VIOLENT OFFENCES BILL (NO. 2)

EXPLANATORY NOTE

PART I of this Bill amends 6 Acts relating to violent offences. It implements a number of recommendations of the Ministerial Committee of Inquiry into Violence, chaired by Sir Clinton Roper (the Roper Committee), but also includes some matters not dealt with in that committee's report. Part II of the Bill, which is intended for enactment as a separate Act, makes provision for the fair treatment of victims of offences, as to which see, generally, pages 143 to 148 of the Roper Committee's report.

Arms

Clause 3 implements, with 2 refinements, recommendation 4 on page 85 of the Roper Committee's report. The Committee recommended that the present maximum penalty of 3 months' imprisonment or a fine of $1,000 prescribed by sections 45 and 46 of the Arms Act 1983 be increased to 2 years' imprisonment.

Section 45 of that Act relates to the carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for a lawful, proper, and sufficient purpose; and section 46 of that Act relates to the carrying of imitation firearms, except for such a purpose.

At present, those offences are punishable on summary conviction, as is appropriate where the maximum penalty is only 3 months' imprisonment. However, with the increase of that maximum to 2 years' imprisonment, it becomes desirable to provide for trial upon indictment, and this clause includes that provision.

Similarly, the increase in the maximum term of imprisonment warrants an increase in the maximum fine, and the clause fixes that at $4,000 in each case.

Crimes

Clause 5 implements in principle recommendation 2 on page 85 of the Roper Committee's report.

Section 18A of the Summary Offences Act 1981 (as inserted by section 2 of the Summary Offences Amendment Act 1986) makes it an offence to be in possession of a knife in any public place without reasonable excuse. The maximum penalty is 3 months' imprisonment or a fine of $1,000.

No. 126—1

Price $4.50
incl. GST $4.95

The Roper Committee recommended that the maximum penalty be increased to 2 years' imprisonment, and noted that this might warrant the transfer of the offence to section 202A of the Crimes Act 1961.

Section 202A was inserted by section 48 (1) of the Summary Offences Act 1981. It prescribed a maximum penalty of 1 year (subsequently increased to 2 years by section 4 of the Crimes Amendment Act (No. 2) 1986) for every one—

(a) Who, without lawful authority or reasonable excuse, has with him or her in any public place any offensive weapon or disabling substance; or

(b) Who has in his or her possession in any place any offensive weapon or disabling substance in circumstances that prima facie show an intention to use it to commit an offence involving bodily injury or the threat or fear of violence.

The term "offensive weapon" in each of these 2 paragraphs has a different meaning. In respect of paragraph (a), subsection (1) defines the term to mean "any article made or altered for use for causing bodily injury, or intended by the person having it with him for such use". It is doubtful that a "legitimate" knife (for example, a pocket knife) would fit within this definition unless it could be proved that the possessor intended to use it for causing bodily injury.

On the other hand, the definition of the term for the purposes of paragraph (b), set out in subsection (2), is very much wider: it covers "any article capable of being used for causing bodily injury". Clearly a knife falls within this formula.

The clause implements the Roper Committee's recommendation by amending section 202A (4) (a) expressly to include knives. However, the implication of that recommendation in the report is that the present provision, section 13A of the Summary Offences Act 1981, will be replaced by this amendment. That approach is not adopted in the clause. The amendment is in addition to, and not instead of, the existing provision. See also *clause 24* of the Bill.

Clause 6 implements recommendation 3 on page 85 of the Roper Committee's report. It provides that where any person is convicted twice within 2 years of an offence against section 202A (4) of the Crimes Act 1961 (as amended by *clause 5* of the Bill), the Court must sentence the offender to a full-time custodial sentence unless it is satisfied that, because of the special circumstances of the offence or the offender, it should not do so.

Clause 7 inserts into the Crimes Act 1961 a new *Part XIA,* relating to the obtaining of evidence by means of listening devices. Although not expressly recommended by the Roper Committee, that Committee made this observation (at page 91 of its report):

> "At present the law restricts the employment of electronic surveillance devices to the investigation of suspected drug offences, and the question is whether surveillance should be extended to other forms of organised crime. In our opinion, it would be quite unacceptable in principle, to frame surveillance legislation directed at a particular group, in this case, gangs, but we do consider that a case has been made out for the extension of electronic surveillance to organised crime, whether involving gangs or anyone else. We go no further than that, except to comment that definition of the circumstances in which such surveillance would be justified, may present difficulties."

The provisions of the proposed new *Part XIA* are closely modelled on the corresponding provisions of the Misuse of Drugs Amendment Act 1978, to which the Roper Committee was referring in the passage just quoted.

Section 312A defines the term "organised criminal enterprise" and is of crucial importance to the scheme of the new provisions. There must be a continuing course of serious criminal offending involving at least 6 persons.

