabited vehicle or vessel, and apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

Aggravated burglary.

148.—(1) A person is guilty of aggravated burglary if he commits burglary and at the time has with him a firearm or imitation firearm, a weapon of offence, or an explosive.

Definitions.

(2) In this section—

(a) “firearm” includes an airgun or air pistol, and “imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not; and

(b) “weapon of offence” means an article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and

(c) “explosive” means an article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

Removal of articles from places open to the public.

149.—(1) A person is guilty of an offence if—

(a) without lawful authority he removes from a building or its grounds the whole or part of an article displayed or kept for display to the public in the building or that part of it or in its grounds; and

(b) the building is one to which the public have access in order to view the building or part of it, or a collection or part of a collection housed in it.

“Collection”.

(2) In this section, “collection”—

(a) includes a collection got together for a temporary purpose;

(b) does not include a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

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*Removal when
no access to
public.*

- (3) A person does not commit an offence under subsection (1) if—
- (a) he removes a thing from a building or its grounds on a day when the public do not have access to the building; and
 - (b) the thing is not in the building or grounds as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public.
- (4) But the fact that the public's access to a building is limited to a particular period or occasion is otherwise immaterial.
- (5) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.

*Belief in lawful
authority.*

- 150.—(1) A person is guilty of an offence if—
- (a) without the consent of the owner or other lawful authority he takes a conveyance for his own or another's use; or
 - (b) he drives, or allows himself to be carried in or on, a conveyance knowing that it has been taken without lawful authority.

*Taking a
conveyance or
pedal cycle
without
authority.*

- (2) A person is guilty of an offence if—
- (a) without the consent of the owner or other lawful authority he takes a pedal cycle for his own or another's use; or
 - (b) he rides a pedal cycle knowing that it has been taken without lawful authority.

*Taking a pedal
cycle.*

- (3) In this section—
- (a) "conveyance" means any conveyance (other than a pedal cycle) constructed or adapted for the carriage of a person or persons by land, water or air, except that it does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it, and "drive" shall be construed accordingly; and
 - (b) "owner", in relation to a conveyance or pedal cycle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of it under the agreement.

Definitions.

- (4) A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

- 151.—(1) A person is guilty of vehicle interference if he interferes with a motor vehicle or trailer or with anything carried in or on a motor vehicle or trailer, intending that an offence specified in subsection (2) shall be committed by himself or some other person.

*Interference with
vehicles.*

- (2) The offences mentioned in subsection (1) are—
- (a) theft of the motor vehicle or trailer or part of it;
 - (b) theft of anything carried in or on the motor vehicle or trailer; and

*Intended
offences.*

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CHAPTER III**

(c) an offence under section 150(1) (taking a conveyance without authority).

(3) If it is proved that a person charged with an offence under this section intended that one of the offences specified in subsection (2) should be committed, it is immaterial that it cannot be proved which it was. 5

Definitions.

(4) In this section—

(a) “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads and includes a side-car attached to a motor cycle; 10

(b) “trailer” means a vehicle drawn by a motor vehicle.

Abstracting electricity.

152. A person is guilty of an offence if he dishonestly—

(a) uses electricity without due authority; or

(b) causes electricity to be wasted or diverted.

Making off without payment.

153.—(1) A person is guilty of an offence if, knowing that payment on the spot for any goods supplied or service done is required or expected from him, he dishonestly makes off without having paid as required or expected and intending to avoid payment of the amount due. 15

“Payment on the spot”.

(2) For the purposes of this section “payment on the spot” includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided. 20

Transaction contrary to law or unenforceable.

(3) Subsection (1) does not apply where the supply of the goods or the doing of the service is contrary to law, or where the service done is such that payment is not legally enforceable. 25

Power of arrest.

(4) Any person may arrest without warrant anyone who is, or whom he has reasonable grounds for suspecting to be, committing or attempting to commit an offence under this section.

Blackmail

Blackmail.

154.—(1) A person is guilty of blackmail if, with a view to gain for himself or another or intending to cause loss to another, he makes an unwarranted demand with menaces. 30

“Unwarranted”.

(2) For the purposes of this section a demand with menaces is unwarranted unless the person making it does so in the belief—

(a) that he has reasonable grounds for making the demand; and 35

(b) that the use of the menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand. 40

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Fraud

PART II CHAPTER III Meaning of "deception".

155. In sections 156, 157, 158, 159 and 163, "deception" means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

156.—(1) A person is guilty of an offence if by any deception he dishonestly obtains property belonging to another, intending to deprive the other permanently of it.

Obtaining
property by
deception.

(2) For the purposes of this section a person obtains property if he obtains ownership, possession or control of it, and "obtain" includes obtaining for another or enabling another to obtain or to retain.

"Obtains".

(3) Section 145 applies for the purposes of this section, with the necessary adaptation of the reference to appropriating, as it applies for purposes of section 140 (theft).

"Intending to
deprive the other
permanently of
it".

157.—(1) A person is guilty of an offence if by any deception he dishonestly obtains services from another.

Obtaining
services by
deception.

(2) It is an obtaining of services where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

"Obtains
services".

158.—(1) A person is guilty of an offence if by any deception—

Evasion of
liability by
deception.

(a) he dishonestly secures the remission of the whole or part of an existing liability to make a payment, whether his own liability or another's; or

(b) intending to make permanent default in whole or in part on an existing liability to make a payment, or intending to let another do so, he dishonestly induces the creditor or a person claiming payment on behalf of the creditor—

(i) to wait for payment (whether or not the due date for payment is deferred) or

(ii) to forgo payment; or

(c) he dishonestly obtains an exemption from or abatement of liability to make a payment.

(2) For the purposes of this section "liability" means legally enforceable liability; and subsection (1) does not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

"Liability".

(3) For the purposes of subsection (1)(b) a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is not paid but is induced to wait for payment.

"Payment" by
cheque etc.

(4) For the purposes of subsection (1)(c) "obtains" includes obtaining for another or enabling another to obtain.

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CHAPTER III
Obtaining
pecuniary
advantage by
deception.

"Pecuniary
advantage".

159.—(1) A person is guilty of an offence if by any deception he dishonestly obtains for himself or another a pecuniary advantage.

(2) For the purposes of this section a pecuniary advantage is obtained for a person if, and only if,—

- (a) he is allowed to borrow by way of overdraft, or to take out a policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so; or
- (b) he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

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False
accounting.

160.—(1) A person is guilty of an offence if, dishonestly, with a view to gain for himself or another or intending to cause loss to another,—

- (a) he destroys, defaces, conceals or falsifies an account or a record or document made or required for any accounting purpose; or
- (b) in furnishing information for any purpose, he produces or makes use of an account, or such a record or document, knowing that it is or may be misleading, false or deceptive in a material particular.

20

"Falsifies".

(2) For the purposes of this section a person who—

- (a) makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular; or
- (b) omits or concurs in omitting a material particular from an account or other document,

is to be treated as falsifying the account or document.

False statements
by company
directors etc.

161.—(1) An officer of a body corporate or unincorporated association, or person purporting to act as such, is guilty of an offence if, intending to deceive members or creditors of the body corporate or association about its affairs, he publishes or concurs in publishing a written statement or account knowing that it is or may be misleading false or deceptive in a material particular.

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Surety as
creditor.

(2) For the purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.

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Body managed
by its members.

(3) Where the affairs of a body corporate or association are managed by its members, this section applies to any statement which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the body corporate or association.

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Suppression, etc.
of documents.

162.—(1) A person is guilty of an offence if, dishonestly, with a view to gain for himself or another or intending to cause loss to another, he destroys, defaces or conceals—

- (a) a valuable security; or

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- (b) a will or other testamentary document; or
- (c) an original document of, or belonging to, or filed or deposited in, a court of justice or government department.
- (2) In this section "valuable security" means any document—
- 5 (a) creating, transferring, surrendering or releasing a right to, in or over property; or
- (b) authorising the payment of money or delivery of property; or
- (c) evidencing the creation, transfer, surrender or release of a right to, in or over property, or the payment of money or
- 10 delivery of property, or the satisfaction of an obligation.

"Valuable security".

163.—(1) A person is guilty of an offence if, dishonestly, with a view to gain for himself or another or intending to cause loss to another, by any deception he procures the execution of a valuable security.

Procuring execution of valuable security.

- 15 (2) Subsection (1) applies in relation to—
- (a) the making, acceptance, indorsement, alteration, cancellation or destruction in whole or in part of a valuable security; or
- (b) the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with
- 20 as, a valuable security,
- as if that were the execution of a valuable security.

"Execution".

(3) In this section "valuable security" has the same meaning as in section 162.

"Valuable security".

Forgery and kindred offences

- 25 164.—(1) In sections 167 to 171, "instrument" means—
- (a) any document, whether of a formal or informal character, other than a currency note;
- (b) any stamp issued or sold by the Post Office;
- (c) any Inland Revenue stamp; and
- 30 (d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

Meaning of "instrument".

(2) In subsection (1) "currency note" means—

"Currency note".

- (a) any note which—
- 35 (i) has been lawfully issued in England and Wales, Scotland, Northern Ireland, any of the Channel Islands, the Isle of Man or the Republic of Ireland; and
- (ii) is or has been customarily used as money in the country where it was issued; and
- 40 (iii) is payable on demand; or
- (b) any note which—
- (i) has been lawfully issued in some country other than those mentioned in paragraph (a)(i); and
- (ii) is customarily used as money in that country.

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CHAPTER III
*Mark denoting
payment of
postage.*

*"Inland Revenue
stamp".*

Meaning of
"false".

(3) For the purposes of sections 167 to 171, a mark denoting payment of postage which the Post Office authorise to be used instead of an adhesive stamp is to be treated as if it were a stamp issued by the Post Office.

(4) In subsection (1) "Inland Revenue stamp" means a stamp (whether adhesive or impressed by means of a die) denoting a duty or fee. 5

165.—(1) For the purposes of sections 167 to 171 an instrument is false if—

- (a) it purports to have been made in the form in which it is made by a person who did not in fact make it in that form; or 10
- (b) it purports to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form; or
- (c) it purports to have been made in the terms in which it is made by a person who did not in fact make it in those terms; or 15
- (d) it purports to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms; or
- (e) it purports to have been altered in any respect by a person who did not in fact alter it in that respect; or 20
- (f) it purports to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or
- (g) it purports to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or 25
- (h) it purports to have been made or altered by an existing person but he did not in fact exist.

(2) A person is to be treated for the purposes of sections 167 to 171 as making a false instrument if he alters an instrument so as to make it false (whether or not it is false in some other respect apart from that alteration). 30

Meaning of
"prejudice" and
"induce".

166.—(1) Subject to subsections (2) and (4), for the purposes of sections 167 to 171, an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs— 35

(a) will result—

- (i) in loss to him; or
- (ii) in his being deprived of an opportunity to earn remuneration or greater remuneration; or 40
- (iii) in his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or

(b) will result in somebody being given an opportunity—

- (i) to earn remuneration or greater remuneration from him; or 45

- (ii) to gain a financial advantage from him otherwise than by way of remuneration; or
- (c) will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.

(2) An act which a person has an enforceable duty to do and an omission to do an act which a person is not entitled to do are to be disregarded for the purposes of those sections.

- (3) In those sections references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one.

Inducing response by machine.

- (4) Where subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy is to be treated as an act or omission to a person's prejudice.

167. A person is guilty of forgery if he makes a false instrument, intending that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Forgery.

168. A person is guilty of an offence if he makes a copy of an instrument which is, and which he knows or believes to be, a false instrument, intending that he or another shall use it to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Copying a false instrument.

169. A person is guilty of an offence if he uses an instrument which is, and which he knows or believes to be, false, intending to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Using a false instrument.

170. A person is guilty of an offence if he uses a copy of an instrument which is, and which he knows or believes to be, a false instrument, intending to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Using a copy of a false instrument.

- 171.—(1) A person is guilty of an offence if he has in his custody or under his control an instrument to which this section applies which is, and which he knows or believes to be, false, intending that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Offences relating to money orders, share certificates, passports, etc.

- (2) A person is guilty of an offence if he has in his custody or under his control, without lawful authority or excuse, an instrument to which this section applies which is, and which he knows or believes

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to be, false.

(3) A person is guilty of an offence if he makes or has in his custody or under his control a machine or implement, or paper or any other material, which to his knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, intending that he or another shall make an instrument to which this section applies which is false and that he or another shall use the instrument to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. 5 10

(4) A person is guilty of an offence if he makes or has in his custody or under his control any such machine, implement, paper or material, without lawful authority or excuse.

(5) The instruments to which this section applies are—

- (a) money orders; 15
- (b) postal orders;
- (c) United Kingdom postage stamps;
- (d) Inland Revenue stamps;
- (e) share certificates;
- (f) passports and documents which can be used instead of 20 passports;
- (g) cheques;
- (h) travellers' cheques;
- (j) cheque cards;
- (k) credit cards; 25
- (l) certified copies relating to an entry in a register of births, adoptions, marriages or deaths and issued by the Registrar General, the Registrar General for Northern Ireland, a registration officer or a person lawfully authorised to register marriages; and 30
- (m) certificates relating to entries in such registers.

(6) In subsection (5)(e) "share certificate" means an instrument entitling or evidencing the title of a person to a share or interest—

- (a) in any public stock, annuity, fund or debt of any government or state, including a state which forms part of another state; 35 or
- (b) in any stock, fund or debt of a body (whether corporate or unincorporated) established in the United Kingdom or elsewhere.

Offences relating to goods stolen etc. 40

Handling stolen goods.

172. A person is guilty of handling stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods, he dishonestly—

- (a) receives or arranges to receive the goods; or
- (b) undertakes or arranges to undertake their retention, removal, 45 disposal or realisation for the benefit of another; or

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- (c) assists or arranges to assist in their retention, removal, disposal or realisation by another.

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173.—(1) A person is guilty of an offence if he publicly advertises, or prints or publishes the public advertisement of, a reward for the return of any goods which have been stolen or lost, using words to the effect that no questions will be asked, or that the person producing the goods will be safe from apprehension or inquiry, or that any money paid for the purchase of the goods or advanced by way of loan on them will be repaid.

Advertising rewards for return of goods stolen or lost.

(2) Section 20 (general requirement of fault) does not apply to this section.

174.—(1) For the purposes of the provisions of this Chapter relating to goods which have been stolen, goods obtained by blackmail or in the circumstances described in section 156 (obtaining property by deception) are to be regarded as stolen; and “steal”, “theft” and “thief” shall be construed accordingly.

Scope of offences relating to “stolen” goods.

(2) Those provisions apply whether the stealing occurred—

Time and place of theft immaterial.

(a) before or after the commencement of this Act; or

(b) in England or Wales or elsewhere, provided that the stealing (if not an offence under this Act) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods are to be construed accordingly.

(3) For the purposes of those provisions references to stolen goods include, in addition to the goods originally stolen and parts of them (whether in their original state or not),—

Proceeds of stolen goods.

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of a disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

(b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of a disposal or realisation of the whole or part of the stolen goods handled by him or of goods so representing them.

(4) But no goods continue to be stolen goods—

Goods ceasing to be “stolen”.

(a) after they are restored to the person from whom they were stolen or to other lawful possession or custody; or

(b) after that person and any other person claiming through him otherwise cease as regards those goods to have any right to restitution in respect of the theft.

(5) References in any enactment, whenever passed, to stolen goods shall be construed in accordance with this section.

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CHAPTER III
Going equipped.

Going equipped for stealing etc.

"Theft" and
"cheat".

175.—(1) A person is guilty of an offence if, when not at his place of abode, he has with him an article for use in the course of or in connection with a burglary, theft or cheat.

(2) For the purposes of this section—

- (a) "theft" includes an offence under section 150(1) (taking a conveyance without authority); and
- (b) "cheat" means an offence under section 156 (obtaining property by deception).

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Ancillary provisions

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Jurisdiction over
theft from mails.

176.—(1) Where a person—

- (a) steals or attempts to steal a mail bag or postal packet in the course of transmission as such between places in different jurisdictions in the British postal area, or any of the contents of such a mail bag or postal packet; or

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- (b) in stealing or intending to steal any such mail bag or postal packet or any of its contents, commits a robbery, attempted robbery or assault intending to rob,

outside England and Wales, he is guilty of the offence in question as if he had done so in England and Wales.

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(2) The "different jurisdictions in the British postal area" referred to in subsection (1) are the jurisdictions of England and Wales, of Scotland, of Northern Ireland, of the Isle of Man and of the Channel Islands, respectively.

(3) In subsection (1) "mail bag" includes any article serving the purpose of a mail bag.

25

Ancillary
provisions.

177. Paragraphs 1, 2 and 4 and, so far as it applies to offences under provisions of this Chapter, paragraph 5 of Schedule 6 (provisions ancillary to Chapters III and IV of Part II) shall have effect.

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CHAPTER IV

OTHER OFFENCES RELATING TO PROPERTY

Offences of damage to property

Meaning of
"property".

178.—(1) In sections 179 to 182, "property" has the meaning given in paragraph (a) of the definition of "property" in section 6, except that it does not include things in action or other intangible property, or mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land.

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"Mushroom"
and "plant".

(2) For the purposes of subsection (1) "mushroom" includes any fungus and "plant" includes any shrub or tree.

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Meaning of
"belonging to
another".

179.—(1) For the purposes of sections 180 to 182 and 185, property belongs to any person—

- (a) having the custody or control of it; or
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- 5 (c) having a charge on it; or
- (d) having a right to enforce a trust to which it is subject.

(2) Property of a corporation sole belongs to the corporation for those purposes notwithstanding a vacancy in the corporation.

Property of corporation sole.

10 **180.—**(1) A person is guilty of an offence if he intentionally or recklessly causes the destruction of or damage to property belonging to another.

Destroying or damaging property.

(2) A person is guilty of an offence if he intentionally or recklessly causes the destruction of or damage to property (whether belonging to himself or another), intending by the destruction or damage to
15 endanger the life of another or being reckless whether the life of another will be thereby endangered.

Intention or recklessness as to endangering life.

