

Schedule 4	Effect of orders for admission to hospital
Schedule 5	Consequences and effect of order for admission to hospital under section 83D or 83L
Schedule 6	Procedural and other provisions applicable on orders for retrial
Schedule 7	Application of Part IV of Mental Health Ordinance (Cap 136) where order made under section 83N
Schedule 8	Level of fine for offences

**Long title**

To consolidate and amend the laws relating to criminal procedure, evidence and practice.  
(Replaced 24 of 1950 Schedule)  
[7 July 1899]  
(Originally 13 of 1899; 14 of 1906;  
31 of 1911; 17 of 1919; 14 of 1929  
(Cap 221 of 1950))

**1. Short title**

This Ordinance may be cited as the Criminal Procedure Ordinance.  
(Amended 5 of 1924 s. 6)

**2. Interpretation**

In this Ordinance, unless the context otherwise requires—

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

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

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

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

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

“hospital order” (入院令) means an order made under section 45, 54 or 54A of the Mental Health Ordinance (Cap 136); (Added 34 of 1972 s. 2. Amended 37 of 1973 s. 7; 46 of 1983 s. 33; 81 of 1997 s. 59)

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

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

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

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

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

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

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

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

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

“witness summons” (證人傳票) means a summons issued under section 34. (Added 59 of 1981 s. 3)  
(Amended 50 of 1911 s. 4; 1 of 1912 Schedule;  
21 of 1912 s. 2; 5 of 1924 s. 12 & Schedule)

## PART I BUSINESS OF THE COURT

**5. Bringing of prisoners before the court**

The Commissioner of Correctional Services shall, by himself or his deputy, bring each prisoner awaiting trial before the court when his case is called for trial, and during the continuance of the trial shall have him under his charge and custody, and remand him to prison, by permission or order of the court, during the progress of the trial or on any adjournment thereof.

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

**7. Assistance by police**

The police shall afford such assistance as may be necessary to enable the Commissioner of Correctional Services to comply with the requirements of section 5.

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

**9. Rules and orders as to practice and procedure**

(1) Rules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules Committee, which shall consist of—

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

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

(2) Such rules and orders may provide for the times for or within which documents must be filed or notices given, the duties of the various officers of the court, the manner in which cases and arguments are to be presented, and generally for the better carrying out of the provisions of this Ordinance. (Amended 24 of 1950 Schedule; 15 of 1969 s. 2; 13 of 1995 s. 23)

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

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

(Replaced 5 of 1933 s. 2)

### 9A. Legal aid in criminal cases

(1) Subject to subsection (1A), the Rules Committee may, with the approval of the Legislative Council, make rules providing for the granting of legal aid in criminal cases to persons of limited means which rules, in particular, may— (Amended 13 of 1995 s. 24; 37 of 1996 s. 2)

- (a) make provision as to the information to be given by a person seeking or receiving legal aid;
  - (b) make provision as to the manner in which the rate of a person's disposable income and the amount of his disposable capital are to be computed for the purpose of the rules and the person or authority by whom such computation shall be made;
  - (c) determine whether any resources are to be treated as disposable income or disposable capital and for taking into account fluctuations of income;
  - (d) determine the contribution towards costs and expenses to be made by a person receiving legal aid;
  - (e) determine the extent to which any resources of a person's husband or wife shall be treated as that person's resources for the purpose of the rules;
  - (f) provide, in relation to infants and in other special cases, for taking into account the resources of other persons;
  - (g) prescribe the scale of fees and costs which shall be paid to solicitor or counsel acting for an aided person (or submitting any opinion for the purpose of the rules);
  - (h) prescribe any forms to be used for the purpose of the rules.
- (1A) Rules may be made under subsection (1) for the granting of legal aid to accused persons who are not represented by counsel or solicitor (and whether or not such persons are of limited means) for the purposes of assisting the court, within the meaning of section 75(6), in its consideration of the question of fitness to be tried of such persons. (Added 37 of 1996 s. 2)

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

(Added 15 of 1969 s. 3)

(See also Cap 91 s. 28(2))

### 9B. Rules for payment of allowance to witnesses

(1) The Rules Committee may, with the approval of the Legislative Council, make rules providing for the payment of an allowance to witnesses in criminal proceedings before any court, and such rules may, in particular, provide for— (Amended 13 of 1995 s. 25)

- (a) the classification of witnesses;
  - (b) the payment of different rates of allowance to different classes of witnesses; and
  - (c) the rate of allowance which may be paid to witnesses in a particular class.
- (2) The expenses of the allowances paid under such rules shall be met from moneys provided by the Legislative Council.
- (3) In this section—
- (a) "court" (法庭) includes the District Court and a magistrate;
  - (b) "witness" (證人) means any person properly attending a court to give evidence, whether or not called to give evidence at the instance of the court, and whether or not he gives evidence, and includes—
    - (i) a person who conducts a prosecution under section 14 of the Magistrates Ordinance (Cap 227) and obtains an order for costs under section 69 of that Ordinance; and
    - (ii) a defendant who obtains an order for costs under section 73A, or section 69 of the Magistrates Ordinance (Cap 227),

but does not include a person who is—

- (A) a police officer attending court in the course of his duties;

(B) an officer of the Correctional Services Department attending court in the course of his duties; or

(C) a prisoner in respect of any occasion on which he is conveyed to court in custody.