Section 312B provides for the Police to apply to a Judge of the High Court for a warrant authorising a Police officer to intercept private communications by means of a listening device. Such an application may be made where there are reasonable grounds for believing that any member of an organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, offences punishable by at least 10 years' imprisonment, or offences against section 258 of the Act (receiving property dishonestly obtained).

Subsection (2) requires every application to be made in writing and on oath by a commissioned officer of Police, and sets out the particulars to be included in the application.

Section 312C specifies the matters of which a Judge must be satisfied before granting an interception warrant, and *section 312D* specifies the matters to be set out in the warrant.

Subsection (3) of *section 312D* provides that a warrant shall be valid for such period, not exceeding 30 days, as the Judge may specify, *section 312E* states the effect of the warrant, and *section 312F* provides for the renewal of a warrant.

Section 312G makes provision for a Judge to issue an emergency permit (orally or otherwise) in any case where the Judge is satisfied that circumstances exist that would justify the grant of a warrant under *section 312B*, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained. Provision is made for the subsequent confirmation of the permit by the Judge. If the permit is not confirmed, any evidence obtained pursuant to it will be inadmissible.

Section 312H attempts to balance the possible competing interests where the Police wish any document relating to a warrant or permit to remain confidential, while any party to Court proceedings seeks to have the document produced. The basic principle is that the document should be produced but a Judge may prohibit production to protect the identity of persons who gave information to the Police and of undercover Police officers unless the identity of such persons was essential to the grant of the warrant or permit.

Section 312I requires the destruction of irrelevant records of information obtained by the interception of a private communication in accordance with a warrant or permit.

Section 312J requires the destruction of relevant records as soon as it is clear that they are unlikely to be required for Court proceedings.

Section 312K provides that a person commits an offence if, otherwise than in the performance of his or her duty, that person knowingly discloses the substance, meaning, or purport of a private communication that has been intercepted in accordance with a warrant or permit.

Section 312L provides that a private communication intercepted in accordance with a warrant or a permit shall not be received in evidence against any person unless the party intending to adduce it has given to the person reasonable notice of his or her intention together with the prescribed particulars.

Section 312M renders inadmissible in any proceedings any evidence obtained by the interception of a private communication by means of a listening device otherwise than in pursuance of a warrant or permit. However, if the Judge in

any criminal proceedings is satisfied that there has been substantial compliance with the terms of the Bill and a warrant or permit, the Judge may admit the evidence notwithstanding any technical or procedural non-compliance.

Subsection (4) of this section attempts to overcome the problem that arose in *R* v *Stack* [1986] 2 CRNZ 238. In that case, a party to a private communication wore a listening device to enable the Police to hear the communication. The other party to the communication (the accused in the proceedings) did not know the communication was being intercepted. The Court of Appeal held that evidence from the interception was inadmissible.

Section 312N generally renders inadmissible any evidence obtained by the lawful interception of a private communication relating to any offence other than one described in *section 312B (1)*.

However, such evidence may be admitted in proceedings for a drug dealing offence if it would have been admissible if the warrant or permit had been issued under Part II of the Misuse of Drugs Amendment Act 1978.

Section 312O provides that any private communication that is privileged at law remains privileged notwithstanding its lawful interception by means of a listening device.

Section 312P requires the Police to report to the Judge on the manner in which they have exercised the powers conferred by a warrant or permit. The report is to include the information specified in *subsection (2)*.

Section 312Q requires the Commissioner of Police to include in the Commissioner's annual report to Parliament information relating to the exercise of the powers of the Police in respect of listening devices.

Criminal Justice

Clause 10 implements recommendations 1 and 2 on page 125 of the Roper Committee's report, and the second recommendation on page 127 of that report, but with some modifications.

The clause repeals section 5 of the principal Act, and substitutes 2 new sections, *5 and 5A*. The present section 5 provides, in broad terms, that where an offender is convicted of an offence punishable by imprisonment for a term of 5 years or more and the court is satisfied that the offence involved "serious violence against, or caused serious danger to the safety of, any other person", the court shall impose a full-time custodial sentence unless there are special circumstances.

The Roper Committee recommended that this rule should apply in respect of offences punishable by imprisonment for a term of 2 years or more, and this is adopted in the new *section 5 (1) (a)*.

The Roper Committee further recommended that this rule should apply where an offender is convicted of any violent offence punishable by imprisonment within 2 years after being convicted of any other such offence. The new *section 5 (3)* implements this recommendation in part, but it applies only to violent offences punishable by imprisonment for a term of 2 years or more.

The Roper Committee also recommended that this rule should apply where an offender is convicted of any violent offence committed while on bail for any other offence. The new *section 5A* (1) implements this recommendation in part only. First, it applies only where the offender commits a violent offence punishable by imprisonment for a term of 2 years or more. Secondly, it applies

only where the offender was, at the time of committing such an offence, on bail in respect of another such offence.

Clause 11 implements in principle the recommendation of the Roper Committee set out at the bottom of page 128 of its report, although some difficulty has been experienced in translating this into legislation. The Committee recommended legislation "to the effect that on sentencing no regard is to be had for the fact that the offender was affected by alcohol or drugs at the time of the commission of the offence except in so far as it may be relevant to a course of curative treatment".