(3) An offence committed under this section by causing the destruction of or damage to property by fire shall be charged as arson.

Fire.

20 **181.** A person is guilty of an offence if he makes to another a threat, intending that other to believe that it will be carried out—

Threats to destroy or damage property.

(a) to cause the destruction of or damage to property belonging to that other or a third person; or

(b) to cause the destruction of or damage to his own property in a way which he knows is likely to endanger the life of that
25 other or a third person.

182. A person is guilty of an offence if he has anything in his custody or under his control, intending to use it or cause or permit another to use it—

Possessing anything with intent to destroy or damage property.

30 (a) to cause the destruction of or damage to property belonging to some other person; or

(b) to cause the destruction of or damage to his own or the user's property in a way which he knows is likely to endanger the life of some other person.

183. Sections 184 and 185 apply to—

Application of defences.

35 (a) any offence under section 180(1); and

(b) any offence under section 181 or 182 other than one involving—

(i) in the case of section 181, a threat; or

40 (ii) in the case of section 182, an intention to use or cause or permit the use of a thing,

to cause the destruction of or damage to property, in a way the person making the threat or having the intention knows is likely to endanger the life of another.

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CHAPTER IV
Consent or
belief in consent.

184. A person does not commit an offence to which this section applies if—

- (a) he knows or believes that the person whom he believes to be entitled to consent to the destruction or damage has so consented; or
- (b) he believes that that person would so consent if he knew of the destruction or damage and its circumstances.

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Protection of
person or
property.

185.—(1) A person does not commit an offence to which this section applies by doing an act which, in the circumstances which exist or which he believes to exist, is immediately necessary and 10 reasonable—

- (a) to protect himself or another from unlawful force or injury; or
- (b) to prevent or terminate the unlawful detention of himself or another; or
- (c) to protect property (whether belonging to himself or another) 15 from unlawful appropriation, destruction or damage.

"Unlawful".

(2) Section 44(3) (meaning of "unlawful") applies for the purposes of this section.

Ancillary
provisions.

186. Paragraph 3 and, so far as it applies to offences under sections 180 to 182, paragraph 5 of Schedule 6 (provisions ancillary to 20 Chapters III and IV of Part II) shall have effect.

Offences relating to entering and remaining on property

Meaning of
"premises" and
"access".

187.—(1) In sections 188 to 191 and 193 to 195—

- (a) "premises" means any building, any part of a building under separate occupation, any land ancillary to a building, the site 25 comprising any building or buildings together with any land ancillary thereto, and (for the purposes only of section 195) any other place; and
- (b) "access" means, in relation to any premises, any part of any site or building within which those premises are situated 30 which constitutes an ordinary means of access to those premises (whether or not that is its sole or primary use).

"Building" and
related
expressions.

(2) References in subsection (1) to a building apply also to any structure other than a movable one, and to any movable structure, vehicle or vessel designed or adapted for residential purposes; and for 35 the purposes of subsection (1)—

- (a) part of a building is under separate occupation if anyone is in occupation or entitled to occupation of that part as distinct from the whole; and
- (b) land is ancillary to a building if it is adjacent to it and used 40 (or intended for use) in connection with the occupation of that building or any part of it.

Criminal Code

188. For the purposes of sections 189 to 191, a person who (otherwise than as a trespasser) was occupying premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser
5 is a displaced residential occupier—

(a) of the premises; and

(b) of any access to the premises,

so long as he continues to be excluded from occupation of the premises by the original trespasser or by any subsequent trespasser.

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CHAPTER IV
Meaning of
“displaced
residential
occupier”.

10 189.—(1) For the purposes of sections 188, 191, 193 and 194, a person who enters, or is on or in occupation of, premises by virtue of—

(a) any title derived from a trespasser; or

15 (b) any licence or consent given by a trespasser or by a person deriving title from a trespasser,

is himself a trespasser (whether or not he would be a trespasser apart from this provision).

Meaning of
“trespasser”.

20 (2) A person who is on any premises as a trespasser does not cease to be a trespasser for the purposes of those sections by virtue of being allowed time to leave the premises; nor does anyone cease to be a displaced residential occupier of any premises by virtue of any such allowance of time to a trespasser.

Person allowed
time to leave.

190.—(1) A person is guilty of an offence if—

25 (a) without lawful authority, he uses or threatens violence for the purpose of securing entry into any premises for himself or another; and

(b) there is, to his knowledge, someone present on those premises at the time who is opposed to the entry which the violence is intended to secure.

Violence for
securing entry.

30 (2) The fact that a person has an interest in, or a right to possession or occupation of, premises does not, for the purposes of subsection (1), constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

Interest in
premises not
lawful authority.

35 (3) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

40 (b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

Purpose of
violence
immaterial.

(4) A person is not guilty of an offence under this section if—

(a) he or any other person on whose behalf he is acting is a displaced residential occupier of the premises in question; or

(b)—

45 (i) part of the premises in question constitutes premises of which he or any other person on whose behalf he is

Defences.

PART II
CHAPTER IV

acting is a displaced residential occupier; and

(ii) the part of the premises to which he is seeking to secure entry constitutes an access of which he or, as the case may be, that other person is also a displaced residential occupier.

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Burden of proof.

(5) The burden of proving a defence provided by subsection (4) is on the defendant.

Power of arrest.

(6) A constable in uniform may arrest without warrant anyone who is, or whom he has reasonable grounds for suspecting to be, guilty of an offence under this section.

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Adverse occupation of residential premises.

191.—(1) A person is guilty of an offence if, being on any premises as a trespasser after having entered as such, he fails to leave those premises on being required to do so by or on behalf of—

- (a) a displaced residential occupier of the premises; or
- (b) an individual who is a protected intending occupier of the premises by virtue of subsection (2) or (3).

15

"Protected intending occupier".

(2) For the purposes of this section an individual is a protected intending occupier of premises at any time when—

- (a) he has in those premises a freehold interest or a leasehold interest with not less than twenty-one years still to run and he acquired that interest as a purchaser for money or money's worth; and
- (b) he requires the premises for his own occupation as a residence; and
- (c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and
- (d) he or a person acting on his behalf holds a written statement—
 - (i) which specifies his interest in the premises; and
 - (ii) which states that he requires the premises for occupation as a residence for himself; and
 - (iii) which was signed by him in the presence of a justice of the peace or commissioner for oaths who has subscribed his name as a witness to the signature.

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False statement offences.

(3) A person is guilty of an offence if—

- (a) he makes a statement for the purposes of subsection (2)(d) which he knows to be false in a material particular; or
- (b) he recklessly makes such a statement which is false in a material particular.

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Further case of "protected intending occupier".

(4) For the purposes of this section an individual is also a protected intending occupier of premises at any time when—

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- (a) he has been authorised to occupy the premises as a residence by an authority to which this subsection applies; and
- (b) he is excluded from occupation of the premises by a person who entered the premises, or any access to them, as a trespasser; and
- (c) there has been issued to him by or on behalf of the authority referred to in paragraph (a) a certificate stating that the

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authority is one to which this subsection applies, being of a description specified in the certificate, and that he has been authorised by the authority to occupy the premises concerned as a residence.

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CHAPTER IV

5 (5) Subsection (4) applies to the following authorities:—

*Authorities
within subsection
(4).*

(a) any body mentioned in section 14 of the Rent Act 1977 (landlord's interest belonging to local authority etc.);

(b) the Housing Corporation;

(c) Housing for Wales; and

10 (d) a housing association, within the meaning of section 1(1) of the Housing Act 1985, which is for the time being either registered in the register of housing associations established under section 3 of that Act or specified in an order made by the Secretary of State under paragraph 23 of Schedule 1 to
15 the Housing Rents and Subsidies Act 1975.

(6) A document purporting to be a certificate under subsection (4)(c) shall be received in evidence in any proceedings for an offence under subsection (1) and, unless the contrary is proved, shall be deemed to have been issued by or on behalf of the authority stated in
20 the certificate.

*Certificate as
evidence.*

(7) A person is not guilty of an offence under subsection (1) if—

Defences.

(a) he believes that the person requiring him to leave the premises is not a displaced residential occupier or protected intending occupier of the premises or a person acting on behalf of a displaced residential occupier or protected intending occupier;
25 or

(b)—

(i) the premises in question are or form part of premises used mainly for non-residential purposes; and

30 (ii) he is not on any part of the premises used wholly or mainly for residential purposes; or

(c) having been requested to leave the premises by a person claiming to be or to act on behalf of a protected intending occupier of the premises, he then asks that person, but that
35 person fails at that time, to produce to him such a statement as is referred to in subsection (2)(d) or such a certificate as is referred to in subsection (4)(c).

(8) The burden of proving a defence provided by subsection (7) is on the defendant.

Burden of proof.

40 (9) Any reference in the preceding provisions of this section, other than subsections (2) and (4), to any premises includes a reference to any access to them, whether or not the access itself constitutes premises, within the meaning given by section 187(1); and a person who is a protected intending occupier of any premises is also for the
45 purposes of this section a protected intending occupier of any access to those premises.

*Access to
premises.*

(10) A constable in uniform may arrest without warrant anyone who is, or whom he has reasonable grounds for suspecting to be, guilty of an offence under subsection (1).

Power of arrest.

PART II
CHAPTER IV
Failure to leave
land despite
direction:

*Power to direct
persons to leave
land.*

*Failing to leave or
re-entering.*

Defences.

Burden of proof.

Power of arrest.

Interpretation.

192.—(1) If the senior police officer reasonably believes that two or more persons have entered land as trespassers and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his; or

(b) that those persons have between them brought twelve or more vehicles on to the land,

he may direct those persons, or any of them, to leave the land.

(2) A person is guilty of an offence if, knowing that such a direction has been given which applies to him—

(a) he fails to leave the land as soon as reasonably practicable; or 15

(b) having left, he again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given.

(3) A person is not guilty of an offence under this section if—

(a) his original entry on the land was not as a trespasser; or 20

(b) he has a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(4) The burden of proving a defence provided by subsection (3) is on the defendant. 25

(5) A constable in uniform who has reasonable grounds for suspecting a person to be committing an offence under this section may arrest him without warrant.

(6) In this section—

“land” does not include— 30

(a) buildings other than—

(i) agricultural buildings within the meaning of section 26(4) of the General Rate Act 1967; or

(ii) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979; 35

(b) land forming part of a highway;

“occupier” means the person entitled to possession of the land by virtue of an estate or interest held by him;

“the senior police officer” means the most senior in rank of the police officers present at the scene; 40

“trespasser”, in relation to land, means a person who is a trespasser as against the occupier of the land;

“vehicle” includes a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960; 45

and a person may be regarded for the purposes of this section as having the purpose of residing in a place although he has a home elsewhere.

193.—(1) A person who is on any premises as a trespasser, after having entered as such, is guilty of an offence if, without lawful authority or reasonable excuse, he has with him on the premises any weapon of offence.

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CHAPTER IV
Trespassing with
a weapon of
offence.

5 (2) In subsection (1) "weapon of offence" means an article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use.

*"Weapon of
offence".*

10 (3) A constable in uniform may arrest without warrant anyone who is, or whom he has reasonable grounds for suspecting to be, committing an offence under this section.

Power of arrest.

194.—(1) A person is guilty of an offence if he enters or is on any premises to which this section applies as a trespasser.

Trespassing on
premises of
foreign missions,
etc.

(2) This section applies to any premises which are or form part of—

15 (a) the premises of a diplomatic mission within the meaning of the definition in Article (1)(i) of the Vienna Convention on Diplomatic Relations signed in 1961 as that Article has effect in the United Kingdom by virtue of section 2 of and Schedule 1 to the Diplomatic Privileges Act 1964;

*Relevant
premises.*

20 (b) consular premises within the meaning of the definition in paragraph (1)(j) of Article 1 of the Vienna Convention on Consular Relations signed in 1963 as that Article has effect in the United Kingdom by virtue of section 1 of the Consular Relations Act 1968;

25 (c) any other premises in respect of which any organisation or body is entitled to inviolability by or under any enactment; and

30 (d) any premises which are the private residence of a diplomatic agent (within the meaning of Article 1(e) of the Convention mentioned in paragraph (a) above) or of any other person who is entitled to inviolability by or under any enactment.

(3) A person is not guilty of an offence under this section if he believes that the premises in question are not premises to which this section applies.

Defence.

35 (4) The burden of proving a defence provided by subsection (3) is on the defendant.

Burden of proof.

40 (5) In any proceedings for an offence under this section a certificate issued by or under the authority of the Secretary of State stating that any premises were or formed part of premises of any description mentioned in paragraphs (a) to (d) of subsection (2) at the time of the alleged offence shall be conclusive evidence that the premises were or formed part of premises of that description at that time.

*Certificate as
evidence.*

45 (6) A constable in uniform may arrest without warrant anyone who is, or whom he has reasonable grounds for suspecting to be, committing an offence under this section.

Power of arrest.

PART II
CHAPTER IV
Obstruction of
court officers
executing
process for
possession
against unau-
thorised
occupiers.

*Relevant
judgments and
orders.*

Defence.

Burden of proof.

Power of arrest.

*"Officer of a
court".*

Saving.

Eviction and
harassment of
occupier:
Eviction.

Harassment.

*Harassment by
landlord or
landlord's agent.*

195.—(1) A person is guilty of an offence if he resists or intentionally obstructs a person who is (whether or not the person resisting or obstructing him is aware that he is or may be) an officer of a court engaged in executing any process issued by the High Court or by a county court for the purpose of enforcing a judgment or order for the recovery of any premises or for the delivery of possession of any premises. 5

(2) Subsection (1) does not apply unless the judgment or order in question was given or made in proceedings under any provisions of rules of court applicable only in circumstances where the person claiming possession of premises alleges that the premises in question are occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation of the premises without the licence or consent of the person claiming possession or any predecessor in title of his. 15

(3) A person is not guilty of an offence under this section if he believes that the person he is resisting or obstructing is not an officer of a court.

(4) The burden of proving a defence provided by subsection (3) is on the defendant. 20

(5) A constable in uniform or an officer of a court may arrest without warrant anyone who is, or whom he has reasonable grounds for suspecting to be, guilty of an offence under this section.

(6) In this section "officer of a court" means— 25

(a) a sheriff, under sheriff, deputy sheriff, bailiff or officer of a sheriff; and

(b) a bailiff or any other person who is an officer of a county court within the meaning of the County Courts Act 1984.

(7) This section is without prejudice to section 8(2) of the Sheriffs Act 1887. 30

Unlawful eviction and harassment of residential occupier

196.—(1) A person is guilty of an offence if he unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part of them. 35

(2) A person is guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of a residential occupier of any premises or members of his household; or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, intending to cause the residential occupier to give up the occupation of the premises or any part of them or to refrain from exercising any right or pursuing any remedy in respect of the premises or part of them. 40 45

(3) The landlord of a residential occupier of any premises or an agent of the landlord is guilty of an offence if—

- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household; or
- (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,
- 5 knowing, or having reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up occupation of the premises or any part of them or to refrain from exercising any right or pursuing any remedy in respect of the premises or part of them.

(4) A person is not guilty of an offence under subsection (1) if he
10 believes, and has reasonable cause to believe, that the residential occupier has ceased to reside in the premises. *Defences.*

(5) A person is not guilty of an offence under subsection (3) if he has reasonable grounds for doing the acts or withdrawing or withholding the services in question.

15 (6) The burden of proving a defence provided by subsection (4) or (5) is on the defendant. *Burden of proof.*

(7) In this section—

“landlord”, in relation to a residential occupier of any premises, means the person who, but for— *“Landlord” and “residential occupier”.*

20 (i) the residential occupier’s right to remain in occupation of the premises; or

(ii) a restriction on the person’s right to recover possession of the premises,

25 would be entitled to occupation of the premises and any superior landlord under whom that person derives title;

“residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right
30 of any other person to recover possession of the premises.

(8) This section is without prejudice to any liability or remedy to which a person guilty of an offence under it may be subject in civil proceedings. *Saving for civil liability.*

CHAPTER V

35 OFFENCES AGAINST PUBLIC PEACE AND SAFETY

Interpretation

197. In this Chapter—

Interpretation.

40 “dwelling” means any structure or part of a structure occupied as a person’s home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“violence” means any violent conduct, so that—

45 (a) except in the context of affray, it includes violent conduct towards property as well as violent conduct

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towards persons, and

(b) it is not restricted to conduct causing or intended to cause personal harm or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing personal harm which does not hit or falls short). 5

Offences against public order

Riot.

198.—(1) A person is guilty of riot if—

- (a) he is one of 12 or more persons who are present together using or threatening unlawful violence for a common purpose; and 10
- (b) the conduct of those persons (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety; and
- (c) he uses unlawful violence for the common purpose; and
- (d) he intends to use violence or is reckless whether his conduct is 15 violent.

(2) The fact that any other person is not guilty of riot in consequence of subsection (1)(d) does not affect the determination of the number of persons who use or threaten violence.

(3) It is immaterial whether or not the 12 or more use or threaten 20 unlawful violence simultaneously.

(4) The common purpose may be inferred from conduct.

(5) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(6) Riot may be committed in private as well as in public places. 25

Violent disorder.

199.—(1) A person is guilty of violent disorder if—

- (a) he is one of 3 or more persons who are present together using or threatening unlawful violence; and
- (b) the conduct of those persons (taken together) is such as would cause a person of reasonable firmness present at the scene to 30 fear for his personal safety; and
- (c) he uses or threatens unlawful violence; and
- (d) he intends to use or threaten violence or is reckless whether his conduct is violent or threatens violence.

(2) The fact that any other person is not guilty of violent disorder 35 in consequence of subsection (1)(d) does not affect the determination of the number of persons who use or threaten violence.

(3) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(4) No person of reasonable firmness need actually be, or be likely 40 to be, present at the scene.

(5) Violent disorder may be committed in private as well as in public places.

200.—(1) A person is guilty of affray if—

- (a) he uses or threatens unlawful violence towards another; and
- (b) his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety; and
- (c) he intends to use or threaten violence or is reckless whether his conduct is violent or threatens violence.