(Replaced 6 of 1990 s. 2)

(Added 56 of 1971 s. 2)

## PART IA BAIL

### 9C. Interpretation

In this Part—

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

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

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

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

(Added 56 of 1994 s. 2)

### 9D. Right of accused person to be admitted to bail

(1) Subject to this section and section 9G, a court shall order an accused person to be admitted to bail, whether he has been committed for trial or not, when—

- (a) he appears or is brought before a court in the course of or in connection with proceedings for the offence of which he is accused; or
  - (b) he applies to the court before which he is accused to be admitted to bail; or
  - (c) he applies to a judge under section 9J to be admitted to bail.
- (2) An order under subsection (1) may be subject to such conditions as appear to the court to be necessary to secure that the person admitted to bail will not—
- (a) fail to surrender to custody as the court may appoint; or
  - (b) commit an offence while on bail; or
  - (c) interfere with a witness or pervert or obstruct the course of justice.
- (3) Without affecting the generality of subsection (2), the court—
- (a) may not make it a condition of admission to bail that a recognizance of bail be taken from the person so admitted but may make it a condition, for the purpose only of securing the surrender of that person to custody as the court may appoint, that a recognizance of bail be taken from a surety;
  - (b) may make it a condition of admission to bail that the person so admitted—
    - (i) shall surrender to the court any passport or travel document;
    - (ii) shall not leave Hong Kong;
    - (iii) shall report to a police station or the offices of the Independent Commission Against Corruption as the court may specify;
    - (iv) shall reside at a specified address and be present therein between such times as the court may specify;
    - (v) shall not enter any place or premises as the court may specify;
    - (vi) shall not go within such distance of any place or premises as the court may specify;
    - (vii) shall not contact directly or indirectly such person as the court may specify;
    - (viii) or any person on his behalf or he and any such person shall, for the purpose only of securing the surrender to custody of the person admitted to bail as the court may appoint, deposit with the court such reasonable sum of money as the court may require.

- (4) In considering the suitability of a surety for a proposed recognizance of bail under subsection (3)(a), the court shall have regard to—
- the surety's financial resources;
  - any other matter that appears to the court to be relevant,
- and any recognizance of bail taken from a surety under that subsection may, if an order under subsection (1) so directs, be taken before any magistrate or before the Commissioner of Correctional Services, the Deputy Commissioner of Correctional Services or a Senior Superintendent or Superintendent of Correctional Services.

(Added 56 of 1994 s. 2)

**9E. Relief from obligation as surety**

- (1) If on application made to it by a surety from whom a recognizance of bail has been taken a court is satisfied that the surety has reasonable cause to believe that the person for whom he is surety will not surrender to custody as shall have been appointed by the court, the court may order that he be relieved of his obligations as a surety.
- (2) On the making of an order under subsection (1), the court shall issue a warrant for the arrest of the person for whom the surety was provided.

(Added 56 of 1994 s. 2)

**9F. Prohibition against agreements to indemnify surety**

- (1) Any agreement indemnifying or purporting to indemnify any person against any liability which he may incur as a surety to secure the surrender to custody of a person admitted to bail shall be void.
- (2) Any person who enters into an agreement of the description mentioned in subsection (1) commits an offence.
- (3) An offence under subsection (2) is committed whether the agreement is entered into before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or money's worth.
- (4) Any person who commits an offence under subsection (2) is liable on summary conviction to a fine of \$75000 and to imprisonment for 6 months, and on conviction upon indictment to a fine of any amount and to imprisonment for 12 months.

(Added 56 of 1994 s. 2)

**9G. An accused person may be refused bail in particular circumstances**

- (1) The court need not admit an accused person to bail if it appears to the court that there are substantial grounds for believing, whether or not an admission were to be subject to conditions under section 9D(2), that the accused person would—
- fail to surrender to custody as the court may appoint; or
  - commit an offence while on bail; or
  - interfere with a witness or pervert or obstruct the course of justice.
- (2) The court in forming an opinion under subsection (1) may have regard to—
- the nature and seriousness of the alleged offence and, in the event of conviction, the manner in which the accused person is likely to be dealt with;
  - the behaviour, demeanour and conduct of the accused person;
  - the background, associations, employment, occupation, home environment, community ties and financial position of the accused person;
  - the health, physical and mental condition and age of the accused person;
  - the history of any previous admissions to bail of the accused person;
  - the character, antecedents and previous convictions, if any, of the accused person;
  - the nature and weight of the evidence of the commission of the alleged offence by the accused person;
  - any other thing that appears to the court to be relevant.
- (3) An accused person need not be admitted to bail if it appears to the court that he should be detained in custody for—