"Our point is that there should be no diminution of sentence solely on the ground that the offender was so affected."

Where the court is contemplating a lengthy term of imprisonment, the Committee's view is clear. The court should not "discount" from (say) 6 years to 5 years because the offender was affected by alcohol or drugs at the time. If, however, the court is weighing the possibility of a short sentence of imprisonment, a term of periodic detention, or a sentence of community care, it is more difficult to apply the Committee's view. If the offender "happened" to be drunk at the time of the offence but has no drinking problem, the court should put this aside. But what if the offender does have a drinking problem? The court may well consider that it is in the interests of the community as well as the offender that that problem be tackled. The court may therefore favour a sentence of community care rather than imprisonment.

The new *section 12A* set out in this clause has been drawn in an attempt to strike this balance. The general principle recommended by the Committee is set out in *subsection (1)*. But *subsection (2)* makes it clear that this does not prevent the court from imposing any sentence, or making any order, or giving any direction, intended to promote the rehabilitation of the offender.

Clauses 12 and 13 make provision for a sentence of reparation to be imposed where the offence occasioned emotional harm to any person. At present, reparation can be required only in respect of loss of or damage to property. This proposal is not referred to in the Roper Committee's report.

Clause 14 makes 2 changes to section 28 of the Criminal Justice Act 1985. At present, where a court imposes a fine on an offender for an offence that occasioned physical harm to any person, the court may award up to half the fine to that person by way of compensation. This clause extends the provision to offences occasioning emotional harm, and allows the court to award any portion of the fine, or the whole of the fine, to the person who suffered the loss. This proposal is not referred to in the Roper Committee's report.

Clause 15 relates to, but does not implement, the recommendation of the Roper Committee set out at the bottom of page 129 of its report. The Committee recommended that the principal Act be amended "to allow a supervision order to be made to take effect on the expiry of a term of imprisonment".

However, most offenders are released from prison on parole, and are then subject to various conditions either prescribed by the principal Act (section 100) or imposed by the Parole Board or the District Prisons Board (section 99), and are subject to supervision by a probation officer. Accordingly, instead of implementing the Roper Committee's recommendation, this clause empowers the court, on imposing any sentence of imprisonment or preventive detention, to impose any conditions to which the offender shall be subject if released on parole.

Clause 16 implements the second recommendation of the Roper Committee set out on page 126 of its report. It increases from 7 years to 10 years the period of a life sentence that the offender must serve before the offender becomes eligible for parole. Although the Committee made no mention of offenders serving preventive detention, the clause makes the same amendment in respect of that sentence.

But the clause also goes further than the Roper Committee's recommendations. It provides that an offender will not be eligible for parole where he or she has been sentenced to imprisonment for a term of more than 2 years for any offence specified in the proposed *subsection (2A)* set out in *subclause (3)*.

Subclause (5) provides that these new provisions do not apply in respect of sentences imposed before the passing of the Bill.

Clause 17 relates to the matters that are to be taken into account by the Parole Board or the District Prisons Board when considering an offender for release on parole. The Roper Committee made no specific recommendations on this point, but recommended (at page 126 of its report) that "the half sentence parole provisions be reviewed as a matter of urgency".

Section 96 (1) of the principal Act sets out the matters to be considered. These include "the safety of the public, and of any person or any class of persons who may be affected by the release of the offender". This clause enjoins the Boards to consider also the likelihood of the offender committing further violent offences on his or her release.

Local Government

Clause 19 implements, in principle, the recommendation of the Roper Committee (on page 92 of its report) in relation to what the Committee calls "gang houses". It gives a District Court the power to order the removal or alteration of any fence, structure, or vegetation where it is satisfied that the fence, structure, or vegetation—

(a) Facilitates or is intended or likely to facilitate the commission of offences; or

(b) Impedes or is intended or likely to impede lawful access to the property; or

(c) Is intended or likely to cause injury to any person exercising any lawful right.

The order may be sought by a territorial authority or the Police, and, where it is not complied with, the territorial authority or the Police may remove or alter the fence, structure, or vegetation and recover the cost from the occupier of the property.

Misuse of Drugs

Clause 21 is equivalent to the proposed *section 312M (4)* of the Crimes Act 1961, set out in *clause 7* of the Bill (as to which, see the note above).

Clause 22 is the mirror image of the proposed *section 312N (2)* of the Crimes Act 1961, also set out in *clause 7* of the Bill. It provides for cases where evidence relating to an offence to which the proposed new *Part XIA* of the Crimes Act 1961 has been obtained by means of a listening device used pursuant to a warrant or permit issued under Part II of the Misuse of Drugs Amendment Act 1978.

Summary Offences

Clause 24 empowers the Court to order the forfeiture of any knife following conviction of an offender of an offence against section 13A of the Summary

Offences Act 1981. As stated in the note to *clause 5* of the Bill, that provision makes it an offence to be in possession of a knife in any public place without reasonable excuse.