(2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A constable may arrest without warrant anyone he reasonably suspects is committing affray.

201.—(1) A person is guilty of an offence if—

- (a) he uses towards another threatening, abusive or insulting words or behaviour; or
- (b) he distributes or displays to another any writing, sign or other visible representation which is threatening, abusive or insulting,

intending to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(2) A person is guilty of an offence under this section only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is reckless whether it is threatening, abusive or insulting.

(3) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(4) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

*Fear or
provocation of
violence.*

*Further fault
element.*

*Where offence
may be
committed.*

Power of arrest.

202.—(1) A person is guilty of an offence if—

- (a) he uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) he displays any writing, sign or other visible representation which is threatening, abusive or insulting,

*Harassment,
alarm or
distress.*

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within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby, and he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is reckless whether it is threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is reckless whether it is disorderly. 5

*Where offence
may be
committed.*

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person 10 is also inside that or another dwelling.

Defences.

(3) A person is not guilty of an offence under this section if—

- (a) he has no reason to believe that there is any person within hearing or sight who is likely to be caused harassment, alarm or distress; or 15
- (b) he is inside a dwelling and has no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, will be heard or seen by a person outside that or any other dwelling; or
- (c) his conduct is reasonable. 20

Burden of proof.

(4) The burden of proving a defence provided by subsection (3) is on the defendant.

Power of arrest.

(5) A constable may arrest a person without warrant if—

- (a) he engages in offensive conduct which the constable warns him to stop, and 25
- (b) he engages in further offensive conduct immediately or shortly after the warning.

(6) In subsection (5) "offensive conduct" means conduct the constable reasonably suspects to constitute an offence under this section, and the conduct mentioned in paragraph (a) and the further 30 conduct need not be of the same nature.

Racial hatred

*Interpretation
(sections 205 to
210).*

203.—(1) In sections 205 to 210—

"broadcast" means broadcast by wireless telegraphy (within the meaning of the Wireless Telegraphy Act 1949) for general 35 reception, whether by way of sound broadcasting or television;

"cable programme service" has the same meaning as in the Cable and Broadcasting Act 1984;

"distribute", and related expressions, shall be construed in 40 accordance with subsection (2) (written material) and subsection (3) (recordings);

"play", and related expressions, in relation to a recording, shall be construed in accordance with subsection (3);

"programme" means any item which is broadcast or included in a 45 cable programme service;

"publish", and related expressions, in relation to written material, shall be construed in accordance with subsection (2);

"racial hatred" means hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins;

"recording" means any record from which visual images or sounds may, by any means, be reproduced;

"show", and related expressions, in relation to a recording, shall be construed in accordance with subsection (3);

"written material" includes any sign or other visible representation.

(2) References in section 206 and 210 to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

(3) References in sections 208 and 210 to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

204.—(1) Nothing in sections 205 to 210 applies to a fair and accurate report of proceedings in Parliament.

Savings for reports of parliamentary or judicial proceedings.

(2) Nothing in sections 205 to 210 applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority where the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

Acts intended or likely to stir up racial hatred

205.—(1) A person is guilty of an offence if—

(a) he uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting; and

Use of words or behaviour or display of written material.

(b)—

(i) he intends thereby to stir up racial hatred; or

(ii) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) A person who does not intend to stir up racial hatred is guilty of an offence under this section only if he intends his words or behaviour, or the written material, to be, or is reckless whether it is, threatening, abusive or insulting.

Further fault element.

(3) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

Where offence may be committed.

(4) A person is not guilty of an offence under this section if he is inside a dwelling and has no reason to believe that the words or behaviour used, or the written material displayed, will be heard or

Defence.

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CHAPTER V
Burden of proof.

Material, etc., for programme.

Power of arrest.

Publishing or distributing written material.

Defence.

Burden of proof.

Public performance of play.

Defences.

Burden of proof.

seen by a person outside that or any other dwelling.

(5) The burden of proving the defence provided by subsection (4) is on the defendant.

(6) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme broadcast or included in a cable programme service. 5

(7) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

206.—(1) A person is guilty of an offence if—

(a) he publishes or distributes written material which is threatening, abusive or insulting; and 10

(b)—

(i) he intends thereby to stir up racial hatred; or

(ii) having regard to all the circumstances racial hatred is likely to be stirred up thereby. 15

(2) A person who does not intend to stir up racial hatred is not guilty of an offence under this section if—

(a) he is not aware of the content of the material; and

(b) he does not suspect, and has no reason to suspect, that it is threatening abusive or insulting. 20

(3) The burden of proving the matters referred to in paragraphs (a) and (b) of subsection (2) is on the defendant.

207.—(1) A person is guilty of an offence if—

(a) he presents or directs a public performance of a play which involves the use of threatening, abusive or insulting words or behaviour; and 25

(b)—

(i) he intends thereby to stir up racial hatred; or

(ii) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby. 30

(2) A person who does not intend to stir up racial hatred is not guilty of an offence under this section if—

(a) he does not know and has no reason to suspect that the performance will involve the use of the offending words or behaviour; or 35

(b) he does not know and has no reason to suspect that the offending words or behaviour are threatening, abusive or insulting; or

(c) he does not know and has no reason to suspect that the circumstances in which the performance will be given will be such that racial hatred is likely to be stirred up. 40

(3) The burden of proving any of the matters referred to in paragraphs (a), (b) and (c) of subsection (2) is on the defendant.

(4) This section does not apply to a performance given solely or primarily for one or more of the following purposes—

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CHAPTER V

*Exception for
rehearsal, etc.*

- (a) rehearsal,
- (b) making a recording of the performance, or
- 5 (c) enabling the performance to be broadcast or included in a cable programme service;

but if the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the
10 burden of proving that the performance was given solely or primarily for the purposes mentioned above is on the defendant.

(5) For the purposes of this section—

*Performers and
directors.*

- (a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer,
- 15 (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and
- 20 (c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance;

and a person shall not be treated as assisting or encouraging the commission of an offence under this section by reason only of his taking part in a performance as a performer.

25 (6) In this section "play" and "public performance" have the same meaning as in the Theatres Act 1968.

Interpretation.

(7) The following provisions of the Theatres Act 1968 apply in relation to an offence under this section as they apply to an offence under section 2 of that Act—

*Ancillary
provisions.*

- 30 section 9 (script as evidence of what was performed),
- section 10 (power to make copies of script),
- section 15 (powers of entry and inspection).

208.—(1) A person is guilty of an offence if—

*Distributing,
showing or
playing a
recording.*

- 35 (a) he distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting; and
- (b)—
 - (i) he intends thereby to stir up racial hatred; or
 - (ii) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

40 (2) A person who does not intend to stir up racial hatred is not guilty of an offence under this section if—

Defence.

- (a) he is not aware of the content of the recording; and
- (b) he does not suspect, and has no reason to suspect, that it is threatening, abusive or insulting.

45 (3) The burden of proving the matters referred to in paragraphs (a) and (b) of subsection (2) is on the defendant.

Burden of proof.

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Exception.

(4) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be broadcast or included in a cable programme service.

Broadcasting or including programme in cable programme service.

209.—(1) Where a programme involving threatening, abusive or insulting visual images or sounds is broadcast, or included in a cable programme service, a person is guilty of an offence if— 5

(a)—

(i) he provides the broadcasting or cable programme service; or

(ii) he produces or directs the programme; or 10

(iii) he uses offending words or behaviour,

and—

(b)—

(i) he intends thereby to stir up racial hatred; or

(ii) having regard to all the circumstances racial hatred 15 is likely to be stirred up thereby.

Further fault element.

(2) A person who does not intend to stir up racial hatred is guilty of an offence under this section only if he knows or has reason to suspect that the offending material is threatening, abusive or insulting.

Defences.

(3) A person providing the service, or producing or directing the 20 programme, who does not intend to stir up racial hatred is not guilty of an offence under this section if—

(a) he does not know and has no reason to suspect that the programme will involve the offending material; and

(b) having regard to the circumstances in which the programme is 25 broadcast, or included in a cable programme service, it is not reasonably practicable for him to secure the removal of the material.

(4) A person producing or directing the programme who does not intend to stir up racial hatred is not guilty of an offence under this 30 section if—

(a) he does not know and has no reason to suspect that the programme will be broadcast or included in a cable programme service; or

(b) he does not know and has no reason to suspect that the cir- 35 cumstances in which the programme will be broadcast or so included will be such that racial hatred is likely to be stirred up.

(5) A person using offending words or behaviour who does not intend to stir up racial hatred does not commit an offence under this 40 section if—

(a) he does not know and has no reason to suspect that a programme involving the use of the offending material will be broadcast or included in a cable programme service; or

(b) he does not know and has no reason to suspect that the cir- 45 cumstances in which a programme involving the use of the offending material will be broadcast, or so included, or in

which a programme broadcast or so included will involve the use of the offending material, will be such that racial hatred is likely to be stirred up.

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(6) The burden of proving any of the matters referred to in paragraphs (a) and (b) of subsections (3), (4) and (5) is on the defendant.

Burden of proof.

(7) This section does not apply—

Exceptions.

- (a) to the broadcasting of a programme by the British Broadcasting Corporation or the Independent Broadcasting Authority; or
- (b) to the inclusion of a programme in a cable programme service by the reception and immediate re-transmission of a broadcast by either of those authorities.

(8) The following provisions of the Cable and Broadcasting Act 1984 apply to an offence under this section as they apply to a “relevant offence” as defined in section 33(2) of that Act—

Ancillary provisions.

- section 33 (scripts as evidence),
- section 34 (power to make copies of scripts and records),
- section 35 (availability of visual and sound records);

and sections 33 and 34 of that Act apply to an offence under this section in connection with the broadcasting of a programme as they apply to an offence in connection with the inclusion of a programme in a cable programme service.

Racially inflammatory material

210.—(1) A person is guilty of an offence if—

Possession of
racially inflam-
matory material.

- (a) he has in his possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to—

(i) in the case of written material, its being displayed, published, distributed, broadcast or included in a cable programme service, whether by himself or another; or

(ii) in the case of a recording, its being distributed, shown, played, broadcast or included in a cable programme service, whether by himself or another;

and—

(b)—

(i) he intends racial hatred to be stirred up thereby; or

(ii) having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

(2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, broadcasting or inclusion in a cable programme service as he has, or it may reasonably be inferred that he has, in view.

(3) A person who does not intend to stir up racial hatred is not guilty of an offence under this section if—

Defence.

- (a) he is not aware of the content of the written material or recording; and

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- Burden of proof.* (b) he does not suspect, and has no reason to suspect, that it is threatening, abusive or insulting.
- (4) The burden of proving the matters referred to in paragraphs (a) and (b) of subsection (3) is on the defendant.
- Exception.* (5) This section does not apply to the possession of written material or a recording by or on behalf of the British Broadcasting Corporation or the Independent Broadcasting Authority or with a view to its being broadcast by either of those authorities.

Other offences against public peace and safety

- Interpretation.* 211. In sections 212 to 214—
- “meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;
- “private premises” means premises to which the public have access (whether on payment or otherwise) only by permission of the owner, occupier, or lessee of the premises;
- “public meeting” includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise;
- “public place” has the meaning given by section 6.

- Wearing of uniform.* 212.—(1) A person is guilty of an offence if in any public place or at any public meeting he wears uniform signifying his association with any political organisation or with the promotion of any political object.

- Defence of police permission.* (2) A person does not commit an offence under this section if the chief officer of police, being satisfied that the wearing of any such uniform on any ceremonial, anniversary or other special occasion will not be likely to involve risk of public disorder, has, with the consent of a Secretary of State, by order permitted the wearing of such uniform on that occasion either absolutely or subject to such conditions as may be specified in the order.

- Power of arrest.* (3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

- Quasi-military organisations.* 213.—(1) A person is guilty of an offence if he takes part in—
- (a) the control or management of an association of persons to which this section applies; or
- (b) the organising or training of any members or adherents of such an association for any of the purposes referred to in subsection (2).

- Associations to which section applies.* (2) This section applies to an association of persons, whether incorporated or not, whose members or adherents are—
- (a) organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose.

(3) A person who takes part in the control or management of such an association does not commit an offence under this section if he neither consents to nor connives at the organisation, training or equipment of members or adherents of the association in contravention of the provisions of this section.

(4) The burden of proving the absence of such consent and connivance is on the defendant.

(5) In any proceedings for an offence under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organising, training or equipping members or adherents of an association is admissible as evidence of the purposes for which, or the manner in which, members or adherents of the association (whether those persons or others) were organised, or trained, or equipped.

(6) This section does not prohibit the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises or the making of arrangements for that purpose or the instruction of the persons to be so employed in their lawful duties as such stewards, or their being furnished with badges or other distinguishing signs.

214.—(1) A person is guilty of an offence if he acts in a disorderly manner at a lawful public meeting for the purpose of preventing the transaction for which the meeting was called together.

(2) If a constable reasonably suspects a person of committing an offence under this section, he may if requested so to do by the chairman of the meeting require that person to declare to him immediately his name and address, and if that person refuses or fails so to declare his name and address or gives a false name and address he is guilty of an offence under this subsection.

(3) This section does not apply as respects meetings to which section 97 of the Representation of the People Act 1983 applies.

215.—(1) A person is guilty of an offence if, without lawful authority or reasonable excuse, he has with him in a public place an offensive weapon.

(2) The burden of proving lawful authority or reasonable excuse is on the defendant.

(3) Where a person is convicted of an offence under this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

Defence.

Burden of proof.

Evidence.

Employment of stewards for certain meetings: saving.

Endeavours to break up lawful public meetings.

Refusal to declare name and address to constable.

Exception.

Possession of offensive weapon.

Burden of proof.

Power of forfeiture.

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*Meaning of
"offensive
weapon".*

(4) In this section "offensive weapon" means any article made or adapted for use for causing personal harm to the person or intended by the person having it with him for such use by him or by some other person.

*Possession of
article with blade
or point in public
place.*

216.—(1) A person is guilty of an offence if he has with him in a public place any article which has a blade or is sharply pointed other than a folding pocketknife the blade of which has a cutting edge not exceeding 3 inches. 5

Defences.

(2) A person is not guilty of an offence under this section if he has good reason or lawful authority for having the article with him in a public place. 10

(3) Without prejudice to the generality of subsection (2), a person is not guilty of an offence under this section if he has the article with him—

- (a) for use at work; or
- (b) for religious reasons; or
- (c) as part of any national costume.

15

Burden of proof.

(4) The burden of proving a defence provided by subsection (2) or (3) is on the defendant.

*Manufacture etc.
of dangerous
weapons.*

217.—(1) A person is guilty of an offence if he manufactures, sells or hires or offers for sale or hire, or exposes for sale or has in his possession for the purposes of sale or hire, or lends or gives to another— 20

- (a) a knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a "flick knife" or "flick gun"; or 25
- (b) a knife which has a blade which is released from its handle or sheath by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, sometimes known as a "gravity knife". 30

*Importation
prohibited.*

(2) The importation of any such knife as is described in subsection (1) is prohibited.

Bomb hoaxes.

218.—(1) A person is guilty of an offence if— 35

- (a) he places any article or substance in any place whatever; or
- (b) he dispatches any article or substance by post, rail or any other means whatever of sending things from one place to another,

with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal harm or damage to property. 40

*Bomb hoax by
communicating
information.*

(2) A person is guilty of an offence if he communicates any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a bomb or other thing liable to explode or ignite is present 45

Criminal Code

in any place or location whatever.

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(3) For a person to be guilty of an offence under subsection (1) or (2) it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief mentioned in that subsection.

219.—(1) A person is guilty of an offence if—

*Contamination
of or
interference with
goods.*

- (a) he contaminates or interferes with goods; or
- (b) he makes it appear that goods have been contaminated or interfered with; or
- 10 (c) he places goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with, in a place where goods of that description are consumed, used, sold or otherwise supplied,

with the intention of causing—

- 15 (i) public alarm or anxiety; or
- (ii) personal harm to members of the public consuming or using the goods; or
- (iii) economic loss to a person by reason of the goods being shunned by members of the public; or
- 20 (iv) economic loss to a person by reason of steps taken to avoid any such alarm or anxiety, personal harm or loss.

(2) A person is guilty of an offence if, with any such intention as is mentioned in paragraph (i), (iii) or (iv) of subsection (1), he threatens that he or another will do, or claims that he or another has done, any of the acts mentioned in subsection (1).

*Threats to
contaminate or
interfere with
goods.*

(3) A person is guilty of an offence if he is in possession of any of the following articles with a view to the commission of an offence under subsection (1)—

*Possession of
article in
connection with
contamination of
or interference
with goods.*

- 30 (a) materials to be used for contaminating or interfering with goods or making it appear that goods have been contaminated or interfered with; or
- (b) goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with.

(4) In this section “goods” includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

“Goods”.

(5) The reference in subsection (2) to a person claiming that certain acts have been committed does not include a person who in good faith reports or warns that such acts have been, or appear to have been, committed.

220. The provisions of Schedule 7 (provisions ancillary to Chapter V) shall have effect.

*Ancillary
provisions.*

SCHEDULES

Sections 7 and 8.