- if he has attained the age of 18 years, his own protection; or
  - if he has not attained the age of 18 years, his own protection, safety or welfare; or
  - the purpose of further inquiry relating to the determining of the question of whether he should be admitted to bail.
- (4) An accused person need not be admitted to bail if—
- he is detained in custody—
    - under a sentence of any court; or
    - for or in connection with a charge of failing to surrender to custody under section 9L; or
  - the court is satisfied that—
    - he has previously failed to comply with any condition of bail imposed under section 9D; or
    - any other court dealing with him in the same proceedings is or has been so satisfied.
- (5) An accused person need not be admitted to bail if he is the subject of a hospital order for the time being in force.
- (6) An accused person need not be admitted to bail if he is the subject of an order made under section 109B (suspended sentence) for the time being in force and he is before the court under section 109D or 109E.
- (7) An accused person need not be admitted to bail if he is the subject of a deportation order for the time being in force made under section 20 of the Immigration Ordinance (Cap 115).
- (8) An accused person need not be admitted to bail if he is before the court under section 5 or 6 of the Probation of Offenders Ordinance (Cap 298) (breach of probation order; or commission of further offence).
- (9) An accused person need not be admitted to bail if he is before the court under section 8 or 9 of the Community Service Orders Ordinance (Cap 378) (breach of community service order; or commission of further offence).
- (10) An accused person charged with—
- murder; or
  - treason under section 2 of the Crimes Ordinance (Cap 200),
- shall be admitted to bail only upon the order of a judge.
- (11) If at any hearing the court refuses to admit an accused person to bail the court shall, at each subsequent hearing while the accused remains in custody, consider the question of whether or not he ought to be admitted to bail and—
- on the first occasion after that upon which the court first refused to so admit, the court shall hear any argument as to fact or law put to it in support of his admission to bail, whether or not it has previously heard that argument;
  - on the second or any subsequent occasion after that upon which the court first refused to so admit, the court need not hear any argument as to fact or law put to it in support of his admission to bail, if it has previously heard that argument.

(Added 56 of 1994 s. 2)

**9H. Application by Secretary for Justice for review of admission to bail by a District Judge or magistrate**

- (1) Where a District Judge or magistrate has admitted any person to bail the Secretary for Justice may apply to a judge to review the decision of the District Judge or magistrate. (Amended L.N. 362 of 1997)
- (2) Subject to section 9I(3), an application under subsection (1) shall be made by summons before a judge in chambers and supported by affidavit.
- (3) The summons may be served on the person admitted to bail at any time before the time appointed therein for the hearing.
- (4) On the hearing of the application the Secretary for Justice shall be entitled to put before the judge such relevant argument and such relevant matter as he thinks proper, whether or not the same

**22. Evidence in criminal proceedings from documentary records**

- (1) Subject to this section and section 22B, a statement contained in a document shall be admitted in any criminal proceedings as prima facie evidence of any fact stated therein if—
- direct oral evidence of that fact would be admissible in those proceedings; and
  - the document is or forms part of a record compiled by a person acting under a duty from information supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information; and
  - the person who supplied the information—
    - is dead or by reason of his bodily or mental condition unfit to attend as a witness;
    - is outside Hong Kong and it is not reasonably practicable to secure his attendance;
    - cannot be identified and all reasonable steps have been taken to identify him;
    - his identity being known, cannot be found and all reasonable steps have been taken to find him;
    - cannot reasonably be expected (having regard to the time which has elapsed since he supplied or acquired the information and to all the circumstances) to have any recollection of the matters dealt with in that information; or
    - having regard to all the circumstances of the case, cannot be called as a witness without his being so called being likely to cause undue delay or expense.
- (2) A statement made in connection with any criminal proceedings or with any investigation relating or leading to any criminal proceedings shall not be admissible under this section.
- (3) Subsection (1) applies whether the information was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied was acting under a duty; and that subsection applies also where the person who compiled the record also supplied the information.
- (4) Where in any criminal proceedings a statement based on information supplied by any person is given in evidence by virtue of this section—
- any evidence which, if that person had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings; and
  - evidence tending to prove that that person has, whether before or after supplying the information, made a statement (whether oral or otherwise) which is inconsistent with that information shall be admissible for the purpose of showing that he has contradicted himself: Provided that nothing in this subsection shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.
- (5) A statement which is admissible by virtue of this section shall not be capable of corroborating evidence given by the person who supplied the information on which the statement is based.
- (6) In deciding for the purposes of subsection (1)(c)(i) whether a person is unfit to attend as a witness the court may act on a certificate purporting to be signed by a medical practitioner registered or deemed to be registered under the Medical Registration Ordinance (Cap 161).
- (7) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.
- (8) This section does not apply to any document to which section 22A applies.

(Replaced 37 of 1984 s. 7)

**22A. Documentary evidence in criminal proceedings from computer records**

- (1) Subject to this section and section 22B, a statement contained in a document produced by a computer shall be admitted in any criminal proceedings as prima facie evidence of any fact stated therein if—
- direct oral evidence of that fact would be admissible in those proceedings; and
  - it is shown that the conditions in subsection (2) are satisfied in relation to the statement and computer in question.

- (2) The conditions referred to in subsection (1)(b) are—
- that the computer was used to store, process or retrieve information for the purposes of any activities carried on by any body or individual;
  - that the information contained in the statement reproduces or is derived from information supplied to the computer in the course of those activities; and
  - that while the computer was so used in the course of those activities—
    - appropriate measures were in force for preventing unauthorized interference with the computer; and
    - the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.
- (3) Notwithstanding subsection (1), a statement contained in a document produced by a computer used over any period to store, process or retrieve information for the purposes of any activities ("the relevant activities") carried on over that period shall be admitted in any criminal proceedings as prima facie evidence of any fact stated therein if—
- direct oral evidence of that fact would be admissible in those proceedings;
  - it is shown that no person (other than a person charged with an offence to which such statement relates) who occupied a responsible position during that period in relation to the operation of the computer or the management of the relevant activities—
    - can be found; or
    - if such a person is found, is willing and able to give evidence relating to the operation of the computer during that period;
  - the document was so produced under the direction of a person having practical knowledge of and experience in the use of computers as a means of storing, processing or retrieving information; and
  - at the time that the document was so produced the computer was operating properly or, if not, any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents,
- but a statement contained in any such document which is tendered in evidence in criminal proceedings by or on behalf of any person charged with an offence to which such statement relates shall not be admissible under this subsection if that person occupied a responsible position during that period in relation to the operation of the computer or the management of the relevant activities.
- (4) Where over a period the function of storing, processing or retrieving information for the purposes of any activities carried on over that period was performed by computer, whether—
- by a combination of computers operating over that period; or
  - by different computers operating in succession over that period; or
  - by different combinations of computers operating in succession over that period; or
  - in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,
- all the computers used for that purpose whether by one or more persons or bodies during that period shall be treated for the purposes of this section as constituting a single computer.
- (5) Subject to subsection (6), in any criminal proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate—
- identifying the document containing the statement and describing the manner in which it was produced, and explaining, so far as may be relevant in the proceedings, the nature and contents of the document;
  - giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
  - dealing with any of the matters to which the conditions mentioned in subsection (2) relate,
- and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall, on its production without further proof, be admitted in those proceedings as prima facie evidence