Summary Proceedings

Clauses 26 to 30 relate to bail. The relevant passage in the Roper Committee's report is to be found on pages 126 and 127. Attention is also drawn to the report of the Criminal Law Reform Committee on Bail, presented to the then Minister of Justice in December 1982.

The changes to the present law effected by these clauses may be summarised as follows:

First, the discretion to grant bail is clarified. Section 46 of the Summary Proceedings Act 1957, short but much amended, is difficult to follow. In practical terms, where a hearing is adjourned, the Court has 3 options for dealing with the defendant:

(a) It can remand the defendant "at large". This is a not terribly helpful way of saying that the defendant is free to go about the ordinary business of life, subject only to the requirement to turn up again at the Court at the appointed hour:

(b) It can remand the defendant in custody:

(c) It can grant the defendant bail.

However, it seems that the present law disguises these 3 options as 2: if the Court agrees to bail, it must first remand the defendant in custody and then grant him or her bail. *Clause 26* of this Bill strips away that disguise. The proposed *section 46* sets out clearly the 3 options that the Court has. This is in line with the views of the Criminal Law Reform Committee (paragraph 122 commencing at page 43 of its report).

Secondly, the bail bond is abolished (except in the case of Police bail granted under section 51 of the Act). The bail bond is a device whereby an offender is pledged to answer to bail on pain of financial penalty. In practice, enforcing (or, as the law has it, estreating) the bond is rarely practicable, as noted by the Roper Committee. However, that Committee made no recommendation one way or the other on this issue. It contented itself (at page 127 of its report) with the following comment:

> "We make no recommendation as to whether the financial bond should remain but see advantages in its retention in serious drug or fraud cases."

The Criminal Law Reform Committee recommended (by a majority) that the bond should be abolished.

Thirdly, the proposed *section 49* clarifies the power of the Court to impose conditions. Although the present law is not entirely clear, it seems that a District Court Judge has no power to impose conditions, except the requirement of sureties and a reporting clause. It is generally supposed that the High Court, by virtue of its inherent jurisdiction, has a discretion to impose reasonable conditions.

The proposed *section 49* empowers the Court to impose any condition that it considers reasonably necessary to ensure that the defendant answers bail, refrains from tampering with any evidence or interfering with any witnesses, and does not offend while on bail. This follows the majority recommendations of the Criminal Law Reform Committee (paragraph 138 at page 48 of its report),

and the more general recommendation of the Roper Committee (page 127 of its report).

Fourthly, although the bail bond is abolished, the concept of sureties is retained. The proposed *section 50* creates a surety bond. The Roper Committee had nothing to say about sureties. Their retention was recommended, albeit with a marked lack of enthusiasm, by the Criminal Law Reform Committee (paragraph 158 at page 54 of its report).

Fifthly, a power is conferred in the proposed *section 53* on members of the Police to arrest without warrant where they believe on reasonable grounds that the defendant has absconded or is about to abscond or has broken any condition of bail. At present, a warrant is generally required. Again, the Roper Committee was silent on the point. The Criminal Law Reform Committee recommended this proposed change (paragraph 148 at page 51 of its report).

Sixthly, the proposed *section 54* makes it an offence to fail to answer bail. This follows the Roper Committee's recommendation (at page 27 of its report), and the recommendation of the Criminal Law Reform Committee (paragraph 126 at page 44 of its report).

Seventhly, *clause 29* gives the defendant the right to appeal to the High Court against any condition of bail imposed by the District Court. At present, there is no such specific right in the case of an unconvicted offender. In practice, a fresh application for bail can be made to the High Court. The Roper Committee did not comment on this issue. The Criminal Law Reform Committee favoured a general right of appeal available both to the defendant and the prosecutor (paragraphs 207 to 212 at pages 70 to 72 of its report).

Except as commented above, the remaining provisions either repeat existing law without substantive amendment or are of a consequential nature only.

PART II

Victims of Offences

Clause 34 defines the term "victim" for the purposes of this Part.

Clauses 35 to 42 state the principles of the way in which the victims of offences should be treated.

Clause 43 establishes a Victims Task Force, with the functions set out in *clause 44*. Its task of first priority is to work with Judges, Police, and others in the development of guidelines to give practical effect to the principles of treatment enunciated in *clauses 35 to 42* of the Bill.

Clause 45 provides for a Victims Task Force Fund to meet the costs of the Victims Task Force. It is not a fund for the compensation of victims. It is financed by 1 percent of all money paid to the Crown in payment of fines.

Clause 46 provides for the expiry of *clauses 43 to 45* at the end of March 1993. At that time, the Victims Task Force and the Victims Task Force Fund will cease to exist.

Right Hon. Geoffrey Palmer

VIOLENT OFFENCES (NO. 2)

ANALYSIS

No. 126—1

Inset 1

A BILL INTITULED

An Act to amend the law relating to violent offences

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Violent Offences Act (No. 2) 1987.