SCHEDULE 1

PROSECUTION, PUNISHMENT AND MISCELLANEOUS MATTERS

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
47	Incitement	<p>As in the case of the offence incited, except that where the incitement is to commit two or more offences the following rules apply:</p> <p>(a) If one of the offences is triable only on indictment, the incitement is triable only on indictment;</p> <p>(b) if one of the offences incited is triable only summarily and one is triable either way, the incitement is triable either way;</p> <p>(c) if the incitement is to commit the summary offence on more than one occasion, the incitement is triable either way.</p>	<p>As in the case of the offence incited, except that—</p> <p>(a) where the offence or one of the offences incited is murder or any other offence the sentence for which is fixed by law, the maximum penalty is life imprisonment;</p> <p>(b) where the incitement is to commit the same summary offence on more than one occasion, there is no limit to the amount of the fine that may be imposed on conviction on indictment;</p> <p>(c) where, in any other case, two or more offences are incited, the penalty is that of the offence for which is provided the most severe penalty;</p> <p>(d) where the incitement amounts also to an offence of incitement referred to in section 51(1), the penalty is the same as the penalty provided for that offence.</p>	<p>As in the case of the offence incited, except that any time limit applicable to the institution of proceedings for the offence incited applies only to the extent that, where the offence incited has been committed and the time limit applicable to it has expired, proceedings shall not be instituted for incitement to commit that offence.</p>		

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	48	Conspiracy	Only on indictment.	As in the case of the offence involved, except that— (a) where the offence or one of the offences involved is murder or any other offence the sentence for which is fixed by law, the maximum penalty is life imprisonment; (b) where the only offences involved are summary offences, there is no limit to the amount of the fine that may be imposed; (c) where, in any other case, two or more offences are involved, the penalty is that of the offence for which is provided the most severe penalty; (d) where the agreement amounts also to an offence of conspiracy referred to in section 51(1), the penalty is the same as the penalty provided for that offence.	As in the case of the offence involved, except that— (a) where the offence is a summary offence the prosecution of which does not require the consent of the Attorney General, proceedings for conspiracy shall not be instituted except by, or on behalf or with the consent of, the Director of Public Prosecutions; and (b) any time limit applicable to the institution of proceedings for the offence involved applies only to the extent that, where the offence involved has been committed and the time limit applicable to it has expired, proceedings shall not be instituted for conspiracy to commit that offence.		
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30							
35	49	Attempt	As in the case of the offence attempted.	As in the case of the offence attempted, except that— (a) where the offence is murder or any other offence the sentence for which is fixed by law, the maximum penalty is life imprisonment; (b) where the attempt amounts also to an offence of attempt referred to in section 51(1), the penalty is the same as the penalty provided for that offence.	As in the case of the offence attempted.		(a) Provisions conferring power to institute proceedings for the offence attempted apply to the institution of proceedings for the attempt. (b) Provisions as to the venue of proceedings for the offence attempted apply in relation to proceedings for the
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45							

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	Part II, Chapter I - Offences against the Person 54	Murder	Only on indictment.	As provided in subsection (2).		Manslaughter (s.55). Killing in pursuance of suicide pact (s.62). Complicity in suicide (s.63). Infanticide (s.64). Child destruction (s.69). Intentional serious personal harm (s.70).	attempt.
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15							
20							
25		Manslaughter	Only on indictment.	Life.		Killing in pursuance of suicide pact (s.62). Complicity in suicide (s.63). Infanticide (s.64). Child destruction (s.69). Reckless driving (Road Traffic Act 1988, s.2). Careless driving (Road Traffic Act 1988, s.3).	
30							
35							
40							
	62	Killing in pursuance of suicide pact	Only on indictment.	7 years.	Only by or with the consent of the Director of Public Prosecutions.	Complicity in suicide (s.63).	
	63	Complicity in suicide	Only on indictment.	7 years.	Only by or with the consent of the Director of Public Prosecutions.	Killing in pursuance of suicide pact (s.62).	

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	64	Infanticide	Only on indictment.	5 years.			
	65	Threats to kill or cause serious personal harm	Either way.	On indictment: 10 years.			
10	66	Abortion	Only on indictment.	Life.		Child destruction (s.69).	
	67	Self-abortion	Only on indictment.	Life.		Child destruction (s.69).	
	68	Supplying article for abortion.	Only on indictment.	5 years.			
15	69	Child destruction	Only on indictment.	Life.		Abortion (s.66). Self-abortion (s.67).	
	70	Intentional serious personal harm	Only on indictment.	Life.		Assault (s.75).	
20	71	Reckless serious personal harm	Either way.	On indictment: 5 years.		Assault (s.75).	
	72	Intentional or reckless personal harm	Either way.	On indictment: 3 years.		Assault (s.75).	
25	73	Administering a substance without consent	Either way.	On indictment: 3 years.			
	74	Torture	Only on indictment.	Life.	Only by or with the consent of the Attorney General		
30	75	Assault	Only summarily.	6 months or a fine not exceeding level 5 on the standard scale, or both.			
35	76	Assault on a constable	Only summarily.	6 months or a fine not exceeding level 5 on the standard scale, or both.			

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	77	Assault to resist arrest	Either way.	On indictment: 2 years.		Assault (s.75).	
	78	Assault to rob	Only on indictment.	Life.		Assault (s.75).	
	80	Unlawful detention	Either way.	On indictment: 5 years.			
10	81	Kidnapping	Only on indictment.	Life.			
	82	Hostage-taking	Only on indictment.	Life.	Only by or with the consent of the Attorney General.		
	83	Abduction of child by parent etc.	Either way.	On indictment: 7 years.	Only by or with the consent of the Director of Public Prosecutions.		
15	84	Abduction of child by other persons	Either way.	On indictment: 7 years.	Only by or with the consent of the Director of Public Prosecutions.		
20	85	Aggravated abduction	Only on indictment.	Life.	Only by or with the consent of the Director of Public Prosecutions.		
	86	Endangering traffic	Either way.	On indictment: 7 years.			
25	Part II, Chapter II - Sexual Offences						
30	89	Rape	Only on indictment.	Life.		Procurement of woman by threats (s.90). Procurement of woman by deception (s.91). Use of article to overpower for sexual purposes (s.92). Indecent assault	The provisions of Schedule 4 have effect in proceed- ings for "rape offences" as defined in paragraph 5 of that Schedule.
35							

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5 89(3) and Schedule 4 para.3(6)	Publication of rape offence in contravention of direction	Only summarily.	A fine not exceeding level 5 on the standard scale.	Only by or with the consent of the Director of Public Prosecutions.	(s.111).	
10 90	Procurement of woman by threats	Either way.	On indictment: 5 years.			
 91	Procurement of woman by deception	Either way.	On indictment: 2 years.			
15 92	Use of article to overpower for sexual purposes	Either way.	On indictment: 2 years.			
 93(1)	Intercourse with girl under thirteen	Only on indictment.	Life.			
20 93(2)	Permitting girl under thirteen to use premises for intercourse	Only on indictment.	Life.			
25 94(1)	Intercourse with girl under sixteen	Either way.	On indictment: 2 years.	A prosecution may not be instituted more than 12 months after the alleged act of intercourse.		
30 94(2)	Permitting girl under sixteen to use premises for intercourse	Either way.	On indictment: 2 years.			
 95	Non-consensual buggery	Only on indictment.	Life.			
35 96	Buggery with child under thirteen	Only on indictment.	Life.	Only by or with the consent of the Director of Public Prosecutions where (i)		

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5					the child is a boy or (ii) the child is a girl and the accused is under the age of eighteen.		
10	97	Buggery with girl under sixteen	Only on indictment.	Life.	Only by or with the consent of the Director of Public Prosecutions, where the accused is under the age of eighteen.		
15	98	Buggery by man with boy under eighteen	Only on indictment.	5 years.	Only by or with the consent of the Director of Public Prosecutions.		
	99	Buggery with boy under eighteen	Only on indictment.	2 years.	Only by or with the consent of the Director of Public Prosecutions.		
20	100	Indecency by man with boy under eighteen	Either way.	On indictment: 5 years.	Only by or with the consent of the Director of Public Prosecutions.		
25	101	Indecency with boy under eighteen	Either way.	On indictment: 2 years.	Only by or with the consent of the Director of Public Prosecutions.		
	102(1)	Buggery by seamen	Only on indictment.	2 years.	Only by or with the consent of the Director of Public Prosecutions.		
30	102(2)	Indecency by seamen	Only on indictment.	2 years.	Where either is under eighteen, only by or with the consent of the Director of Public Prosecutions.		
35	103(1)	Incest by a man	Only on indictment.	7 years.	Only by or with the consent of the Director of Public Prosecutions.	Intercourse with girl under thirteen (s.93(1)). Intercourse with girl under sixteen (s.94(1)).	

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	103(2)	Aggravated incest	Only on indictment.	Life.	Only by or with the consent of the Director of Public Prosecutions.	Intercourse with girl under thirteen (s.93(1)). Intercourse with girl under sixteen (s.94(1)).	
10	103(3)	Inciting incestuous intercourse	Either way.	On indictment: 2 years.			
15	104	Incest by a woman	Only on indictment.	7 years.	Only by or with the consent of Director of Public Prosecutions.		
	105	Intercourse with step-child under twenty-one	Only on indictment.	7 years.	Only by or with the consent of the Director of Public Prosecutions.		
20	106(1)	Intercourse with mentally handi- capped woman	Only on indictment.	2 years.	Only by or with the consent of the Director of Public Prosecutions.		
25	106(2)	Permitting mentally handi- capped woman to use premises for intercourse	On indictment.	2 years.			
30	107	Buggery with mentally handi- capped person	Only on indictment.	5 years.	Only by or with the consent of the Director of Public Prosecutions.		
	108	Indecency with mentally handi- capped person	Either way.	On indictment: 2 years.	Only by or with the consent of the Director of Public Prosecutions.		
35	109	Abduction of mentally handi- capped person	Either way.	On indictment: 2 years.			
	110(1)	Sexual act by officer with mentally	On indictment.	2 years.	Only by or with the consent of the Director of Public Prosecutions.		

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5		disordered in-patient					
	110(2)	Sexual act by officer with mentally disordered out- patient	On indictment.	2 years.	Only by or with the consent of the Director of Public Prosecutions.		
10							
	110(3)	Sexual act by guardian, etc., with mentally disordered patient	On indictment.	2 years.	Only by with the consent of the Director of Public Prosecutions.		
15							
	111	Indecent assault	Either way.	On indictment: 10 years.			
	112	Procurement of gross indecency by threats	Either way.	On indictment: 5 years.			
20							
	113	Indecent exposure	Only summarily.	3 months or a fine not exceeding level 3 on the standard scale.			
25	114	Indecency with child under thirteen	Either way.	On indictment: 5 years.			
	115	Indecency with child under sixteen	Either way.	On indictment: 2 years.			
30							
	116	Indecent pho- tographing of children	Either way.	On indictment: 3 years. On summary conviction: 6 months or a fine not exceeding level 5 on the standard scale, or both.			
35							
	117	Possession of indecent photo- graphs of children	Only summarily.	A fine not exceeding level 5 on the standard scale.			

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	118	Bestiality	Only summarily.	6 months.			
	119	Procuring bestiality	Either way.	On indictment: 5 years.			
	120(2)	Sexual acts in public	Either way.	On indictment: 12 months.			
10	121	Acts in public lavatories	Either way.	On indictment: 12 months.			
	123	Organising prostitution	Either way.	On indictment: 7 years.			
15	124	Controlling a prostitute	Either way.	On indictment: 3 years.			
	125	Facilitating prostitution	Either way.	On indictment: 3 years.			
20	127	Managing premises used for prostitution	Only summarily.	6 months, or a fine of £10,000, or both.			
	128	Letting premises for prostitution	Only summarily.	6 months, or a fine of £10,000, or both.			
25	129	Permitting use of premises for prostitution	Only summarily.	6 months, or a fine of £10,000, or both.			
	130	Use of premises for prostitution involving personal harm	Only summarily.	6 months, or a fine of £10,000, or both.			
30	131	Procurement of woman to become prostitute	Either way.	On indictment: 2 years.			
35	132	Procurement of woman under twenty-one	Either way.	On indictment: 2 years.			

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	133	Procurement of homosexual acts	Either way.	On indictment: 2 years.			
	135	Woman prostitute loitering or soliciting	Only summarily.	A fine not exceeding level 3 on the standard scale.			
10	136	Kerb-crawling	Only summarily.	A fine not exceeding level 3 on the standard scale.			
	137	Persistent soliciting of women	Only summarily.	A fine not exceeding level 3 on the standard scale.			
15	138	Soliciting by man for homosexual purposes	Either way.	On indictment: 2 years.			
20	Part II, Chapter III - Theft, Fraud and Related Offences						The provisions of Schedule 6 relate to this Chapter. Provisions affecting particular offences only are referred to in this column.
25							
	140	Theft	Either way.	On indictment: 10 years.	Where the property belongs to the defendant's spouse, only by or with the consent of the Director of Public Prosecutions; but this restriction does not apply— (i) if the defendant is charged with the offence jointly with the spouse; or (ii) if by virtue of any judicial decree or order (wherever made) the defendant and the spouse are at the time of the offence under no	Taking a conveyance (s.150(1)).	Provision of Schedule 6 applying speci- fically to this offence: paragraph 4 (evidence on charge of theft of thing in course of transmission).
30							
35							
40							

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5				obligation to cohabit; and for this purpose the institution of proceedings includes, notwithstanding section 25 of the Prose- cution of Offences Act 1985,—		
10				(a) an arrest (if without warrant) made by the spouse; and		
15				(b) the issue of a warrant of arrest on an information laid by the spouse.		
146	Robbery	Only on indictment.	Life.			
20	147 Burglary	Either way, except that the following are triable only on indictment: (i) burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment; (ii) burglary in a dwelling if any person in the dwelling was subjected to violence or the threat of violence.	On indictment: 14 years.			
25						
30						
148	Aggravated burglary	Only on indictment.	Life.			
35	149 Removal of articles from places open to the public	Either way.	On indictment: 5 years.			
131	150(1) Taking a con- veyance	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			
40	150(2) Taking a pedal cycle	Only summarily.	A fine not exceeding level 3 on the standard scale.			

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	151	Interference with vehicles	Only summarily.	3 months, or a fine not exceeding level 4 on the standard scale, or both.			
	152	Abstracting electricity	Either way.	On indictment: 5 years.			
10	153	Making off without payment	Either way.	On indictment: 2 years.			
	154	Blackmail	Only on indictment.	14 years.			
	156	Obtaining property by deception	Either way.	On indictment: 10 years.			
15	157	Obtaining services by deception	Either way.	On indictment: 5 years.			
20	158	Evasion of liability by deception	Either way.	On indictment: 5 years.			
	159	Obtaining pecuniary advantage by deception	Either way.	On indictment: 5 years.			
25	160	False accounting	Either way.	On indictment: 7 years.			
	161	False statements by company directors, etc.	Either way.	On indictment: 7 years.			
30	162	Suppression, etc. of documents	Either way.	On indictment: 7 years.			
	163	Procuring execution of valuable security	Either way.	On indictment: 7 years.			
35	167	Forgery	Either way.	On indictment: 10 years.			

Provision of Schedule
6 applying speci-

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5						fically to this offence: paragraph 1 (powers of search, seizure and forfeiture).
10	168	Copying a false instrument	Either way.	On indictment: 10 years.		As for forgery (s.167).
	169	Using a false instrument	Either way.	On indictment: 10 years.		As for forgery (s.167).
15	170	Using a copy of a false instru- ment	Either way.	On indictment: 10 years.		
	171(1)	Having a false instrument with ulterior intention	Either way.	On indictment: 10 years.		
20	171(2)	Having a false instrument	Either way.	On indictment: 2 years.		
	171(3)	Having material for forgery with ulterior intention	Either way.	On indictment: 10 years.		
25	171(4)	Having material for forgery	Either way.	On indictment: 2 years.		
	172	Handling stolen goods	Either way.	On indictment: 14 years.		Provisions of Schedule 6 applying speci- fically to this offence: paragraph 4(2) (indictment and trial of persons together) paragraph 4(3) (evidence).
30						
35	173	Advertising rewards for return of goods stolen or lost	Only summarily.	A fine not exceeding level 3 on the standard scale.		

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	175	Going equipped	Either way.	On indictment: 3 years.			The provisions of Schedule 6 are ancillary to sections 178 to 196.
10	Part II, Chapter IV - Other offences relating to property						
15	180(1)	Destroying or damaging property	Either way (but to be tried summarily where value involved does not exceed "the relevant sum": Magistrates' Courts Act 1980, s.22).	On indictment: 10 years. On summary conviction, where court proceeded to summary trial in pursuance of Magistrates' Courts Act 1980, s.22: 3 months, or a fine not exceeding level 4 on the standard scale, or both.	Where the property belongs to the defendant's spouse, only by or with the consent of the Director of Public Prosecutions; but this restriction does not apply— (i) if the defendant is charged with the offence jointly with the spouse; or (ii) if by virtue of any judicial decree or order (wherever made) the defendant and the spouse are at the time of the offence under no obligation to cohabit; and for this purpose the institution of proceedings includes, notwithstanding section 25 of the Prose- cution of Offences Act 1985,— (a) an arrest (if without warrant) made by the spouse; and (b) the issue of a warrant of arrest on an information laid by the spouse.		
20							
25							
30							
35							
40	180(1) and (3)	Arson	Either way.	On indictment: Life.	As in the case of destroying or damaging property (s.180(1)).		
	180(2)	Intentionally or	Only on indictment.	Life.	As in the case of destroying		

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	recklessly endangering life (or the same by fire (arson))			or damaging property (s.180(1)).		
10	181 Threats to destroy or damage property	Either way.	On indictment: 10 years.			
15	182 Possessing anything with intent to destroy or damage property	Either way.	On indictment: 10 years.			
20	190 Violence for securing entry	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			
25	191(1) Adverse occu- pation of residential premises	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			
30	191(3) False statement as to intending occupier	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			
35	192(2) Failure to leave land despite direction	Only summarily.	3 months, or a fine not exceeding level 4 on the standard scale, or both.			
	193 Trespassing with a weapon of offence	Only summarily.	3 months, or a fine not exceeding level 5 on the standard scale, or both.			
	194 Trespassing on premises of foreign missions, etc.	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			
	195 Obstruction of court officers executing process	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5		for possession against unautho- rised occupiers.					
10	196(1)	Eviction of residential occupier	Either way.	On indictment: 2 years.			Proceedings may be instituted by any of the following authorities: (a) councils of districts and London boroughs; (b) the Common Council of the City of London; (c) the council of the Isles of Scilly.
15							
20	196(2)	Harassment of residential occupier	Either way.	On indictment: 2 years.			As for s.196(1).
25	196(3)	Harassment by landlord or landlord's agent	Either way.	On indictment: 2 years.			As for s.196(1).
30	Part II, Chapter V - Offences against Public Peace and Safety						The provisions of Schedule 7 relate to this Chapter. Provisions affecting particular offences only are referred to in this column.
35	198	Riot	Only on indictment.	10 years.	Only by or with the consent of the Director of Public Prosecutions.		
40	199	Violent disorder	Either way.	On indictment: 5 years.		Behaviour etc. intended or likely to cause fear of violence (s.201).	Provision of Schedule 7 applying speci- fically to this offence: paragraph 1(2) (powers of Crown Court on conviction of

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5							offence under s.201).
10	200	Affray	Either way.	On indictment: 3 years.		Behaviour etc. intended or likely to cause fear of violence (s.201).	Provision of Schedule 7 applying speci- fically to this offence: paragraph 1(2) (powers of Crown Court on conviction of offence under s.201).
15	201	Behaviour etc. intended or likely to cause fear of violence	Only summarily.	6 months, or a fine not exceeding level 5 on the standard scale, or both.			
20	202	Behaviour etc. likely to cause harassment, alarm or distress	Only summarily.	A fine not exceeding level 3 on the standard scale.			
25	205	Behaviour etc. intended or likely to stir up racial hatred	Either way.	On indictment: 2 years.	Only by or with the consent of the Attorney-General.		Provision of Schedule 7 applying speci- fically to this offence: paragraph 3 (power to order forfeiture of written material).
30	206	Publication etc. of written material intended or likely to stir up racial hatred	Either way.	On indictment: 2 years.	Only by or with the consent of the Attorney-General.		Provision of Schedule 7 applying speci- fically to this offence: paragraph 3 (power to order forfeiture).
35							
40	207	Public perfor- mance of play intended or likely to stir up racial hatred	Either way.	On indictment: 2 years.	Only by or with the consent of the Attorney-General.		