of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(6) Unless the court otherwise orders, a certificate shall not be admitted in evidence under subsection (5) unless 14 days' notice in writing of the intention to tender such certificate in evidence, together with a copy thereof and of the statement to which it relates, has been served—

- (a) where the certificate is tendered by the prosecution, on the defendant (or, if more than one, on each defendant) or his solicitor;
- (b) where the certificate is tendered by a defendant, on the Secretary for Justice, (Amended L.N. 362 of 1997)

but nothing in this subsection shall affect the admissibility of a certificate in respect of which notice has not been served in accordance with the requirements of this subsection if no person entitled to be so served objects to its being so admitted.

(7) Notwithstanding subsection (5), a court may (except where subsection (3) applies) require oral evidence to be given of any of the matters mentioned in subsection (5).

(8) Any person who in a certificate tendered in evidence under subsection (5) makes a statement which he knows to be false or does not believe to be true shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 2 years.

(9) For the purposes of this section—

- (a) information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored, processed or retrieved for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(10) The Criminal Procedure Rules Committee constituted under section 9 of the Criminal Procedure Ordinance (Cap 221) may make rules with respect to the procedure to be followed under this section. (Amended 13 of 1995 s. 27)

(11) Nothing in this section affects the admissibility of a document produced by a computer where the document is tendered otherwise than for the purpose of proving a fact stated in it.

(12) Subject to subsection (4), in this section "computer" (電腦) means any device for storing, processing or retrieving information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

(13) The Legislative Council may by resolution amend subsection (12) so as to make it cover devices performing functions of a similar character to the functions performed by the devices mentioned in that subsection.

(Added 37 of 1984 s. 7)

## 22B. Provisions supplementary to sections 22 and 22A

(1) Where in any criminal proceedings a statement contained in a document is admissible in evidence by virtue of section 22 or 22A, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document or of the material part thereof.

(2) Where in any criminal proceedings a statement contained in a document is admitted in evidence by virtue of section 22 or 22A, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including the form and contents of the document in which the statement is contained.

(3) In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of section 22 or 22A, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—

(a) in the case of a statement falling within section 22, to the question whether or not the person who supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and

(b) in the case of a statement falling within section 22A, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

(4) In sections 22 and 22A and this section "document" (文件), "copy" (副本) and "statement" (陳述) have the same meaning as in Part IV.

(5) Nothing in section 22 or 22A shall prejudice the admissibility of any evidence that would be admissible apart from that section.

(Added 37 of 1984 s. 7)

## 23. Copy of records of Hong Kong Observatory

A document purporting to be a copy of the records or part of the records kept by the Director of the Hong Kong Observatory and purporting to be certified by the officer having the custody of the records shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and— (Amended L.N. 362 of 1997)

(a) until the contrary is proved, the court before which such document is produced shall presume—

- (i) that the document is certified by such officer;
- (ii) that the document is a true copy of the records or part of the records to which it refers; and
- (iii) that the records were duly made and compiled at the time referred to in the document; and

(b) such document shall be prima facie evidence of all matters contained therein.

(Added 46 of 1967 s. 2. Amended 31 of 1969 s. 3)

## 24. Certificate of accuracy of chronometer

A document purporting to be a record of the testing of and the accuracy of a chronometer and purporting to be certified by an officer of the Hong Kong Observatory shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and— (Amended L.N. 362 of 1997)

(a) until the contrary is proved the court before which such document is produced shall presume—

- (i) that the document is certified by such officer;
- (ii) that the facts stated in the document relating to the chronometer are true; and
- (iii) that the record was made and compiled at the time referred to in the document; and

(b) such document shall be prima facie evidence of all matters contained therein.

(Added 46 of 1967 s. 2. Amended 31 of 1969 s. 4)

**PART VIII  
PROTECTION OF MAGISTRATES**

**125. Action against magistrate for act within his jurisdiction**

In every action brought against any magistrate for any act done by him in the execution of his duty as such magistrate, with respect to any matter within his jurisdiction as such magistrate, it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such action the plaintiff fails to prove such allegation, he shall be nonsuit or the judgment or verdict, as the case may be, shall be for the defendant.

[cf. 1848 c. 44 s. 1 U.K.]