PART I

AMENDMENTS OF EXISTING ACTS

Arms

2. Sections to be read with Arms Act 1983—This section and the next succeeding section shall be read together with and

deemed part of the Arms Act 1983* (in that section referred to as the principal Act).

*1983, No. 44
Amendment: 1985, No. 5

3. Maximum penalties increased—(1) Section 45 (1) of the principal Act is hereby amended by omitting the words "summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000", and substituting the words "conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding $4,000".

(2) Section 46 (1) of the principal Act is hereby amended by omitting the words "summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000", and substituting the words "conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding $4,000".

Crimes

4. Sections to be read with Crimes Act 1961—This section, the **next 4 succeeding** sections, and the **First** Schedule to this Act shall be read together with and deemed part of the Crimes Act 1961* (in those sections referred to as the principal Act).

*R.S. Vol. 1, p. 635
Amendments: 1979, No. 5; 1979, No. 127; 1980, No. 63; 1980, No. 85; 1982, No. 46; 1982, No. 157; 1985, No. 82; 1985, No. 121; 1985, No. 160; 1985, No. 171; 1986, No. 4; 1986, No. 33; 1986, No. 71; 1986, No. 75; 1986, No. 82, 1987, No. 1

5. Possession of knife in public place—Section 202A of the principal Act (as inserted by section 48 (1) of the Summary Offences Act 1981) is hereby amended by inserting in subsection (4) (a), before the words "offensive weapon", the words "knife or".

6. Sentencing for second crime against section 202A (4)—The principal Act is hereby amended by inserting, after section 202B (as inserted by section 48 (1) of the Summary Offences Act 1981), the following section:

"202BA. Where—

"(a) Any person is convicted of a crime against **paragraph (a)** or **paragraph (b)** of **section 202A (4)** of this Act; and

"(b) That person has previously been convicted on at least 1 occasion within the preceding 2 years of a crime against either of those paragraphs,—

the Court shall impose a full-time custodial sentence (within the meaning of the Criminal Justice Act 1985) on the offender unless the Court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced."

7. New Part (relating to obtaining evidence by listening devices) inserted in principal Act—The principal Act is hereby amended by inserting, after section 312, the following Part:

"PART XIA

"OBTAINING EVIDENCE BY LISTENING DEVICES

"312A. **Meaning of 'organised criminal enterprise'**—In this Part of this Act, the term 'organised criminal enterprise' means a continuing association of 6 or more persons having as its object or as one of its objects the acquisition of substantial assets by means of a continuing course of criminal conduct.

"312B. **Application by Police for warrant to intercept private communications**—(1) An application may be made in accordance with this section to a Judge of the High Court for a warrant for any member of the Police to intercept a private communication by means of a listening device in any case where there are reasonable grounds for believing that—

"(a) Any member of an organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is—

"(i) An offence punishable by a period of imprisonment for a term of 10 years or more; or

"(ii) An offence against section 258 of this Act,—

as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

"(b) It is unlikely that the Police investigation of the case could be brought to a successful conclusion without the grant of such a warrant.

"(2) Every application under **subsection (1)** of this section shall be made by a commissioned officer of Police, in writing, and on oath, and shall set out the following particulars:

"(a) The facts relied upon to show that there are reasonable grounds for believing that—

"(i) There is an organised criminal enterprise; and

"(ii) Any member of that enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence described in **subsection (1) (a)** of this section as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

"(b) A description of the manner in which it is proposed to intercept private communications; and

"(c) The name and address, if known, of the suspect whose private communications there are reasonable grounds for believing will assist the Police investigation of the case, or, if the name and address of the suspect are not known, a general description of the premises or place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise; and

"(d) The period for which a warrant is requested; and

"(e) Whichever of the following is applicable:

"(i) The other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case, and the reasons why they have failed in that respect; or

"(ii) The reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

"(iii) The reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.

"312C. **Matters on which Judge must be satisfied in respect of applications**—On an application made in accordance with **section 312B** of this Act, the Judge may grant an interception warrant if the Judge is satisfied that it would be in the best interests of the administration of justice to do so, and that—

"(a) There are reasonable grounds for believing that—

"(i) There is an organised criminal enterprise; and

"(ii) Any member of that organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence described in **section 312B (1) (a)** of this Act, as part of the continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

"(b) There are reasonable grounds for believing that evidence relevant to the investigation of the case will be obtained through the use of a listening device to intercept private communications; and

"(c) Whichever of the following is applicable:

"(i) Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; or

"(ii) Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

"(iii) The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

"(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.