	(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	208	Distribution etc. of recording intended or likely to stir up racial hatred	Either way.	On indictment: 2 years.	Only by or with the consent of the Attorney-General.		Provision of Schedule 7 applying speci- fically to this offence: paragraph 3 (power to order forfeiture).
10	209	Broadcast etc. of programme intended or likely to stir up racial hatred	Either way.	On indictment: 2 years.	Only by or with the consent of the Attorney-General.		
15	210	Possession of racially inflam- matory material	Either way.	On indictment: 2 years.	Only by or with the consent of the Attorney-General.		Provisions of Schedule 7 applying speci- fically to this offence: para- graphs 2 (powers of entry and search) and 3 (power to order forfeiture).
20							
25	212	Wearing of uniform	Only summarily.	3 months, or a fine not exceeding level 4 on the standard scale, or both.	Further proceedings after charge only with the consent of the Attorney- General except as authorised by section 25 of the Prosecution of Offences Act 1985.		Provision of Schedule 7 applying speci- fically to this offence: paragraph 4 (release on bail).
30							
35	213	Management etc. of quasi-military organisation	Either way.	On indictment: 2 years.	Only with the consent of the Attorney-General.		Provision of Schedule 7 applying speci- fically to this offence: paragraph 5 (powers of entry, search and seizure).
40	214(1)	Endeavours to break up lawful public meetings	Only summarily.	6 months, or a fine not exceeding level 4 on the standard scale, or both.			
	214(2)	Refusal to	Only summarily.	A fine not exceeding level 1			

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
5	declare name and address to constable at public meeting		on the standard scale.			
10	215 Possession of offensive weapon	Either way.	On indictment: 2 years. On summary conviction: 3 months, or a fine not exceeding level 5 on the standard scale, or both.			
15	216 Possession of article with blade or point	Only summarily.	A fine not exceeding level 3 on the standard scale.			
	217 Manufacture etc. of dangerous weapons	Only summarily.	6 months, or a fine not exceeding level 4 on the standard scale, or both.			
20	218(1) Bomb hoaxes	Either way.	On indictment: 5 years. On summary conviction: 3 months, or a fine not exceeding level 5 on the standard scale, or both.			
25	218(2) Bomb hoax by communicating information	Either way	On indictment: 5 years. On summary conviction: 3 months, or a fine not exceeding level 5 on the standard scale, or both.			
30	219(1) Contamination of or interfe- rence with goods	Either way	On indictment: 10 years.			
35	219(2) Threats to contaminate or interfere with goods	Either way	On indictment: 10 years			
40	219(3) Possession of article in connec- tion with con- tamination of or	Either way	On indictment: 10 years			

(1) Provision creating offence	(2) Nature of offence	(3) How triable	(4) Punishment	(5) Restriction on institution of proceedings	(6) Alternative verdicts under section 8(1)(a)(i)	(7) Ancillary and miscellaneous
	interference with goods					

SCHEDULE 2

Section 39.

DISPOSAL AFTER RETURN OF MENTAL DISORDER VERDICT

[This Schedule will contain the powers of the Courts in relation to
5 defendants found not guilty on evidence of mental disorder,
provisions relating to the exercise of these powers and the conse-
quences of their exercise, and related provisions.]

SCHEDULE 3

Section 83(7).

**MODIFICATIONS OF SECTION 83 FOR CHILDREN IN CERTAIN
10 CASES**

Children in care of local authorities

and voluntary organisations

1.—(1) This paragraph applies in the case of a child who is in the
care of a local authority or voluntary organisation in England or
15 Wales.

(2) Where this paragraph applies, section 83 shall have effect as
if—

(a) the reference in subsection (1) to the appropriate consent were
a reference to the consent of the local authority or voluntary
20 organisation in whose care the child is; and

(b) subsections (3), (5) and (6) were omitted.

Children in places of safety

2.—(1) This paragraph applies in the case of a child who is
committed to a place of safety in England and Wales in pursuance
25 of—

(a) section 40 of the Children and Young Persons Act 1933; or

(b) section 34 of the Adoption Act 1976; or

(c) section 2(5) or (10), 16(3) or 28(1) or (4) of the Children and
Young Persons Act 1969; or

30 (d) section 12 of the Foster Children Act 1980.

(2) Where this paragraph applies, section 83 shall have effect as
if—

(a) the reference in subsection (1) to the appropriate consent were
a reference to the leave of any magistrates' court acting for
35 the area in which the place of safety is; and

(b) subsections (3), (5) and (6) were omitted.

Adoption and custodianship

3.—(1) This paragraph applies in the case of a child—

40 (a) who is the subject of an order under section 14 of the
Children Act 1975 freeing him for adoption; or

(b) who is the subject of a pending application for such an order;
or

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- (c) who is the subject of a pending application for an adoption order; or
- (d) who is the subject of an order under section 25 of the Children Act 1975 or section 53 of the Adoption Act 1958 relating to adoption abroad or of a pending application for such an order; or
- (e) who is the subject of a pending application for a custodianship order.

(2) Where this paragraph applies, section 1 shall have effect as if—

- (a) the reference in subsection (1) to the appropriate consent were a reference—

- (i) in a case within sub-paragraph (1)(a) above to the consent of the adoption agency which made the application for the order or, if the parental rights and duties in respect of the child have been transferred from that agency to another agency by an order under section 23 of the Children Act 1975, to the consent of that other agency;

- (ii) in a case within sub-paragraph (1)(b), (c) or (e) above to the leave of the court to which the application was made; and

- (iii) in a case within sub-paragraph (1)(d) above to the leave of the court which made the order or, as the case may be, to which the application was made; and

- (b) subsection (3), (5) and (6) were omitted.

Cases within paragraphs 1 and 3

4. In the case of a child falling within both paragraph 1 and paragraph 3, the provisions of paragraph 3 shall apply to the exclusion of those in paragraph 1.

Interpretation

5.—(1) In this Schedule—

- (a) “adoption agency” has the meaning as in section 1 of the Children Act 1975;
- (b) “adoption order” means an order under section 8(1) of that Act;
- (c) “custodianship order” has the same meaning as in Part II of that Act; and
- (d) “local authority” and “voluntary organisation” have the same meanings as in section 87 of the Child Care Act 1980.

(2) In paragraph 3(1) above references to an order or to an application for an order are references to an order made by, or to an application to, a court in England or Wales.

(3) Paragraph 3(2) above shall be construed as if the references to the court included, in any case where the court is a magistrates’ court, a reference to any magistrates’ court acting for the same petty sessions area as the court.

SCHEDULE 4

Section 89(3).

PROVISIONS RELATING TO PROCEEDINGS FOR RAPE
OFFENCES

Restrictions on evidence at trials for rape etc.

5 1.—(1) If at a trial any person is for the time being charged with a
rape offence to which he pleads not guilty, then, except with the
leave of the judge, no evidence and no question in cross-examination
shall be adduced or asked at the trial, by or on behalf of any
10 defendant at the trial, about any sexual experience of a complainant
with a person other than that defendant.

(2) The judge shall not give leave in pursuance of the preceding
sub-paragraph for any evidence or question except on an application
made to him in the absence of the jury by or on behalf of a
15 defendant; and on such an application the judge shall give leave if
and only if he is satisfied that it would be unfair to that defendant to
refuse to allow the evidence to be adduced or the question to be
asked.

(3) In sub-paragraph (1) "complainant" means a woman upon
whom, in a charge for a rape offence to which the trial in question
20 relates, it is alleged that rape was committed, attempted or proposed.

(4) Nothing in this paragraph authorises evidence to be adduced or
a question to be asked which cannot be adduced or asked apart from
this paragraph.

Application of paragraph 1 to committal proceedings,

25 *courts-martial and summary trials.*

2.—(1) Where a magistrates' court inquires into a rape offence as
examining justices, then, except with the consent of the court,
evidence shall not be adduced and a question shall not be asked at the
inquiry which, if the inquiry were a trial at which a person is charged
30 as mentioned in paragraph 1(1) and each of the accused at the inquiry
were charged at the trial with the offences of which he is accused at
the inquiry, could not be adduced or asked without leave in pursuance
of that paragraph.

(2) On an application for consent in pursuance of the preceding
35 sub-paragraph for any evidence or question the court shall—

(a) refuse the consent unless the court is satisfied that leave in
respect of the evidence or question would be likely to be
given at a relevant trial; and

(b) give the consent if the court is so satisfied.

40 (3) Where a person charged with a rape offence is tried for that
offence either by court-martial or summarily before a magistrates'
court in pursuance of section 6(1) of the Children and Young Persons
Act 1969 (which provides for the summary trial in certain cases of
persons under the age of 17 who are charged with indictable offences)
45 the preceding paragraph shall have effect in relation to the trial as
if—

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- (a) the words "in the absence of the jury" in sub-paragraph (2) were omitted; and
- (b) for any reference to the judge there were substituted—
 - (i) in the case of a trial by court-martial for which a judge advocate is appointed, a reference to the judge advocate, and
 - (ii) in any other case, a reference to the court.

3.—(1) Except as authorised by a direction given in pursuance of this paragraph—

- (a) after an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person neither the woman's name nor her address nor a still or moving picture of her shall during her lifetime—
 - (i) be published in England and Wales in a written publication available to the public; or
 - (ii) be broadcast or included in a cable programme in England and Wales,if that is likely to lead members of the public to identify her as an alleged victim of such an offence; and
- (b) after a person is accused of a rape offence no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall during her lifetime—
 - (i) be published in England and Wales in a written publication available to the public; or
 - (ii) be broadcast or included in a cable programme in England and Wales;

but nothing in this sub-paragraph prohibits the publication or broadcasting or inclusion in a cable programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(2) In sub-paragraph (1) "picture" includes a likeness however produced.

(3) If, before the commencement of a trial at which a person is charged with a rape offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge of the Crown Court for a direction in pursuance of this sub-paragraph and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that sub-paragraph (1) shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.

(4) If at a trial the judge is satisfied that the effect of sub-paragraph (1) is to impose a substantial and unreasonable restriction

upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he shall direct that that sub-paragraph shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not
5 be given in pursuance of this sub-paragraph by reason only of the outcome of the trial.

(5) If a person who has been convicted of an offence and given notice of an appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of
10 Appeal for a direction in pursuance of this sub-paragraph and satisfies the Court—

(a) that the direction is required for the purpose obtaining evidence in support of the appeal; and

(b) that the applicant is likely to suffer substantial injustice if the
15 direction is not given, the Court shall direct that sub-paragraph (1) shall not, by virtue of an accusation which alleges a rape offence and is specified in the direction, apply in relation to a complainant so specified.

(6)—

20 (i) A person is guilty of an offence if any matter is published, broadcast or included in a cable programme in contravention of paragraph 1 and he is—

(a) in the case of a publication in a newspaper or periodical, any proprietor, any editor or any publisher of
25 the newspaper or periodical; or

(b) in the case of any other publication, the person who publishes it; or

(c) in the case of a broadcast or inclusion in a cable programme, any body corporate which transmits the programme, or includes the matter in a cable programme or
30 any person having functions in relation to the programme corresponding to those of the body corporate or person mentioned in (a) or (b).

(ii) A person is not guilty of an offence

(a) if he is not aware and neither suspects nor has reason
35 to suspect that the publication, broadcast or cable programme in question is of, or includes, such matter as is mentioned in paragraph 1(1); or

(b) if the woman has given written consent to the appearance of the matter in question and no person has
40 interfered unreasonably with her peace and comfort with intent to obtain her consent.

(iii) The burden of proving a defence provided by this sub-paragraph is on the defendant except that the burden is on the prosecution to prove any such unreasonable interference
45 as is mentioned in (ii)(b), above.

(7) For the purposes of this paragraph a person is accused of a rape offence if—

(a) an information is laid alleging that he has committed a rape offence; or

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- (b) he appears before a court charged with a rape offence; or
- (c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence; or
- (d) a bill of indictment charging him with a rape offence is preferred before a court in which he may lawfully be indicted for the offence,

and references in this paragraph to an accusation alleging a rape offence shall be construed accordingly; and in this paragraph—

“a broadcast” means a broadcast by wireless telegraphy of sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

“complainant”, in relation to a person accused of a rape offence or an accusation alleging a rape offence, means the woman against whom the offence is alleged to have been committed; and

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(8) Nothing in this paragraph—

- (a) prohibits the publication or broadcasting, in consequence of an accusation alleging a rape offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or
- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast;

and a direction in pursuance of this paragraph does not affect the operation of sub-paragraph (1) of this paragraph at any time before the direction is given.

Provisions supplementary to paragraph 3

4.—(1) In relation to a person charged with a rape offence in pursuance of any provision of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, the preceding paragraph shall have effect with the following modifications, namely—

- (a) any reference to a trial or a trial before the Crown Court shall be construed as a reference to a trial by court-martial;
- (b) in sub-paragraph (1) after the word “Wales” in both places there shall be inserted the words “or Northern Ireland”;
- (c) for any reference in sub-paragraph (3) to a judge of the Crown Court there shall be substituted a reference to the officer who is authorised to convene or has convened a court-martial for the trial of the offence (or, if after convening it he has ceased to hold the appointment by virtue of which he convened it, the officer holding that appointment) and for any reference in sub-paragraph (4) to such a judge there shall be substituted a reference to the court;
- (d) for any reference in sub-paragraph (5) to the Court of Appeal there shall be substituted a reference to the Courts-Martial

Appeal Court; and

(e) in sub-paragraph (7) for paragraphs (a) to (d) there shall be substituted the words "he is charged with a rape offence in pursuance of any provision of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955".

(2) If after the commencement of a trial at which a person is charged with a rape offence a new trial of the person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of sub-paragraph (3) of the preceding paragraph.

(3) In relation to a conviction of an offence tried summarily as mentioned in paragraph 2(3) of this Schedule, for references to the Court of Appeal in sub-paragraph (5) of the preceding paragraph there shall be substituted references to the Crown Court and the reference to notice of an application for leave to appeal shall be omitted.

5. In this Schedule "a rape offence" means any offence of rape, attempted rape, procuring, assisting or encouraging rape or attempted rape, incitement to rape, conspiracy to rape and burglary intending to rape.

SCHEDULE 5

Section 116(5).

INDECENT PHOTOGRAPHS OF CHILDREN

Entry, search and seizure

1.—(1) The following applies where a justice of the peace is satisfied by information on oath, laid by or on behalf of the Director of Public Prosecutions or by a constable, that there is reasonable ground for suspecting that, in any premises in the petty sessions area for which he acts, there are indecent photographs of children and that such photographs—

- (a) are or have been taken there; or
- (b) are or have been shown there, or are kept there with a view to their being distributed or shown.

(2) The justice may issue a warrant under his hand authorising any constable to enter (if need be by force) and search the premises within fourteen days from the date of the warrant, and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs of children taken or shown on the premises, or kept there with a view to their being distributed or shown.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a justice of the peace acting for the same petty sessions area as the justice who issued the warrant.

(4) This paragraph and paragraph 2 below apply in relation to any stall or vehicle, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

2.—(1) The justice before whom any articles are brought in pursuance of paragraph 1 may issue a summons to the occupier of the premises to appear on a day specified in the summons before a magistrates' court for that petty sessions area to show cause why they should not be forfeited. 5

(2) If the court is satisfied that the articles are in fact indecent photographs of children, taken on the premises or shown there or kept there with a view to their being distributed or shown, the court shall order them to be forfeited; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved. 10

(3) In addition to the persons summoned, any other person being the owner of the articles brought before the court, or the persons who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited. 15

(4) Where any of the articles are ordered to be forfeited under sub-paragraph (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court. 20

(5) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs should not be forfeited; and costs order to be paid under this sub-paragraph shall be recoverable as a civil debt. 25

(6) Where indecent photographs of children are seized under paragraph 1 above, and a person is convicted under section 116(1) of offences in respect of those photographs, the court shall order them to be forfeited. 30

(7) An order made under sub-paragraph (2) or (6) above (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose— 35

- (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and 40
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned. 45

SCHEDULE 6

Sections 177

**PROVISIONS ANCILLARY TO CHAPTERS III AND IV OF PART
II**

and 186.

Powers of search, forfeiture, etc.

5 1.—(1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control—

10 (a) any thing which he or another has used, whether before or after the coming into force of this Act, or intends to use, for the making of any false instrument or copy of a false instrument, in contravention of section 167 or 168; or

15 (b) any false instrument or copy of a false instrument which he or another has used, whether before or after the coming into force of this Act, or intends to use, in contravention of section 169 or 170; or

(c) any thing custody or control of which is an offence under section 171,

20 the justice may issue a warrant authorising a constable to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant.