**126. Action for act done without or in excess of jurisdiction**

(1) For any act done by a magistrate in a matter over which by law he has no jurisdiction or in which he has exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by the magistrate in any such matter, may maintain an action against the magistrate in the same form and in the same case as he might have done before the commencement of this Ordinance, without making any allegation in his pleadings that the act complained of was done maliciously and without reasonable and probable cause:

Provided, nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction or order has been quashed, either on appeal to the Court of Appeal or on application to the court, nor shall any such action be brought for anything done under any such warrant which has been issued by the magistrate to procure the appearance of such party, and which has been followed by a conviction or order in the same matter, until after such conviction or order has been so quashed as aforesaid; or if such last-mentioned warrant has not been followed by any such conviction or order, or if it is a warrant on an information for an alleged indictable offence, nevertheless, if a summons was issued previously to the warrant, and such summons was served on such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of the summons, in such case no such action shall be maintained against the magistrate for anything done under warrant.

(2) In any action under this section it shall be a good defence that the act complained of was not done maliciously and without reasonable and probable cause, and the onus of proving the same shall rest with the magistrate. (Added 2 of 1955 s. 9)

(3) Save under and in accordance with the provisions of this section no action shall lie in any civil court against a magistrate for any act done in a matter over which by law he has no jurisdiction or in which he has exceeded his jurisdiction. (Added 2 of 1955 s. 9)

[cf. 1848 c. 44 s. 2 U.K.]

**127. Action to be against convicting magistrate**

Where a conviction or order is made by one magistrate and a warrant of distress or of commitment is granted thereon by another magistrate bona fide and without collusion, no action shall be brought against the magistrate who so granted the warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the magistrate who made the same, but the action, if any, shall be brought against the magistrate who made the conviction or order.

[cf. 1848 c. 44 s. 3 U.K.]

**128. Compelling magistrate to do act and immunity for doing it**

In all cases where a magistrate refuses to do any act relating to the duties of his office, it shall be lawful for the party requiring the act to be done to apply to the Court of First Instance for an order of mandamus, and if the court make the order, no action or proceeding whatsoever shall be commenced or prosecuted against the magistrate for having obeyed the order.

(Replaced 30 of 1958 s. 9. Amended 25 of 1998 s. 2)

[cf. 1938 c. 63 s. 19(1) & Second Schedule U.K.]

**129. After appeal no action for anything done under warrant upon it**

In any case where a warrant of distress or warrant of commitment is granted by a magistrate on any conviction or order which, either before or after the granting of such warrant, has been or is confirmed on appeal, no action shall be brought against the magistrate who so granted the warrant for anything which may have been done under the same by reason of any defect in the conviction or order.

[cf. 1848 c. 44 s. 6 U.K.]

**130. Setting aside of action prohibited by the Ordinance**

In any case where by this Ordinance it is enacted that no action shall be brought in particular circumstances, if any such action is brought, it shall be lawful for a judge, on summons taken out by the defendant and on an affidavit of facts, to set aside the proceedings in the action, with or without costs, as to him may seem meet.

[cf. 1848 c. 44 s. 7 U.K.]

**131. Provisions as to limitation of actions, costs, tender, payment and notice**

Where any action is brought against any magistrate for any act done by him in a matter over which by law he has no jurisdiction or in which he has exceeded his jurisdiction, or in respect of any alleged neglect or default in the exercise of his jurisdiction, the following provisions shall apply—

(a) the action shall not lie or be instituted, unless, it is commenced within 6 months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within 6 months next after the ceasing thereof;

(b) whenever in any action a judgment is obtained by the defendant it shall carry costs to be taxed as between solicitor and client;

(c) in any action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment;

(d) if, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends, before the commencement of the action, the court may award to the defendant costs to be taxed as between solicitor and client.

[cf. 1893 c. 61 s. 1 U.K.]

**132. Amount of damages in certain cases**

In any case where the plaintiff in any such action is entitled to recover, and he proves the levying or payment of any fine or sum of money under any conviction or order as part of the damages which he seeks to recover, or if he proves that he was imprisoned under such conviction or order, and seeks to recover damages for such imprisonment, he shall not be entitled to recover the amount of such fine or sum so levied or paid, or any sum beyond the sum of 5 cents as damages for such imprisonment, or any costs of suit whatsoever, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum which he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted or for non-payment of the sum which he was so ordered to pay.

[cf. 1848 c. 44 s. 13 U.K.]

**PART IX  
MISCELLANEOUS**

**133. Rules**

The Chief Justice, with the approval by resolution of the Legislative Council, may make rules for the carrying into effect of this Ordinance and for any matter ancillary thereto.

**134. Regulations as to costs and fees**

- (1) The Chief Justice, with the approval by resolution of the Legislative Council, may make regulations—
- as to the fees to be taken (if any) at the magistrates' court in respect of any proceedings or of the issuing, service or execution of any process or otherwise;
  - as to the costs (if any) to be allowed for the attendance of witnesses or for legal assistance or otherwise;
  - fixing a scale of such fees and costs;
  - exempting any particular class of cases from the payment of any such fees or costs;
  - as to the fees to be taken for the supply of copies of minutes and extracts from registers under section 35A. (Added 14 of 1979 s. 4)
- (2) A table of the fees and costs for the time being in force shall be hung up in some conspicuous part of the magistrates' court.
- (3) A magistrate may refuse to do any act for which any fee is payable unless such fee has been paid, and, where any such act is done and the fee due thereon remains unpaid, any magistrate may summon the person from whom such fee is due and the fee may be recovered in the manner provided in this Ordinance for the recovery of a fine.