"312D. **Contents and term of warrant**—(1) Every interception warrant shall be issued in the form set out in the **Sixth** Schedule to this Act, and shall—

"(a) State the offence or offences in respect of which the warrant is granted; and

"(b) State the name and address of the suspect, if known, whose private communications may be intercepted, or, where the suspect's name and address are not known, the premises or place in respect of which private communications may be intercepted, being

premises or a place believed to be used for any purpose by any member of the organised criminal enterprise; and

"(c) Specify the commissioned officer of Police who (with any other member of the Police for the time being assisting the commissioned officer) may intercept the private communications; and

"(d) Where the Judge considers it necessary, contain express authority to enter (with force, where necessary) any aircraft, ship, hovercraft, carriage, vehicle, or premises for the purpose of placing, servicing, or retrieving a listening device; and

"(e) Contain such additional terms and conditions as the Judge considers advisable in the public interest.

"(2) Without limiting **subsection (1)** of this section, where it is proposed to place a listening device in the residential or business premises of a person who is a barrister or solicitor, or a clergyman, or a registered medical practitioner, the Judge shall prescribe such conditions (if any) as the Judge considers desirable to avoid so far as practicable the interception of communications of a professional character to which the barrister or solicitor or clergyman or registered medical practitioner is a party.

"(3) Every interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the warrant.

"312E. **Effect of warrant**—Every interception warrant shall have effect, according to its terms, to authorise the interception of private communications by means of a listening device.

"312F. **Renewal of warrants**—(1) Any Judge of the High Court may from time to time grant a renewal of an interception warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.

"(2) Every application for the renewal of an interception warrant shall be made in the manner provided by **section 312B** of this Act, and shall give—

"(a) The reason and period for which the renewal is required; and

"(b) Full particulars, together with times and dates, of any interceptions made or attempted under the warrant, and an indication of the nature of the information that has been obtained by every such interception.

"(3) Every such application shall be supported by such other information as the Judge may require.

"(4) A renewal of an interception warrant may be granted under this section if the Judge is satisfied that the circumstances described in **section 312C** of this Act still obtain.

"(5) Every renewal of an interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the renewal.

"(6) A renewal of an interception warrant may be granted upon an application made within the time prescribed by **subsection (1)** of this section notwithstanding that the warrant (or any renewal of the warrant) has expired before the application is determined.

"(7) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of an interception warrant upon an application duly made.

"312G. **Emergency permits**—(1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of an interception warrant under **section 312C** of this Act, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or in writing, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place and in a particular manner.

"(2) No emergency permit shall authorise the interception of telephonic communications.

"(3) Any application for an emergency permit may be made orally, but otherwise every such application shall comply with the requirements of **section 312B** of this Act.

"(4) Where the Judge grants the application for an emergency permit, the Judge shall forthwith make a note in writing of the particulars of the application. The note shall be filed in the High Court Registry nearest to where the application is made, and shall, for the purposes of **section 312H (1)** of this Act, be deemed to be a document relating to the application for the permit. The Judge shall also make a note of the terms of the permit.

"(5) The provisions of **section 312D** of this Act, so far as they are applicable and with the necessary modifications, shall apply to emergency permits in the same manner as they apply to interception warrants.

"(6) Every emergency permit shall remain valid for 48 hours from the time when it is given, and shall then expire.

"(7) On filing the report required by **section 312P** of this Act, the member of the Police who applied for the emergency permit (or, if that member is not the member filing the report, then the member who is filing the report) may apply to the Judge who granted the permit (or, if that Judge is not the Judge receiving the report, then the Judge who is receiving the report) for a certificate confirming the permit pursuant to **subsection (9)** of this section.

"(8) Where the Police, within the period of 48 hours during which the emergency permit is valid, apply for an interception warrant in place of the permit, the member of the Police applying for the warrant may also apply for a certificate confirming the permit pursuant to **subsection (9)** of this section.

"(9) The Judge to whom an application is made pursuant to **subsection (7)** or **subsection (8)** of this section shall issue a certificate confirming the permit if the Judge is satisfied, having regard to the requirements of **section 312C** of this Act, that if the original application for the emergency permit had been an application for an interception warrant, the Judge would have granted a warrant.

"(10) For the purposes of **section 312M** of this Act, an interception of a private communication pursuant to an emergency permit shall be deemed to have been made unlawfully unless the Judge to whom an application is made in accordance with **subsection (7)** or **subsection (8)** of this section issues a certificate confirming the permit pursuant to **subsection (9)** of this section.

"312H. **Security of applications**—(1) As soon as an application for an interception warrant or for a renewal of an interception warrant or for an emergency permit or for a certificate confirming an emergency permit has been determined by the Judge, the Registrar shall place all documents relating to the application (except the warrant or renewal or permit or certificate itself) in a packet, seal the packet, and thereafter keep it in safe custody, subject to the succeeding provisions of this section.

"(2) Notwithstanding any enactment or rule of law or rules of Court entitling any party to any proceedings to demand the production of any documents, no such party shall be entitled to demand the production of any documents held in safe custody pursuant to **subsection (1)** of this section, except in accordance with the succeeding provisions of this section.

"(3) Every such party who requires the production of any document held in safe custody pursuant to **subsection (1)** of this section shall, except in a case to which **subsection (9)** or **subsection (10)** of this section applies, apply in writing to the Registrar, who shall forthwith notify the senior Police officer in the district.