25 (2) A constable may at any time after the seizure of any object suspected of falling within sub-paragraph (1)(a), (b) or (c) (whether the seizure was effected by virtue of a warrant under that sub-paragraph or otherwise) to apply to a magistrates' court for an order under this sub-paragraph with respect to the object; and the court, if it is satisfied both that the object in fact falls within any of those sub-paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the forfeiture of the object and its subsequent destruction or disposal.

30 (3) Subject to sub-paragraph (4), the court by or before which a person is convicted of an offence under sections 167 to 171 may order any object shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

35 (4) The court shall not order any object to be forfeited under sub-paragraph (2) or (3) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

40 2.—(1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or possession or on his premises any stolen goods, the justice may issue a warrant to search for and seize the same; but no warrant to search for stolen goods shall be addressed to a
45 person other than a constable except under the authority of an enactment expressly so providing.

(2) Where under this paragraph a person is authorised to search premises for stolen goods, he may enter and search the premises accordingly, and may seize any goods he believes to be stolen goods.

SCH. 6

(3) This paragraph is to be construed in accordance with section 174.

3.—(1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe has been used or is intended for use to commit an offence— 5

(a) by destroying or damaging property belonging to another; or

(b) by destroying or damaging any property in a way likely to endanger the life of another, 10

the justice may issue a warrant authorising any constable to search for and seize that thing.

(2) A constable who is authorised under this paragraph to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which he believes to have been used or to be intended to be used as aforesaid. 15

(3) The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of the police under this paragraph as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act. 20

*Evidence and procedure on charge of theft
or handling stolen goods*

4.—(1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together. 25

(2) On the trial of two or more persons indicted for jointly handling any stolen goods the jury may find any of the accused guilty if the jury is satisfied that he handled all or any of the stolen goods, whether or not he did so jointly with the other accused or any of them. 30

(3) Where a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realisation, the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods:— 40

(a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than twelve months before the offence charged; and

(b) (provided that seven days' notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of theft or of handling stolen 45

goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person
5 that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him were in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration, subject to the following conditions:—

10 (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(b) a statutory declaration shall only be admissible if at least seven
15 days before the hearing or trial a copy of it has been given to the person charged, and he has not, at least three days before the hearing of trial or within such further time as the court may in special circumstances allow, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

20 (5) This paragraph is to be construed in accordance with section 174 of this Act; and in subparagraph (3)(b) above the reference to handling stolen goods includes any corresponding offence committed before the commencement of this Act.

Effect on civil proceedings

25 5.—(1) A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence to which this paragraph applies—

(a) from answering any question put to that person in proceedings
30 for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) from complying with any order made in any such proceedings;
but no statement or admission made by a person in answering any such question or complying with any such order shall, in proceedings
35 for an offence to which this paragraph applies be admissible in evidence against that person or (unless they married after the making of the statement of admission) against the wife or husband of that person.

(2) This paragraph applies to any offence under sections 139 to 176
40 (other than sections 164 to 171) and sections 180 to 182.

SCHEDULE 7

PROVISIONS ANCILLARY TO CHAPTER V OF PART II

Procedure relating to sections 198 to 202 and 205 to 210: parental responsibility miscellaneous

1.—(1) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 198 to 202 and 205 to 210 creates one offence. 5

(2) The Crown Court has the same powers and duties in relation to a person who is by virtue of Sched. 1 col. 6 (alternative verdicts) convicted before it of an offence under section 201 as a magistrates' court would have on convicting him of the offence. 10

Powers of entry and search ancillary to section 210

2.—(1) If in England and Wales a justice of the peace is satisfied by information on oath laid by a constable that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 210, the justice may issue a warrant under his hand authorising any constable to enter and search the premises where it is suspected the material or recording is situated. 15

(2) A constable entering or searching premises in pursuance of a warrant issued under this paragraph may use reasonable force if necessary.

(3) In this paragraph "premises" means any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft, 25
- (b) any offshore installation as defined in section 1(3)(b) of the Mineral Workings (Offshore Installations) Act 1971, and
- (c) any tent or movable structure.

Power to order forfeiture ancillary to sections 205 to 210

3.—(1) A court by or before which a person is convicted of— 30

- (a) an offence under section 205 relating to the display of written material, or

- (b) an offence under section 206, 208 or 210,

shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates. 35

(2) An order made under this section shall not take effect in the case of an order made in proceedings in England and Wales, until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned. 40

(3) For the purposes of subparagraph (2)—

- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

SCH. 7

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Provision for bail in relation to charges under section 212

4. Where a person is charged with an offence under section 212 and is remanded in custody he shall, after the expiration of a period of eight days from the date on which he was so remanded, be entitled to be released on bail without sureties unless within that period the Attorney-General has consented to further proceedings in respect of the offence.

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Powers of entry and search ancillary to section 213

5. If a judge of the High Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under section 213 has been committed, and that evidence of its commission is to be found at any premises or place specified in the information, he may, on an application made by a police officer of a rank not lower than that of inspector, grant a search warrant authorising any such officer named in the warrant together with any other persons named in the warrant and any other police officers to enter the premises or place at any time within one month from the date of the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence.

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Provided that no woman shall, in pursuance of a warrant issued under this paragraph, be searched except by a woman.

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SCHEDULE 8

Section 4(1).

ABOLITION OF OFFENCES AT COMMON LAW

Incitement

Murder

Manslaughter

35

Mayhem

Assault

Battery

False imprisonment

Kidnapping

40

Buggery

Section 5(1).

SCHEDULE 9

CONSEQUENTIAL AMENDMENTS

[This Schedule will contain the amendments to existing legislation which will be required in consequence of the enactment of the Criminal Code Bill.]

5

Section 5(2).

SCHEDULE 10

REPEALS

[This Schedule will contain the enactments to be repealed, to the extent specified in column 3 of the Schedule, in consequence of the enactment of the Criminal Code Bill.]

10

EXAMPLES

Clause	Example	
8(1)(b)	8	D is charged with robbing P of his car. The jury may acquit of robbery but convict of theft (sub-paragraph (i) — an allegation of robbery includes an allegation of theft) or of taking the car without authority (sub-paragraph (ii) — on an indictment for theft the jury may convict of the offence of taking the car without authority: Theft Act 1968 s. 12(4), preserved by cl. 8(1)(a)(i) and Sched. 1 (in the entry against cl. 140 — theft)).
11(1)(a) and (b)	11(i)	D is acquitted or convicted of the murder of P. He may not be tried thereafter in respect of the same act for murder (subs. (1)(a)) or manslaughter, killing in pursuance of a suicide pact, complicity in suicide, infanticide, child destruction or intentional serious personal harm (subs. (1)(b) and cl. 8(1)(a), and Sched. 1, col. 6) or an attempt to commit any of these offences (subs. (1)(b) and cl. 8(1)(c)) because he might (on sufficient evidence being adduced) have been convicted of any of these offences on the indictment for murder.
	11(ii)	D is acquitted by a magistrates' court on an information charging him with assault on a constable. He may not thereafter be tried in respect of the same act for assault (subs. (1)(b) and cl. 8(4)(b) and Sched. 1, col. 6). If he is charged with assault to resist arrest, it is for the court to exercise any discretion it has to stay the proceedings (subs. (7)).
11(1)(c)(i) and (d) (i)	11(iii)	D is acquitted or convicted of theft. He may not thereafter be tried in respect of the same act for robbery (subs. (1)(c)(i) and (d)(i)) because an allegation of robbery includes an allegation of theft (cl. 6 "included offence").
11(1)(c)(ii)	11(iv)	D is acquitted of theft. He may not thereafter be tried in respect of the same act for burglary by entering and attempting to steal (subs. (1)(c)(ii)) because he might have been convicted of attempting to steal on the theft charge.
11(1)(d)(ii)	11(v)	D is acquitted or convicted of recklessly causing personal harm to P. He may not thereafter be tried in respect of the same act for intentionally causing personal harm (subs. (1)(c)(i) and (d)(i)), intentionally or recklessly causing serious personal harm (subs. (1)(c)(i) and (d)(i)), manslaughter or murder (subs. (1)(c)(i), (d)(i), and (3)), except where he was convicted and, on a subsequent day, the personal harm became serious or death occurred (subs. (1)(d)(ii), exception).
11(1)(c)(i)	11(vi)	D is acquitted of driving his motor-cycle in Nottingham on August 1, 1988 while disqualified. He may subsequently be tried for perjury in swearing that he did not drive his motor-cycle in Nottingham on that day because the allegations in the indictment do not include (expressly or by implication) an allegation of the offence of which he has been acquitted.

Clause	Example	
14	14(i)	D sets fire to a house in which, as he knows, P is asleep. P dies in the fire. There was an obvious risk that this would occur. But a finding either that D intended P's death or that he was aware that it might occur depends on a consideration of all the evidence, including the fact that that result was probable and any evidence given by D as to his state of mind.
	14(ii)	D buys from E, at a very favourable price, goods which E describes to him as "hot". D is charged with receiving stolen goods knowing or believing them to be stolen. The court or jury may be satisfied that most people would have realised from the use of the word "hot" that the goods were stolen. If so, they will take this into account in deciding whether D realised that fact, though they will not be bound to conclude that he did.
	14(iii)	D is charged with assaulting P. D in evidence says that he misinterpreted a gesture made by P as an act of violence and that he hit P in self-defence. The court or jury are satisfied that there were no reasonable grounds for the mistake D claims to have made. They will take this into account in deciding whether it is possible that D did make that mistake.
17(1)(a)	17(i)	D hits P who falls against Q, knocking Q down. Q suffers injuries from which she later dies. Assuming D intended to cause serious personal harm to P, but was not aware that he might kill, D is guilty of the manslaughter (cl. 55) of Q. His act has contributed to her death and, by clause 24, his intention to cause serious personal harm to P is to be treated as an intention to cause that result to Q.
17(1)(b)	17(ii)	D, E's mistress, lives with E and P, E's child by his wife. While E is away P falls seriously ill. D, wishing P to die, fails to call a doctor. P dies. P's life might have been prolonged by medical attention. If D was under a duty to obtain medical attention for P she is guilty of murder. She has caused P's death intending to cause death.
17(2)	17(iii)	D hits P during a quarrel. P is lying dazed when he is stabbed by E. P dies. D has not caused P's death because E's supervening act was the immediate cause of death, sufficient in itself to cause death, unforeseen by D and not reasonably foreseeable.
	17(iv)	D stabs P who is taken to hospital. P refuses the blood transfusion which he is told is necessary to save his life. D has caused P's death. The refusal of the transfusion may be unforeseen by D and not reasonably foreseeable, but it is not sufficient in itself to cause death. The death would not have occurred without the wound inflicted by D.
	17(v)	D stabs P who is taken to hospital. P is given negligent medical treatment which aggravates his condition and he dies. His life might have been saved by proper treatment. D has caused P's death. Negligent treatment, although unlikely, is not unforeseeable nor (save in an exceptional case) sufficient in itself to cause the result of death.

Clause	Example	
18(a)	18(i)	D is handed a packet by E. The packet contains heroin. D chooses not to open the packet and therefore does not see what it contains. If D believes it to contain heroin, he is "knowingly" in possession of heroin.
18(b)	18(ii)	D plants a bomb on an aeroplane with the purpose of destroying the aeroplane in flight and recovering the sum for which the cargo is insured. It is not D's purpose to kill the crew but he is aware that their deaths will occur in the ordinary course of events. D "intends" to cause death and will be guilty of murder if the crew are killed by the explosion.
18(c)	18(iii)	D tries unsuccessfully to have sexual intercourse with P, who does not consent. If D is aware that P may not be consenting, he acts "recklessly" (since it is clearly unreasonable to take the risk of non-consent) and is guilty of attempted rape. (Under cl. 49(2) recklessness with respect to a circumstance (such as consent) suffices for an attempt where it suffices for the offence attempted. Recklessness includes an element of awareness and therefore suffices for the offence of rape under cl. 89).
	18(iv)	D, without justification or excuse, throws a brick at O, who is standing not far from a window belonging to P. D realises that the brick may break the window (or damage some other property belonging to another). He is guilty of recklessly destroying or damaging the window if the brick breaks it.
	18(v)	D, shooting at a bird on his estate, injured P, a poacher who was crouching in the undergrowth. D knew that poachers sometimes operated in this part of the estate and was aware that there was a risk of such injury. Whether D caused personal harm recklessly depends on whether it was reasonable for him to take the risk. That is the question for the court or jury to decide, having regard to all the circumstances that were known to D.
19(1)	19	D is indicted for intentionally causing serious personal harm to P. He may be convicted of recklessly causing serious personal harm or recklessly causing personal harm to P (see cl. 8(1)(b)); the allegation of recklessness being included in that of intention, these offences are "included offences" in relation to the offence charged.
20	20(i)	Under clause 147 a person commits burglary if he enters a building as a trespasser intending to steal in the building. Nothing is said as to any fault required in respect of the fact that the entrant is a trespasser. The offence is committed only if the entrant knows that, or is reckless whether, he is trespassing.
	20(ii)	An offence of causing polluting matter to enter a watercourse is enacted after the Code comes into force. In the absence of provision to the contrary the offence requires (a) an intention to cause the matter to enter the watercourse or recklessness whether it will do so, and (b) knowledge that the matter is a pollutant or recklessness whether it is.

Clause	Example	
21	21(i)	D, removing property from a flat at the end of his tenancy, intentionally damages a fixture. It is a landlord's fixture but D thinks that it belongs to himself. He is not guilty of intentionally damaging property belonging to the landlord.
	21(ii)	It is an offence for a person to act as auditor of a company at a time when he knows that he is disqualified from appointment to that office. D, a director of X Ltd., does not know that a director of a company is disqualified from appointment as its auditor. He acts as auditor of X Ltd. He is not guilty of the offence.
22(1)(a)	22(i)	D, who is voluntarily intoxicated, tries unsuccessfully to have sexual intercourse with P, who does not consent. D is treated as having been aware of the risk of P's non-consent if he would have been aware of the risk had he been sober. He may therefore be convicted of attempted rape. (Compare example 18(iii).) If D succeeds in having intercourse with P believing, wrongly, that she is consenting, he will be treated as not having held that belief if he would not have held it had he been sober (cl. 88), and accordingly he may be convicted of rape.
	22(ii)	D is charged with intentionally causing serious personal harm to P. He testifies that he was drunk and that he intended to break a window but was not aware of any risk that he might cause personal harm to any person. If it is found that this story may reasonably be true he must be acquitted of the offence charged; but, if he would have been aware of a risk of causing personal harm to a person had he been sober, he may be convicted of recklessly causing personal harm to P.
22(1)(b)	22(iii)	D is charged with intentionally causing serious personal harm to P. D mistakenly believed that P was making a murderous attack on him and that there was no other way in which he could save his life. He was voluntarily intoxicated and would not have made the mistake had he been sober. For the purposes of the defence under clause 44, he can rely on his belief in relation to the offence specifically charged but not in relation to the included offence of recklessly causing serious personal harm.
	22(iv)	D is charged with recklessly damaging property belonging to P. D, who was voluntarily intoxicated, damaged the property intentionally, believing that it belonged to his friend, E, who would not have objected to his doing so. If he had been sober, he would have realised that the property in question was not E's. He will be treated as if he knew that the property did not belong to E and will not be able to rely on the defence in clause 184.
22(4)(b)	22(v)	D is charged with intentionally causing serious personal harm to P. D, who suffers from brain damage, drank alcohol and then attacked P. He claims that he did not know what he was doing and the medical evidence is that his lack of awareness was due to the combined effect of the brain damage and the alcohol. If D may not have known what he was doing he must be acquitted and if, on the balance of probabilities, the medical evidence is correct, a mental disorder verdict should be returned (cl. 36).

Clause	Example	
22(5)(b) and (6)	22(vi)	D, a diabetic, having taken insulin in accordance with his doctor's instructions, omits to take food as directed. He knows from experience that this may result in his behaving in an aggressive and uncontrollable way. He loses consciousness due to hypoglycaemia and, while unconscious, strikes P. The insulin is not taken "properly for a medicinal purpose" and D is voluntarily intoxicated. If he is charged with recklessly causing personal harm, he may not rely on clause 33 (automatism and physical incapacity) and is to be treated as having struck the blow, being aware that it might cause personal harm.
	22(vii)	As in example 22(vi), except that D, though aware that failure to take food may result in loss of consciousness, is not aware that it may cause him to do any act. If charged with recklessly causing personal harm, he is regarded as having been involuntarily intoxicated and may rely on clause 33 and on clause 22(1). He could not do so if charged with careless driving, because of his awareness that failure to take food might result in unconsciousness and loss of control of a motor vehicle if he drove one.
23	23(i)	D falls asleep while smoking a cigarette. He wakes up to find that the mattress on which he is lying has caught fire from his cigarette. He realises that other property may be destroyed if the fire is not put out. He leaves the scene, taking no steps that he might take to put out the fire. The house burns down. D has recklessly caused the destruction of the house and is guilty of arson under clause 180(1) and (3).
	23(ii)	D is driving a car which, without fault on his part, comes to rest on P's foot. D realises what has happened but fails to move the car off P's foot. He is guilty of assault under clause 75(1), by allowing an application of force to P to continue.
24(1)	24(i)	D does an act by which he intends to injure O. He misses O but injures P, whom he does not intend to injure or have in mind as likely to be injured. He is guilty of intentionally causing personal harm to another. He may be convicted of this offence on an indictment or information alleging an intention to cause personal harm to P.
	24(ii)	D wishes to injure O. He aims a blow at P, believing him to be O. He is guilty of attempting to cause personal harm to P. If he hits and injures P, he is guilty of intentionally causing personal harm to P.
24(2)	24(iii)	D, under provocation, aims a shot at O with intent to kill him. The shot misses O and kills P. D may raise the plea of provocation under clause 58.
26(1)(b)	26(i)	D orders P, a security guard, to drop the money he is carrying and threatens to shoot him if he refuses. P drops the money and E, D's accomplice, takes it. D and E are guilty of robbery as principals.
26(1)(c)	26(ii)	D instructs E, aged nine, to climb through a window of a house and take some jewellery. E does so. E is not guilty of burglary because he is under ten years of age (cl. 32(1)). D is guilty of burglary as a principal.