**135. Amendment of First Schedule and Fourth Schedule**

The Chief Executive in Council may by order amend the First Schedule and the Fourth Schedule.  
(Amended 59 of 1972 s. 3; 25 of 1998 s. 2)  
(Part IX replaced 32 of 1966 s. 5)

**SCHEDULE 2**

Sch 2 [sections 91 & 92]  
(Amended 30 of 1958 s. 12)

**PART I**

- Any offence which is punishable with death.
- Any offence (except an offence against section 10 or 12 of the Theft Ordinance (Cap 210), or an offence against Part VIII of the Crimes Ordinance (Cap 200)) which is punishable with imprisonment for life. (Amended 30 of 1958 Schedule; 58 of 1967 s. 4; 21 of 1970 s. 35; 91 of 1970 s. 6; 48 of 1972 s. 4)
- Any offence against section 21 or 22 of the Crimes Ordinance (Cap 200).
- Misprision of treason.
- Any offence against Part I or Part II of the Crimes Ordinance (Cap 200). (Amended 25 of 1998 s. 2)
- Blasphemy and offences against religion.
- Composing, printing or publishing blasphemous, seditious or defamatory libels, except as provided by section 16 of the Defamation Ordinance (Cap 21).
- Genocide and any conspiracy or incitement to commit genocide. (Added 52 of 1969 s. 4)
- Torture. (Added 11 of 1993 s. 9)

**PART II**

- Perjury and subornation of perjury.
- Making or suborning any other person to make a false oath punishable as perjury. (Amended 50 of 1991 s. 4)
- Any offence against the provisions of the laws relating to bankrupts.
- Bigamy.
- Bribery. (Replaced 24 of 1950 Schedule)
- (Repealed 48 of 1972 s. 4)
- An offence against section 22(1) of the Theft Ordinance (Cap 210). (Replaced 21 of 1970 s. 35)

**PART III**

[section 88]

- Any offence which is punishable with death.
- Any offence which is punishable with imprisonment for life except an offence against section 37C, 37D, 37O or 37P of the Immigration Ordinance (Cap 115), an offence against section 53 or 123 of the Crimes Ordinance (Cap 200), an offence against Part VIII of the Crimes Ordinance (Cap 200), an offence against section 4 or 6 of the Dangerous Drugs Ordinance (Cap 134), an offence against section 10 or 12 of the Theft Ordinance (Cap 210), section 17, 28 or 29 of the Offences against the Person Ordinance (Cap 212) or section 16, 17 or 18 of the Firearms and Ammunition Ordinance (Cap 238). (Replaced 49 of 1965 s. 21. Amended L.N. 165 of 1967; 41 of 1968 s. 59; 21 of 1970 s. 35; 48 of 1972 s. 4; 25 of 1978 s. 6; 59 of 1980 s. 2; 68 of 1981 s. 56; 59 of 1984 s. 7; 52 of 1992 s. 11)
- Any offence against section 21 or 22 of the Crimes Ordinance (Cap 200).
- Misprision of treason.
- Any offence against Part I or Part II of the Crimes Ordinance (Cap 200). (Amended 25 of 1998 s. 2)
- Blasphemy and offences against religion.
- Composing, printing or publishing blasphemous, seditious or defamatory libels.  
(Part III added 2 of 1953 s. 4)
- Genocide and any conspiracy or incitement to commit genocide. (Added 52 of 1969 s. 4)  
(Second Schedule replaced 24 of 1949 Schedule)

**SCHEDULE 3****OFFENCES TO WHICH DEFENDANT MAY PLEAD  
GUILTY BY LETTER**

[section 18E(1)]

**1. Summary Offences**

Any offence against section 4(11) or section 4A (Obstruction of public places) or section 13(1) (Making noise at night) of the Summary Offences Ordinance (Cap 228). (Replaced 58 of 1967 s. 5)

**2. Rabies**

An offence against section 23 (Dogs to be kept under control) of the Rabies Ordinance (Cap 421) or section 20 (Dogs to be licensed) of the Rabies Regulation (Cap 421 sub. leg.). (Replaced L.N. 8 of 1995)

**3. Road Traffic**

(1) Any offence against section 41(1), 42(2), 46, 48, 50, 51, 52(1) or 52(2) of the Road Traffic Ordinance (Cap 374).

(2) Any offence against the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap 374 sub. leg.).

(3) Any offence against the Road Traffic (Driving Licences) Regulations (Cap 374 sub. leg.).

(4) Any offence against the Road Traffic (Parking) Regulations (Cap 374 sub. leg.).

(5) Any offence against the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg.), other than a contravention of regulation 29.

(6) An offence against the Road Traffic (Traffic Control) Regulations (Cap 374 sub. leg.), other than a contravention of regulation 53 or 54.

(7) Any offence against the Road Traffic (Public Service Vehicles) Regulations (Cap 374 sub. leg.).

(8) Any offence against the Road Traffic (Safety Equipment) Regulations (Cap 374 sub. leg.).

(9) Any offence against the Road Traffic (Village Vehicles) Regulations (Cap 374 sub. leg.).  
(Added L.N. 18 of 1987)

(Replaced L.N. 229 of 1984)

**4. Public Health and Urban Services**

Any offence against section 9 (Prevention of obstruction) of the Public Markets Regulation (Cap 132 sub. leg.). (Amended 10 of 1986 s. 32; 78 of 1999 s. 7)

"probationer" (受感化者) means a person for the time being under supervision by virtue of a probation order.