"(4) If, within 3 days after notice is given to the senior Police officer in the district under **subsection (3)** of this section, that officer gives written notice to the Registrar that that officer intends to oppose the production of the documents, the Registrar shall refer the matter to a Judge.

"(5) Where the senior Police officer in the district does not give such written notice to the Registrar, the Registrar shall produce the documents to the party applying for production.

"(6) Where a matter is referred to a Judge pursuant to **subsection (4)** of this section, both the person requesting production of the documents and the member of the Police opposing production shall be given an opportunity to be heard.

"(7) If the Judge is satisfied that information in any document the production of which is in dispute identifies or is likely to lead to the identification of a person who gave information to the Police, or of any member of the Police whose identity was concealed for the purpose of any relevant investigation and has not been subsequently revealed, the Judge may, if the Judge believes it in the public interest to do so, order that the whole or any specified part of the document be not produced.

"(8) Subject to the provisions of **subsection (7)** of this section, the Judge shall order the production of the documents to the party requesting it.

"(9) Where a request for the production of any document kept in safe custody pursuant to **subsection (1)** of this section is made in the course of any proceedings presided over by a Judge and the request is opposed, the Judge shall adjudicate upon the matter as if it had been referred to the Judge pursuant to **subsection (4)** of this section.

"(10) Where such a request is made in the course of any other proceedings, the presiding judicial officer shall forthwith refer the matter to a Judge for adjudication.

"(11) Notwithstanding anything in this section, every Judge who is presiding over any proceedings in which the issue of an interception warrant or emergency permit is in issue shall be entitled to inspect any relevant document held under **subsection (1)** of this section.

"312I. **Destruction of irrelevant records made by use of listening device**—(1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit shall, as soon as practicable after it has been made, destroy any record, whether written or otherwise, of the information obtained by that interception if none of the information directly or indirectly relates to the commission of an offence described in **section 312B (1) (a)** of this Act or a drug dealing offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978).

"(2) Every person who fails to comply with **subsection (1)** of this section commits an offence and is liable on summary conviction to a fine not exceeding $500.

"312J. **Destruction of relevant records made by use of listening device**—(1) The Commissioner of Police shall ensure that every record, whether written or otherwise, of the information obtained by the Police from the interception of a private communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to the commission of an offence described in **section 312B (1) (a)** of this Act or a drug dealing offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978), is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.

"(2) Nothing in **subsection (1)** of this section shall apply to—

"(a) Any record of any information adduced in proceedings in any Court, or (in any case where the defendant pleads guilty) of any record of any information that, in the opinion of the Judge to whom the report referred to in **subsection (3)** of this section is made, would have been adduced had the matter come to trial:

"(b) Any record of any information contained in any transcript or written statement given to any person in accordance with **section 312L (a)** of this Act.

"(3) Every report made to a Judge in accordance with **section 312P** of this Act shall state whether or not **subsection (1)** of this section has yet been complied with, and, if it has not, the Judge shall give such directions relating to the eventual destruction of the record as the Judge thinks necessary to ensure compliance with that subsection, including a requirement that the Judge be advised when the record has been destroyed.

"312K. **Prohibition on disclosure of private communications lawfully intercepted**—(1) No person who—

"(a) Intercepts or assists in the interception of a private communication in pursuance of an interception warrant or emergency permit; or

"(b) Acquires knowledge of a private communication as a direct or indirect result of that interception—

shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication, otherwise than in the performance of that person's duty.

"(2) Every person who acts in contravention of **subsection (1)** of this section commits an offence and is liable on summary conviction to a fine not exceeding $500.

"312L. **Notice to be given of intention to produce evidence of private communication**—Particulars of a private communication intercepted pursuant to an interception warrant or an emergency permit shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of that person's intention to do so, together with—

"(a) A transcript of the private communication where that person intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where that person intends to adduce oral evidence of it; and

"(b) A statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known.

"312M. **Inadmissibility of evidence of private communications unlawfully intercepted**—(1) Subject to **subsections (2) to (4)** of this section, where a private communication intercepted by means of a listening device otherwise than in pursuance of an interception warrant or emergency permit issued under this Part of this Act or of any authority conferred by or under any other enactment has come to the knowledge of a person as a direct or indirect result of that interception or its disclosure, no evidence so acquired of that communication, or of its substance, meaning, or purport, and no other evidence obtained as a direct or indirect result of the interception or disclosure of that communication, shall be given against any person, except in proceedings relating to the unlawful interception of a private communication by means of

a listening device or the unlawful disclosure of a private communication unlawfully intercepted in that manner.

"(2) Where, in any criminal proceedings for an offence described in **section 312B (1) (a)** of this Act, the Court is of the opinion that any evidence that is inadmissible by virtue of **subsection (1)** of this section—

"(a) Is relevant; and

"(b) Is inadmissible by virtue of that subsection merely because of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the granting of the interception warrant or emergency permit, or in the manner in which the evidence was obtained,—

and that the defect in form or irregularity in procedure was not the result of bad faith, the Court may admit that evidence.