Clause	Example	
26(1)(c) and (3) 26(2) and 29(1) (b)	26(iii)	D encourages E to trip up P. D knows, but E does not, that P suffers from a bone condition which makes him peculiarly vulnerable to fractures. D intends that P shall break his leg. E foresees only that P may be cut or bruised by the fall. E trips P who breaks his leg in the fall. E is guilty of recklessly causing personal harm, but is not guilty of a more serious offence of causing serious personal harm since he lacks both intention and recklessness in respect of the causing of serious harm. D is guilty as a principal of intentionally causing serious personal harm.
	26(iv)	D induces E to have sexual intercourse with P by telling E that P will consent to it despite her apparent reluctance. E has intercourse with P believing, despite her protests, that she is consenting. E is not guilty of rape because he lacks the required fault for the offence (cl. 89). D is guilty of rape as a principal notwithstanding that the definition of rape implies a personal act by the principal.
	26(v)	An offence is created after the Code comes into force of selling to the prejudice of the purchaser any food which is not of the nature or quality demanded by the purchaser. The legislation excludes the application of clause 20 to this offence and provides that no fault is required. E, an assistant in D's shop, sells a pie to P which, unknown to D and E, is mouldy. D and E are guilty of the offence as principals.
27(1)	27(i)	It is an offence to use an overloaded lorry on the highway. D, a weighbridge operator at a colliery hands over a ticket to E, the driver of a lorry which has just been loaded with coal. The ticket records the weight of the load which is in excess of that permitted for the lorry. D knows that possession of the ticket will enable E to leave the colliery and drive the lorry on the highway. E does so. E is guilty of the offence as a principal. D is guilty as an accessory.
	27(ii)	D hears screams and the sounds of a struggle from E's room. He enters and watches silently while E has sexual intercourse with P, who is not consenting to it. E knows that P is not consenting. D is guilty of rape as an accessory if (a) his presence is an encouragement to E to have intercourse; and (b) he intends his presence to encourage E to have intercourse; and (c) he knows that P is not consenting or is reckless whether P consents; and (d) he realises that E is or may be aware that P is not consenting.
	27(iii)	At D's suggestion E tells P that a picture which E is selling is by Constable. Neither D nor E knows whether this statement is true. It is false. P buys the picture in reliance on the statement. E is guilty of obtaining property by (a reckless) deception. D is guilty of the offence as an accessory because he encourages E and is reckless whether E obtains the price by deception.
	27(iv)	D and E agree to assault P using their fists. During the assault E stabs P with a knife which D does not know E is carrying. P dies from the wound. E is guilty of murder if he intended the stabbing to kill or if he intended it to cause serious personal harm and was aware that it might cause death. D is not guilty as an accessory to murder because he

Clause	Example
	did not intend to assist or encourage E to do the act (stabbing) E did. He is not guilty of manslaughter as an accessory for the same reason. He is guilty of assault and an attempt to commit an offence under clause 70 or 72 if he intended to assault to cause serious personal harm or personal harm respectively.
	27(v) D assists E in carrying out a bank robbery, knowing that E is carrying a gun and that he may use it during the joint enterprise with the fault required for murder. E uses the gun to kill a security guard who is attempting to prevent their escape. D is guilty of murder as an accessory.
27(3)	27(vi) It is an offence to consume alcohol on licensed premises outside permitted hours. D, a licensee, fails to take steps to collect the drinks of customers who are drinking in his public house outside the permitted hours. D may be guilty as an accessory to the offence committed by the customers.
27(4)	27(vii) D lends E certain equipment, knowing that E intends to use it to break into premises. E uses it a week later to break into a bank in London. D is guilty as an accessory to burglary. He intended to assist E to do the acts constituting the offence and it is immaterial that he did not know which premises were to be entered or when.
27(6)(a)	27(viii) E and F agree to carry out a robbery at a warehouse. They approach D for assistance. Unknown to them D is an informer. D supplies advice in order to learn details of the plan. He subsequently passes the details to the police in the expectation that they will prevent the robbery. The police fail to arrive in time and the robbery takes place. D is not guilty as an accessory.
27(6)(b)	27(ix) D, a doctor, believes that sexual intercourse is very likely to take place between P, a girl aged 15, and her boyfriend Q. D prescribes contraceptive treatment for P, his only purpose being to guard P against the risk of pregnancy or sexually transmitted disease. Even if D knows that in the circumstances his act will inevitably encourage Q in having unlawful intercourse with P, D is not guilty as an accessory to the offence that Q commits when intercourse takes place.
27(6)(c)	27(x) D hands over an article to E on request, knowing that E intends to commit a burglary with it. The article belongs to E and D believes that he is legally obliged to return it. If D has no purpose to further the commission of burglary he will not be guilty as an accessory to any subsequent burglary committed by E.
27(7)	27(xi) It is an offence to have sexual intercourse with a girl under sixteen, and her consent is no defence. E has intercourse with D, a girl under sixteen, who consents to the intercourse. D is not guilty as an accessory to E's offence.
27(8)	27(xii) D and E agree that E shall set fire to a school. D later repents of the plan and advises E to abandon it. E sets fire to the school. D is not guilty of arson as an accessory but remains guilty of conspiracy to commit arson.

Clause	Example	
28(1)	28	D and E jointly attack P with knives. P suffers serious injury. D and E are jointly charged with intentionally causing serious personal harm. The evidence shows that P suffered only one stab wound and it is uncertain which of the defendants inflicted it. Both may be convicted of the offence provided that the jury is satisfied in the case of each that he either did the act of stabbing himself or encouraged the other to do it.
29(1)(a)	29(i)	A statute provides that it is an offence for the holder of a justices' licence whether by himself, his servant or agent to supply intoxicating liquor on licensed premises outside permitted hours. No fault is required for this offence. D is the licensee of a public house. E, his barman, serves a drink to a friend outside the permitted hours. In the absence of any special defence D is guilty of the offence as a principal. Assuming fault on E's part, E is guilty as an accessory.
29(1)(b)	29(ii)	A statute provides that it is an offence for a person to sell goods to which a false trade description is applied. No fault is required for this offence. E, an assistant employed in D's shop, sells a ham as a "Scotch" ham. D has previously given instructions that such hams are not to be sold under any specific name of place of origin. The ham is in fact an American ham. Both D and E are guilty of the offence as principals.
30(1)	30(i)	It is an offence to use a motor vehicle on a road in breach of construction and use regulations. No fault is required. C, an employee of D Ltd., drives one of its lorries on a road. The lorry's condition does not comply with the regulations. D Ltd. commits the offence.
	30(ii)	If dark smoke is emitted from a chimney, the occupier of the building is guilty of an offence although he is not at fault. D Ltd. occupies a factory from the chimney of which dark smoke is emitted. It commits the offence.
30(2)-(5)	30(iii)	C, a director of D Ltd., conspires with others to obtain by deception for D Ltd. payments of a subsidy to which it is not entitled. D Ltd. is a party to the conspiracy and to any subsequent offence of obtaining the subsidy by deception.
	30(iv)	The carriage of a coach party without a special licence is an offence if, as the carrier knows or ought to know, the trip has been publicly advertised. A theatre club books a coach trip with D Ltd. The club then advertises spare seats in the local newspaper. C, a director of D Ltd., sees the advertisement and realises that it may relate to a company trip. He takes no action. The trip goes ahead without a special licence. If C ought to have discovered the facts, D Ltd. is guilty of the offence.
30(8)(a)(i)	30(v)	D Ltd. owns a sheep farm. C, a director, acting as such, orders the killing of a neighbouring farmer's dog. D Ltd. is not guilty of an offence of destroying or damaging property if C believes the circumstances to be such that the killing would be justifiable for the protection of the company's sheep (see cl. 44).

Clause	Example	
30(8)(a)(ii)	30(vi)	The manager of a store belonging to D Ltd. finds a controlled drug among groceries which have just been delivered to the store. He takes possession of it, intending to deliver it to the police. D Ltd. may rely upon this intention on a charge under the Misuse of Drugs Act 1971, s. 5(1), of possessing the drug (see s. 5(4)(b) of that Act).
30(8)(b) and (c)	30(vii)	D Ltd. has a parcel of heroin in its warehouse. It is guilty of having a controlled drug in its possession, unless it neither knows nor suspects nor has reason to suspect that the parcel contains such a drug (see Misuse of Drugs Act 1971, s. 28(2)). No director of D Ltd. with responsibility for warehousing operations knows or suspects or has reason to suspect that fact. D Ltd. is not guilty.
30(8)(c)	30(viii)	Goods are supplied in a store belonging to D Ltd., although safety regulations prohibit their supply. This is an offence under the Consumer Protection Act 1987, s. 12(1), unless D Ltd. can prove that it took all reasonable steps and exercised all due diligence to avoid committing the offence. This requires the company to prove that no fault on the part of controlling officers was involved in failing to maintain effective systems designed to avoid such an offence.
31	31	As in example 30(iii). D, the managing director of D Ltd., is not a party to the conspiracy, but he knows of it and could take steps to thwart it. He turns a blind eye to it and does nothing. He is guilty as an accessory to any offence of obtaining the subsidy by deception.
33(1)	33(i)	D, driving a car, has a sudden "black-out", as a result of which the car mounts the kerb and comes to rest against a wall. D is not guilty of driving without due care and attention.
33(1)(b)	33(ii)	D, driving a car, feels himself becoming drowsy. He continues driving and in due course falls asleep at the wheel. He is guilty of driving without due care and attention both before and after falling asleep.
	33(iii)	D is charged with recklessly causing personal harm to P when in a condition of impaired consciousness caused by alcohol, drugs or medicine. He cannot rely on his "state of automatism" if he was "voluntarily intoxicated".
33(2)	33(iv)	As in example 33(i). The car also passes a red traffic light. D is not guilty of failing to comply with a traffic sign.
	33(v)	D is involved in a traffic accident which he is under a duty to report to the police within twenty-four hours. He is seriously injured in the accident and spends more than a day in intensive care. He is not guilty of the offence of failing to report the accident.
35(1)	35	D intentionally sets fire to P's house when suffering from a mental illness having one or more of the severe features listed in clause 34. On a charge of arson he is entitled to a mental disorder verdict unless the jury is satisfied beyond reasonable doubt that the offence was not attributable to the illness.

Clause	Example	
36	36(i)	D is charged with intentionally causing serious personal harm to P. He was unaware of his violent act. It occurred when he was in a state of impaired consciousness during an epileptic episode of a kind to which he is prone. The impairment of consciousness was a feature of a disorder that may cause a similar state on another occasion. A mental disorder verdict must be returned. The court has power to make any of a number of orders or to discharge D (cl. 39 and Sched. 2).
	36(ii)	The same charge as in example 36(i). A similar explanation of the attack is given. The medical evidence leads the court or jury to think that the explanation may be true; D must therefore be acquitted. But they are not satisfied (on the whole of the medical evidence, including any adduced by the prosecution) that it is in fact true; so there will not be a mental disorder verdict, mental disorder not having been proved.
	36(iii)	The same charge as in example 36(i). There is evidence that D, who suffers from diabetes, had taken insulin on medical advice. This had caused a fall in his blood-sugar level which deprived him of control or awareness of his movements. If D is acquitted, a mental disorder verdict is not appropriate. His "disorder of mind" was caused by the insulin, an "intoxicant" (see cl. 26(5)(a)). It was therefore a case of "intoxication" and not of "mental disorder" (cl. 34).
41	41	An offence is created after the Code comes into force of knowingly supplying liquor to a child. An exception is made for liquor in a properly corked and sealed vessel. A supplier has a defence if he believes the liquor to be in a properly corked and sealed vessel. But if it were provided that the offence is not committed if the supplier believes on reasonable grounds that the liquor is in a properly corked and sealed vessel, subsection (1) would not apply.
42(1)-(3)	42(i)	D takes part in a terrorist attack on a public house. He does so because E, the leader of the terrorist group, has told him that he (D) will be "severely punished" if he does not. D knows E's reputation for extreme violence and believes that E is threatening serious injury to himself or a member of his family. He does not believe that he has time to put himself under police protection before he must take part in the attack or suffer his "punishment". If clause 42(5) does not apply (see example 42(iv)), whether D has the defence of duress in respect of offences to which he is a party depends on a question to be answered by the jury: could D reasonably be expected to resist the threat as he understood it? The jury must have regard to all the circumstances, some of which would be: (a) the nature of the offences; (b) the part played by D; (c) D's age and any other personal characteristics affecting the gravity of the threat; (d) current attitudes to what may properly be expected of citizens facing threats from terrorists.
	42(ii)	As in example 42 (i), except that E communicates no threat to D. D is falsely told by F, and believes, that E will "severely punish" him if he does not take part in the raid. The result is the same as if the threat were actually made — that is, the same as in example 42(i).

Clause	Example	
42(1)–(4)	42(iii)	As in example 42(i), except that D realises that he has time to put himself under police protection. He believes, however, that the police cannot effectively protect him and his family from E. This belief, even if justified, is immaterial. The defence of duress is not available to D.
42(1)–(5)	42(iv)	As in example 42(i), except that D is himself a member of the terrorist group. When he joined he knew that the group sometimes violently punished its members for disobedience. If he had no reasonable excuse for joining the group (see example 42(v)), the defence of duress is not available to him.
	42(v)	As in example 42(iv). D is a police officer. He joined the group in that capacity, posing as a committed terrorist. If this constituted a “reasonable excuse” for joining the group, the defence of duress may be available to him. If it is, the jury may wish to take the fact that he is a police officer into account in deciding whether he could reasonably have been expected to resist the threat.
43(1) and (2)	43(i)	It is an offence to drive a motor vehicle on a road with a proportion of alcohol in the blood in excess of a prescribed limit. “Driving” for this purpose includes steering. The proportion of alcohol in D’s blood is above the limit. Having gone to sleep in the passenger seat of E’s car, he wakes to find himself alone in the car, which is running out of control down a steep hill towards children playing on the street. D, to avoid serious injury to himself or the children, steers the car into a wall, damaging the car. The defence of duress of circumstances may be available to him on a charge of the driving offence or of damaging property. It is a question for the tribunal of fact whether he could reasonably have been expected to act otherwise than as he did.
	43(ii)	D’s child, P, is a passenger in D’s car. P is taken ill. D exceeds the speed limit in order to get P to hospital as quickly as possible. If D believed that it was immediately necessary to drive at that speed in order to save P from death or serious harm, and if in the circumstances he could not reasonably have been expected to do otherwise, he is not guilty of the speeding offence.
44(1)(a)	44(i)	D shoots P who is about to attack him with a knife. If this action is necessary and reasonable to prevent P from killing or causing serious personal harm to D, D commits no offence. (It would be immaterial that D was unaware that P was armed with a knife, or was about to attack.)
	44(ii)	D shoots P whom he believes to be about to attack him with a knife. If this action would have been necessary and reasonable to prevent P killing, or causing serious personal harm to D, had D’s belief been true, D commits no offence, even if P was unarmed, or was not in fact about to attack.
44(3)(a)	44(iii)	D, a shopkeeper, sees P, whom he knows to be under the age of 10, take a watch from the counter and run off with it. D seizes P and takes the watch from him by force. If it is necessary to use force to prevent P from appropriating the watch and the force used is reasonable, D commits no offence.

Clause	Example	
44(3)(b)	44(iv)	D's tenant, P, is about to destroy certain fixtures in the leased premises. P wrongly believes that the fixtures belong to him. Although P lacks the fault for the offence of causing damage to property belonging to another, D may use reasonable and necessary force to protect his property.
	44(v)	Wrongly believing that D is about to attack him, P makes what he believes to be a counter-attack on D. If P is using no more force than would be necessary and reasonable if the circumstances were as he believed them to be, he is not committing any offence; but D may use necessary and reasonable force to repel P's attack.
44(3)(c)	44(vi)	P, a police officer, reasonably but wrongly believing D to be an armed, dangerous criminal, X, points a revolver at him. D, believing that he is about to be shot, strikes P and causes him serious personal harm. If in the light of D's belief this action is necessary and reasonable to prevent personal harm to D, he commits no offence, even though he knows that P is a police officer acting lawfully.
44(4)	44(vii)	P, a constable, is arresting Q. D, who believes that P has no grounds for making the arrest, uses force against P to free Q. In fact P has reasonable grounds for suspecting that Q has committed an arrestable offence. D has no defence under this section to a charge of assault or causing personal harm.
	44(viii)	As in example 44(vii), but D also believes that P is about to cause Q personal harm. If the force used by D would have been necessary and reasonable to prevent the apprehended personal harm to a person wrongfully arrested, D commits no offence.
44(5)	44(ix)	P, an armed criminal, shoots a policeman who drops his revolver. D, a bystander, fearing that P is about to shoot him, picks up the revolver to use it in self-defence. D is not guilty of being in possession of a firearm without a firearm certificate or of having with him an offensive weapon.
44(6)	44(x)	A gang of youths (the A group) shout taunts at a rival gang (the B group) until the latter attack them. D, a member of the A group, is attacked by P, a member of the B group, with a knife. D, who also has a knife, stabs P and kills or injures him. D has no defence under subsection (1) to a charge of murder, manslaughter or causing personal harm.
	44(xi)	Members of a political group, X, hold a lawful meeting. They know from experience that they are almost certain to be attacked by members of the rival group, Y. They are so attacked, and D, a member of the X group, kills or injures P, a member of the Y group. D may rely on subsection (1).
45	45(i)	A statute provides that local authorities may seize and destroy counterfeit goods. D, the properly-appointed official for this purpose, seizes and destroys P's counterfeit watches. D is not guilty of theft or criminal damage.
	45(ii)	D, a professional boxer taking part in a fight conducted in accordance with the rules of boxing, seriously injures P by a blow allowed by those rules. If the blow is lawful at common law D will not be guilty of an offence. (The Code

Clause	Example	
18(a)	18(i)	D is handed a packet by E. The packet contains heroin. D chooses not to open the packet and therefore does not see what it contains. If D believes it to contain heroin, he is "knowingly" in possession of heroin.
18(b)	18(ii)	D plants a bomb on an aeroplane with the purpose of destroying the aeroplane in flight and recovering the sum for which the cargo is insured. It is not D's purpose to kill the crew but he is aware that their deaths will occur in the ordinary course of events. D "intends" to cause death and will be guilty of murder if the crew are killed by the explosion.
18(c)	18(iii)	D tries unsuccessfully to have sexual intercourse with P, who does not consent. If D is aware that P may not be consenting, he acts "recklessly" (since it is clearly unreasonable to take the risk of non-consent) and is guilty of attempted rape. (Under cl. 49(2) recklessness with respect to a circumstance (such as consent) suffices for an attempt where it suffices for the offence attempted. Recklessness includes an element of awareness and therefore suffices for the offence of rape under cl. 89).
	18(iv)	D, without justification or excuse, throws a brick at O, who is standing not far from a window belonging to P. D realises that the brick may break the window (or damage some other property belonging to another). He is guilty of recklessly destroying or damaging the window if the brick breaks it.
	18(v)	D, shooting at a bird on his estate, injured P, a poacher who was crouching in the undergrowth. D knew that poachers sometimes operated in this part of the estate and was aware that there was a risk of such injury. Whether D caused personal harm recklessly depends on whether it was reasonable for him to take the risk. That is the question for the court or jury to decide, having regard to all the circumstances that were known to D.
19(1)	19	D is indicted for intentionally causing serious personal harm to P. He may be convicted of recklessly causing serious personal harm or recklessly causing personal harm to P (see cl. 8(1)(b)); the allegation of recklessness being included in that of intention, these offences are "included offences" in relation to the offence charged.
20	20(i)	Under clause 147 a person commits burglary if he enters a building as a trespasser intending to steal in the building. Nothing is said as to any fault required in respect of the fact that the entrant is a trespasser. The offence is committed only if the entrant knows that, or is reckless whether, he is trespassing.
	20(ii)	An offence of causing polluting matter to enter a watercourse is enacted after the Code comes into force. In the absence of provision to the contrary the offence requires (a) an intention to cause the matter to enter the watercourse or recklessness whether it will do so, and (b) knowledge that the matter is a pollutant or recklessness whether it is.