(2) For the purposes of this Ordinance, except section 3(7), where a probation order or an order for conditional discharge has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought. (Amended 26 of 1976 s. 2) (Added 7 of 1987 s. 2)

### 3. Probation

(1) Where a court by or before which a person is tried for an offence (not being an offence the sentence for which is fixed by law) is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, after conviction, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than 1 year nor more than 3 years. (Replaced 54 of 1961 s. 2. Amended 20 of 1971 s. 2; 55 of 1986 s. 8)

(2) A probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences:

Provided that (without prejudice to the power of the court to make an order under section 7(2)) the payment of compensation under that section shall not be included among the requirements of a probation order. (Amended 48 of 1972 s. 4) [cf. 1948 c. 58 s. 3 U.K.]

(3) Without prejudice to the generality of subsection (2), a probation order may include requirements relating to the residence of the offender:

Provided that—

(a) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(b) where the order requires the offender to reside in an approved institution, the name of the institution and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the order.

(4) Before making a probation order, the court shall explain, or cause to be explained, to the offender in a language understood by him the effect of the order (including any additional requirements proposed to be inserted therein under subsection (2) or (3)) and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than 14 years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

(5) A probationer shall be subject to the supervision of the probation officer appointed or assigned to the area in which such probationer may from time to time reside, or to such other probation officer as the principal probation officer may nominate.

(6) (Repealed 68 of 1995 s. 53)

(7) The court by which a probation order is made, or any court by which an order is made under section 4(2) amending any such probation order, shall forthwith give copies of such order, or such amending order as the case may be, to the probation officer responsible for the supervision of the probationer and he shall give a copy thereof to the probationer and to the person in charge of any institution in which the probationer is or was by such order or such amending order required to reside.

### 3A. Restriction on punishment of probationer

An offender in whose case a probation order is made shall not be sentenced further.

(Replaced 13 of 1995 s. 2)

### 4. Discharge, amendment and review of probation orders

(1) Any court may upon application made by the probation officer responsible for the supervision of an offender or by a probationer discharge a probation order:

Provided that if the probation order was made by the Court of First Instance or by the District Court such order shall not be discharged except by the court which made the order. (Replaced 54 of 1961 s. 3. Amended 25 of 1998 s. 2)

(2) Any court may, upon application made by the probation officer responsible for the supervision of an offender or by a probationer, by order amend a probation order by cancelling any of the requirements thereof or by inserting therein (either in addition to or in substitution for any such requirement) any requirement which could be included in the order if it were then being made by that court in accordance with the provisions of section 3(2): (Amended 54 of 1961 s. 3)

Provided that—

(a) a court shall not amend a probation order by reducing the probation period, or by extending that period beyond the end of 3 years from the date of the original probation order; (Amended L.N. 587 of 1995)

(b) a court shall not so amend a probation order that the probationer is thereby required to reside in an approved institution for any period exceeding 12 months in all; and (Amended 54 of 1961 s. 3)

(c) where the probation order was made by the Court of First Instance or the District Court, the order shall not be amended except by the court which made the order. (Added 54 of 1961 s. 3. Amended 25 of 1998 s. 2) [cf. 1948 c. 58 Schedule 1 U.K.]

(3) Where a court proposes to amend a probation order under this section, otherwise than on the application of the probationer, it shall summon him to appear before the court; and if the probationer is not less than 14 years of age, the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of such probation order as amended:

Provided that this subsection shall not apply to an order cancelling a requirement of a probation order or reducing the period of any requirement thereof.

(4)-(5) (Repealed 76 of 1979 s. 2)

(6) Where, under any of the provisions of this Ordinance, a probation order is discharged or amended or the probationer is sentenced for the offence for which he was placed on probation, the court shall send for the record in which the original order of probation appears and shall endorse thereon any order it may make or any sentence it may pass, as the case may be, and where the probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect. (Replaced 54 of 1961 s. 3)

### 5. Breach of requirements of probation order

(1) If at any time during the probation period it appears on information to a magistrate that the probationer has failed to comply with any of the requirements of the order, the magistrate may issue a summons requiring the probationer to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest. (Amended 54 of 1961 s. 4)

(2) If it is proved to the satisfaction of the magistrate's court before which a probationer appears or is brought under this section that the probationer has failed to comply with any of the requirements of the probation order, the court may, without prejudice to the continuance of the probation order, caution him or impose on him a fine not exceeding \$500, or may— (Amended 54 of 1961 s. 4; 76 of 1979 s. 3)

(a) if the probation order was made by a magistrate's court, deal with the probationer for the offence in respect of which the probation order was made, in any manner in which the court could deal with him if he had just been tried for or convicted of that offence by or before that court or refer the case to the court by which the probation order was made;

(b) if the probation order was made by the Court of First Instance or District Court, commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the Court of First Instance or the District Court, as the case may be. (Amended 25 of 1998 s. 2)

(3) Where the magistrate's court deals with the case as provided in subsection (2)(b), then—

(a) the court shall send to the Court of First Instance or the District Court a certificate signed by the magistrate, certifying that the probationer has failed to comply with such of

the requirements of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Court of First Instance or District Court; and

(b) where the probationer is brought or appears before the Court of First Instance or District Court, and it is proved to the satisfaction of such court that he has failed to comply with any of the requirements of the probation order, the court may deal with him, for the offence in respect of which the probation order was made, in any manner in which the court could deal with him if he had just been tried for or convicted of that offence by or before that court. (Amended 25 of 1998 s. 2)

(4) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction (which expression includes any costs or compensation adjudged to be paid by the conviction of which the amount is ascertained by the conviction). (Amended 54 of 1961 s. 4; 48 of 1972 s. 4)

[cf. 1948 c. 58 s. 6 U.K.]

## 6. Commission of further offence

(1) If it appears to a judge or magistrate on whom jurisdiction is hereinafter conferred that a person in whose case a probation order or an order for conditional discharge has been made has been convicted by any court in Hong Kong of an offence committed during the probation period or during the period of conditional discharge, and has been dealt with in respect of that offence, the judge or magistrate may issue a summons requiring that person to appear at the place and time specified therein, or may issue a warrant for his arrest: (Amended 17 of 1999 s. 3)

Provided that a magistrate shall not issue such a warrant except on information in writing and on oath.

(2) The following persons shall have jurisdiction for the purposes of subsection (1), that is to say—

- (a) if the probation order or the order for conditional discharge was made by the Court of First Instance, a judge of the Court of First Instance;
- (b) if the order was made by the District Court, a district judge;
- (c) if the order was made by a magistrate's court, or juvenile court, a magistrate. (Amended 47 of 1997 s. 10)

(3) A summons or warrant issued under this section shall direct the person so convicted to appear or be brought before the court by which the summons or warrant was issued or before the court by which the probation order or the order for conditional discharge was made: (Amended 54 of 1961 s. 5)

Provided that if that court is the Court of First Instance or the District Court and he cannot forthwith be brought before that court a summons or warrant shall have effect as if it directed him to be brought before a magistrate's court or juvenile court and such magistrate's court or juvenile court shall commit him to custody or release him on bail with or without sureties until he can be brought or appear before the Court of First Instance or District Court, as the case may be.

(4) If a person in whose case a probation order or an order for conditional discharge has been made by the Court of First Instance or the District Court is convicted by a magistrate's court in respect of an offence committed during the probation period or during the period of conditional discharge, the magistrate's court may order that he be brought or appear before the court by which the order was made if the magistrate considers it expedient to do so, and for this purpose may commit him to custody or release him on bail (with or without sureties); and if the magistrate's court makes such an order, it shall send to the Court of First Instance or the District Court, as the case may be, a copy of the minute or memorandum of the conviction entered in the register, signed by the magistrate. (Replaced 76 of 1979 s. 4)

(5) Where it is proved to the satisfaction of the court before which a probationer or a person subject to an order for conditional discharge appears or is brought pursuant to this section that the person in whose case such order was made has been convicted and, except in the case of an order

under subsection (4), dealt with in respect of an offence committed during the probation period, or during the period of conditional discharge, as the case may be, the court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if he had just been tried for or convicted of that offence by or before that court. (Amended 54 of 1961 s. 5; 76 of 1979 s. 4)

(5A) Where a person has been ordered to be brought or appear before the Court of First Instance or District Court under subsection (4), that court, after dealing with him under subsection (5) in respect of the original offence, may deal with such person in respect of the offence referred to in subsection (4) in any manner in which he could be dealt with by a magistrate's court for that offence, or order that he be brought or appear before the magistrate's court to be dealt with in respect of that offence and for such purpose may commit him to custody or release him on bail (with or without sureties); and if the Court of First Instance or District Court makes such an order it shall send to the magistrate's court a copy of every order or sentence made or imposed, signed by the judge. (Added 76 of 1979 s. 4)

(6) If a person in whose case a probation order or an order for conditional discharge has been made by a magistrate's court is convicted before the Court of First Instance or District Court or another magistrate's court of an offence committed during the probation period or during the period of conditional discharge, the Court of First Instance or the District Court or such other magistrate's court may deal with him, for the offence for which the order was made, in any manner in which the magistrate's court by which the order was made could deal with him if he had just been tried for or convicted of that offence by or before that court. (Amended 54 of 1961 s. 5)

(Amended 25 of 1998 s. 2)

## 7. Supplementary provision as to probation and discharge

(1) Without prejudice to the provisions of section 15(j) of the Juvenile Offenders Ordinance (Cap 226) (which enables a court to order the parent or guardian of a child or young person charged with an offence to give security for his good behaviour), any court may, on making a probation order or an order for conditional discharge, if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender; and section 64 of the Magistrates Ordinance (Cap 227) shall apply to any such security as if it were a security given under the provisions of that Ordinance by a surety.

(2) A court, on making a probation order or an order for conditional discharge, may, without prejudice to its power to award costs against him, order the offender to pay to any aggrieved person such compensation for—

- (a) personal injury;
  - (b) loss of or damage to property; or
  - (c) both such injury and loss or damage,
- as it thinks reasonable; but in the case of an order made by a magistrate's court, the compensation shall not exceed \$5000. (Replaced 48 of 1972 s. 4)

(3) An order for the payment of compensation as aforesaid may be enforced in like manner as an order for the payment of costs by the offender; and where a court, in addition to making such an order for the payment of compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs. (Amended 48 of 1972 s. 4)

(4) In proceedings before the Court of First Instance under the foregoing provisions of this Ordinance, any question whether a probationer has failed to comply with the requirements of the probation order or has been convicted of an offence committed during the probation period, and any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge, shall be determined by the court and not by the verdict of a jury. (Amended 25 of 1998 s. 2)

(5) When a court makes any order under the provisions of this section, then if the offender—

- (a) is under 14 years of age, such order shall be enforced against the parent or guardian of the offender;