Clause	Example	
		conspiracy with the company because the ordinary meaning of agreement requires a meeting of two minds and only one would be involved in this case.
48(1) and (2)	48(iii)	D and E agree to have sexual intercourse with P. They hope that she will consent but both are aware that she may not. They are guilty of conspiracy to rape. (Awareness of the risk of non-consent suffices for rape; therefore D's and E's recklessness (recklessness includes awareness of risk) as to the circumstance of non-consent suffices for conspiracy.)
48(5) and (6)	48(iv)	D and E agree that an armed robbery shall be carried out by a person to be recruited by E. E subsequently hires F to carry out the robbery. D, E and F are guilty of conspiracy to rob.
	48(v)	D and E know that F intends to burgle the house where they are employed. Without F's knowledge they agree to leave a ladder positioned so as to facilitate F's entry to the house. They are not guilty of conspiracy to be accessories to the commission of burglary by F.
48(1) and (7)	48(vi)	It is an offence to escape from prison. E and F agree to effect the escape of G, a prisoner. D agrees to supply a car to be used in the escape and is paid £500. He does not intend to supply the car or that the agreement to effect the escape should be carried out. Assuming that D's conduct amounts to encouragement, D is guilty as an accessory to the conspiracy of E and F.
48(8)(c)	48(vii)	The facts are as in example 48(iv). D, E and F are charged with conspiracy to rob. There is some circumstantial evidence against all three and a confession admitted only against F. D and E are acquitted and F is convicted. F's conviction is not inconsistent in the circumstances with the acquittal of D and E. If the evidence against D and E were substantially the same, and D were convicted and E acquitted, D's conviction would be inconsistent in the circumstances with E's acquittal.
48(8)(d)	48(viii)	D agrees with E, aged nine, that E shall act as lookout while D carries out a burglary. D is guilty of conspiracy to commit burglary. He has agreed with E that acts shall be done which will involve the commission of burglary by D, and they both intend that the offence shall be committed.
49(1) and (2)	49(i)	The facts are as in example 48(iii). If D tries unsuccessfully to have intercourse with P, who does not consent, D is guilty of attempted rape. It would make no difference if, as a result of voluntary intoxication, he believed that she was consenting (cll. 22(1) and 88, and see example 22(i)).
49(1) and (3)	49(ii)	D has custody of P, her mentally handicapped child by her divorced husband. E moves in to live with D and P. The police visit the house some weeks later and find P emaciated and very ill. D and E confess that, hoping P would die, they had agreed not to feed P or to call medical attention when P fell ill. Murder is an offence capable of being committed by an omission, therefore an attempt to commit murder by omission is within the scope of the section. D would have a duty to feed and obtain medical

Clause	Example	
		care for her child; if her failure to discharge this duty was more than merely preparatory to the causing of death she would be guilty. E would also be guilty, either as a principal if he owed a similar duty himself or as an accessory to D's offence.
49(6)	49(iii)	D, knowing that E intends to burgle the house where D is employed, leaves a ladder positioned so as to facilitate E's entry to the house. D is not guilty of an attempt to be an accessory to burglary. If E uses the ladder to effect an entry, D will be guilty of burglary as an accessory.
50(1)	50(i)	D proposes to E that E should store a consignment of cigarettes which both believe are to be stolen by F. Unknown to them the cigarettes have been destroyed in a fire. D is guilty of inciting E to handle stolen goods, since the commission of the offence would be possible in the circumstances which D hopes will exist, namely that the cigarettes will be stolen by F.
	50(ii)	It is an offence to produce a controlled drug without a licence. Cocaine is a controlled drug. D and E agree to produce cocaine from a substance which, unknown to them, contains no cocaine and from which cocaine cannot be produced. Neither D nor E has the relevant licence. They are guilty of conspiracy to commit the offence, since the commission of it would be possible in the circumstances which they believe exist, namely that the substance is capable of yielding cocaine.
	50(iii)	D sells to P goods which he represents as being of a certain weight but which he believes to be underweight. In fact D has miscalculated and the goods are of the weight described. D is guilty of an attempt to obtain the price of the goods by deception, since the commission of this offence would have been possible in the circumstances which D believed to exist at the relevant time.
50(3)	50(iv)	D, unaware that P is about to attack him with a knife, shoots P. If this action is necessary and reasonable to prevent P from killing or causing serious personal harm to D, D commits no offence involving the use of force (cl. 44(1)) and is not guilty of an attempt to commit such an offence.
52(1) and (3)	52(i)	D and E agree in England to kill P in France. They are guilty of conspiracy to murder.
52(2) and (3)	52(ii)	D in France, tries to persuade E that E should plant a bomb in the centre of London. D is guilty of inciting E to cause an explosion likely to endanger life or property.
52(4)	52(iii)	It is an offence to import cannabis into England without a licence. D and E agree in Morocco to import cannabis into England. Neither D nor E has the relevant licence. E travels to London to make arrangements for the importation. D and E are guilty of conspiracy to commit the offence.

APPENDIX C

A COMPREHENSIVE CRIMINAL CODE

Part I

General Principles of Liability

Clauses 1 to 52 of the draft Criminal Code Bill

Part II

Specific Offences

The following offences should in due course be collected in Part II of the Criminal Code Act. The list assumes: (a) the enactment of offences to give effect to existing recommendations of the Law Commission and the Criminal Law Revision Committee; and (b) otherwise the modernisation, in conformity with the style of the Code, of statutory offences. It is also assumed that some extant common law offences will be replaced by statutory offences and that the latter will find their places in Part II.

Chapter I: Offences against the person

Clauses 53 to 86 of the draft Criminal Code Bill
Offences against the personal security of the sovereign
Cruelty to children¹
Criminal defamation²

Chapter II: Sexual offences

Clauses 87 to 138 of the draft Criminal Code Bill

Chapter III: Theft, fraud and related offences

Clauses 139 to 177 of the draft Criminal Code Bill
[Conspiracy to defraud³]

Chapter IV: Other offences relating to property

Clauses 178 to 196 of the draft Criminal Code Bill

Chapter V: Offences relating to public peace and safety

Clauses 197 to 220 of the draft Criminal Code Bill
Offences under the Unlawful Drilling Act 1819⁴
Offences under the Explosive Substances Act 1883⁵

Chapter VI: Offences against the international community

Genocide
Piracy⁶
Offences under the Aviation Security Act 1982
Hijacking ships⁷

Chapter VII: Offences against the State

Treason etc.
Incitement to disaffection
Offences under the Foreign Enlistment Act 1870
Offences under the Official Secrets Acts

¹See Report, Vol. 2, para. 14.60(a).

²See (1985), Law Com. No. 149, Cmnd. 9618, draft Criminal Defamation Bill.

³See (1987) Working Paper No. 104, and Report, Vol. 2, para. 16.2.

⁴See Report, Vol. 2, para. 18.11(a).

⁵See *ibid.*, para. 18.11(b).

⁶See (1978), Law Com. No. 91, paras. 99 *et seq.*, and draft Criminal Jurisdiction Bill, cl. 7.

⁷*Ibid.*, paras. 106 *et seq.* and cl. 5.

Offences under Part II of the Forgery and Counterfeiting Act 1981
Offences relating to public stores

Chapter VIII: Offences relating to the administration of justice

Offences recommended in the draft Administration of Justice (Offences) Bill⁸
Contempt of Court

Chapter IX: Offences against public morals and decency

Offences under the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906
Offences under the Honours (Prevention of Abuses) Act 1925
Bigamy
Offences against religion and public worship⁹

Offences excluded from Part II would include offences under:

- 10 Insolvency Act 1986
- 1 Companies Acts
- 5 Financial Services Act 1986
- 3 Customs and Excise legislation
- 6 Firearms Act 1968
- 7 Food and Drugs legislation
- 8 Health and Safety legislation
- 9 Immigration Act 1971
- 11 Licensing Act 1974
- 12 Misuse of Drugs Act 1971
- 4 Drug Trafficking Offences Act 1986
- 14 Representation of the People Act 1983
- 15 Road Traffic Act 1988
- 18 Legislation concerned with the protection of the environment
- 19 Legislation concerned with public registers
- 17 Legislation concerned with the protection of animals
- 16 Trade Descriptions Act 1968
- 13 Obscene Publications Act 1959
- 2 Copyright, Designs and Patents Act 1988

Part III

Evidence and Procedure

Part IV

Disposal of Offenders

We have not undertaken even any preliminary work on Parts III and IV.¹⁰ It is therefore too early to set out a possible structure for these projected parts of the Code.

⁸See (1979), Law Com. No. 96.

⁹See (1985), Law Com. No. 145.

¹⁰See para. 3.7 above.

APPENDIX D

ORGANISATIONS AND INDIVIDUALS WHO COMMENTED ON
"CODIFICATION OF THE CRIMINAL LAW: A REPORT TO THE LAW
COMMISSION" (1985) LAW COM. NO. 143

His Honour Judge Francis Allen
Mr Anthony Arnall
Dr Andrew Ashworth
The Hon. Mr Justice Bingham
Ms Diane Birch
Mr Rodney Brazier
Mr Richard Buxton Q.C.
Dr K. Campbell
Professor S. M. Cretney
Sir William Dale K.C.M.G.
The Rt Hon. The Lord Denning
The Rt Hon. Sir John Donaldson M.R.
Mr Richard Du Cann Q.C.
Mr R.A. Duff
The Rt Hon. The Lord Edmund-Davies
The Rt Hon. The Lord Elwyn-Jones CH
The Rt Hon. Lord Justice Goff
Dr Harrison
Mr David Hopkin
JUSTICE
Justices' Clerks' Society
Mr H. Keating
The Rt Hon. Lord Justice Kerr
The Rt Hon. Lord Justice Lawton
The Hon. Mr Justice Leggatt
Professor L.H. Leigh
The Rt Hon. Lord Justice Lloyd
Mr R.D. Mackay
Mr N.A. McKittrick
The Hon. Mr Justice McNeil
The Hon. Mr Justice Mann
Sir David Napley
The Hon. Mr Justice Pain
The Rt Hon. Lord Justice Parker
Mr Philip Parry
Prosecuting Solicitors' Society of England and Wales
The Hon. Mr Justice Rose
The Rt Hon. The Lord Roskill
Sir Henry Rowe K.C.B., Q.C.
The Rt Hon. The Lord Scarman O.B.E.
The Rt Hon. The Lord Simon of Glaisdale
Professor A.T.H. Smith
Society of Public Teachers of Law
Mr John Stannard
Statute Law Society (Working Party)
The Hon. Mr Justice Staughton
The Hon. Mr Justice Steyn
Mr Eric Taylor
Mr Dimitry Tolstoy Q.C.
The Rt Hon. Lord Justice Waller O.B.E.
Mr Martin Wasik
Ms Celia Wells
The Hon. Mr Justice Woolf

APPENDIX E

MEMBERS OF CIRCUIT SCRUTINY GROUPS

Wales and Chester Circuit (Preliminary Provisions)

His Honour Judge Hywel ap Robert (*Chairman*)
Mr Keith Bush, Barrister
Mr Michael Boland, Chief Prosecuting Solicitor
Mr John Curran, Barrister
Mr Hugh Jones, County Court Registrar
Mr Michael Jones, Solicitor
Mr J.A. Emlyn-Jones, J.P., Chairman, Cardiff Justices
Mr Malcolm Pill Q.C., Recorder of the Crown Court
Mrs Nest Hughes, Solicitor
Mr Wyn Williams, Barrister
Mr David Miers, University College, Cardiff
Mr Michael Heap, Justices' Clerk (*Secretary*)

Western Circuit (Jurisdiction)

His Honour Judge H.J. Martin Tucker Q.C. (*Chairman*)
Mr M.J.S. Axtell, Solicitor
Mr Michael Brodrick, Barrister, Recorder of the Crown Court
Mr M.J. Davies, Principal Prosecuting Solicitor
Mr G. Derham, Justices' Clerk
Mr J. Gibbons, Barrister
Professor A.T.H. Smith, University of Reading
Mr D. Saxton, Chief Clerk, Winchester Crown Court (*Secretary*)

South Eastern Circuit (Old Bailey) (Proof, External Elements of Offences)

His Honour Judge Thomas Pigot Q.C. (*Chairman*)
The Hon. Mr. Justice Beldam
Mr Richard Buxton Q.C., Recorder of the Crown Court
Mr J.J. Goodwin, Prosecuting Solicitor
Mr Christopher Green, Solicitor
Mr Michael Hill Q.C., Recorder of the Crown Court
Mr Ralph Lownie, Stipendiary Magistrate
Miss Jennifer Temkin, London School of Economics

North Eastern Circuit (Fault)

His Honour Judge H.G. Bennett Q.C. (*Chairman*)
Mr R.O. Barlow, Solicitor
Mr David Bentley Q.C., Recorder of the Crown Court
Professor D.W. Elliott, Newcastle University
Professor Brian Hogan, Leeds University
Mr John Richman, Justices' Clerk
Mr N.J. Rose, Prosecuting Solicitor
Mr W. Scott, retired Clerk
Mr Peter Seago, Leeds University
His Honour Judge Stephenson
Mr Robin Stewart Q.C., Recorder of the Crown Court

Northern Circuit (Parties to Offences)

His Honour Judge Michael Lever Q.C. (*Chairman*)
Mr Alan Berg, Solicitor*
Mr Robert Barrett, Justices' Clerk
Mr Christopher Carr, Barrister
Mr Paul Firth, Deputy Justices' Clerk
Mr Peter Lakin, Solicitor
Mr Brian Leveson Q.C.
Mr C.P.L. Openshaw, Barrister

Mr Richard Taylor, Lancashire Polytechnic*
Mr Martin Wasik, Manchester University
His Honour Judge Wickham
Miss Sally Rimmer, Northern Circuit Administrator's Office (*Secretary*)

South Eastern Circuit (Southwark) (Defences)

His Honour Judge Derek Clarkson Q.C. (*Chairman*)
The Hon. Sir Ralph Kilner Brown O.B.E., T.D.
Mr Quentin Campbell, Metropolitan Stipendiary Magistrate
Dr Kenneth Campbell, King's College, London
Mr John Clitheroe, Solicitor
Mr Barry Hancock, Area Prosecuting Solicitor
Mr David Jeffreys Q.C., Recorder of the Crown Court
Mr Roger Rickard O.B.E., Justices' Clerk

South Eastern Circuit (Maidstone) (Preliminary Offences)

His Honour Judge Rolf Hammerton (*Chairman*)
The Hon. Mr. Justice Cantley
Mr Richard Brown, Barrister
Mr Andrew Goymer, Barrister
Mr Peter Morgan, Solicitor
Professor Sidney Prevezer, Sussex University
Mr Peter Wallis, Justices' Clerk
Mr I. Wilson, Solicitor

Midland and Oxford Circuit (Damage to Property)

His Honour Judge Edwin Jowitt Q.C. (*Chairman*)
Mr David Beal, Prosecuting Solicitor
Ms Diane Birch, Nottingham University
Mr John Goldring, Barrister
Mr Simon Hammond, Solicitor
Mr Michael Meadows, Justices' Clerk
His Honour Judge Patrick Medd Q.C.
Mr Conrad Seagroatt Q.C., Recorder of the Crown Court

Special Group (Offences against the Person)

The Rt Hon. Lord Justice Lawton (*Chairman*)
His Honour Judge John Hazan Q.C.
Mr. Timothy Lawrence, Solicitor
The Rt Hon. Lord Justice Lloyd
The Hon. Mr Justice McCullough
The Rt Hon. Sir George Waller O.B.E.
Miss Isabel Gurney, Law Commission (*Secretary*)

*Mr Berg resigned during the course of the scrutiny and was replaced by Mr Taylor.