"(3) **Subsection (1)** of this section shall not render inadmissible against any party to a private communication evidence of that communication that has, in the manner referred to in that subsection, come to the knowledge of the person called to give evidence, if all the parties to the communication consent to that person giving the evidence.

"(4) **Subsection (1)** of this section shall not render inadmissible evidence of a private communication by any person who intercepted that communication by means of a listening device with the prior consent of any party to the communication.

"312N. **Inadmissibility of evidence of private communications lawfully intercepted**—(1) Subject to **subsection (2)** of this section, where a private communication intercepted in pursuance of an interception warrant or an emergency permit discloses evidence relating to any offence other than an offence described in **section 312B (1) (a)** of this Act, no evidence of that communication, or of its substance, meaning, or purport, shall be given in any Court.

"(2) If, in any proceedings for a drug dealing offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978),—

"(a) Evidence is sought to be adduced of a private communication intercepted in pursuance of an interception warrant or an emergency permit issued under this Part of this Act; and

"(b) The Judge is satisfied, on the evidence then before the Judge,—

"(i) That a warrant or permit could have been issued under Part II of the Misuse of Drugs Amendment Act 1978; and

"(ii) That the evidence sought to be adduced would have been admissible if the warrant or permit had been issued under that Part of that Act,—

the evidence may be admitted notwithstanding **subsection (1)** of this section.

"312O. **Privileged evidence**—Where evidence obtained by the interception of a private communication would, but for the interception, have been privileged by virtue of—

"(a) Any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980; or

"(b) Any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client,—

such evidence shall remain privileged and shall not be given in any Court, except with the consent of the person entitled to waive that privilege.

"312P. **Report to be made to Judge on use of warrant or permit**—(1) As soon as practicable after an interception warrant or an emergency permit has expired, the member of the Police who applied for it, or (if that member is unable to act) another commissioned officer of Police, shall make a written report to the Judge who granted the warrant or permit, or (if that Judge is unable to act) to another Judge, on the manner in which the power conferred by the warrant or permit has been exercised and the results obtained by the exercise of that power.

"(2) Notwithstanding anything in **section 312H** of this Act, the Judge who receives a report under **subsection (1)** of this section shall be entitled to inspect any relevant document held under **subsection (1)** of that section.

"(3) Without limiting the generality of **subsection (1)** of this section, every report made for the purposes of that subsection shall contain the following information:

"(a) Where the listening device was placed:

"(b) The number of interceptions made by means of the listening device:

"(c) Whether any relevant evidence was obtained by means of the listening device:

"(d) Whether any relevant evidence has been, or is intended to be, used in any criminal proceedings:

"(e) Whether any records of a private communication intercepted pursuant to the warrant or permit have been destroyed in accordance with **section 312I** or **section 312J** of this Act, and, if not, why they have not been destroyed:

"(f) Whether the listening device has been retrieved, and, if not, why it has not been retrieved.

"(4) On receiving a report under this section, the Judge may require such further information relating to the matter as the Judge thinks fit, and (in addition to any directions the Judge gives for the purposes of **section 312J(3)** of this Act) the Judge may give such directions as the Judge thinks desirable, whether relating to the retrieval of the listening device, or otherwise.

"312Q. **Commissioner of Police to give information to Parliament**—The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958 the following information in respect of the period under review:

"(a) The number of applications for warrants made under **section 312B** of this Act; and

"(b) The number of applications for renewals of warrants made under **section 312F** of this Act; and

"(c) The number of applications for emergency permits made under **section 312G** of this Act; and

"(d) The number of such applications referred to in each of the preceding paragraphs of this subsection that were granted, and the number that were refused; and

"(e) The average duration of warrants (including renewals); and

"(f) The number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception carried out pursuant to a warrant or permit has been adduced, and the result of those prosecutions."

8. New Sixth Schedule added to principal Act—The principal Act is hereby amended by adding the **Sixth** Schedule set out in the **First** Schedule to this Act.

Criminal Justice

9. Sections to be read with Criminal Justice Act 1985—This section and the **next 5 succeeding** sections shall be read

together with and deemed part of the Criminal Justice Act 1985* (in those sections referred to as the principal Act).

*1985, No. 120
Amendment 1986, No. 83

10. Two sections (relating to imprisonment of violent offenders) substituted in principal Act—The principal Act is hereby amended by repealing section 5, and substituting the following sections:

"5. **Violent offenders to be imprisoned except in special circumstances**—(1) Where—

"(a) An offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and

"(b) The court is satisfied that, in the course of committing the offence, the offender used serious violence against, or caused serious danger to the safety of, any other person,—

the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced.

"(2) Where—

"(a) An offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and

"(b) The offender has previously been convicted on at least 1 occasion within the preceding 2 years of such an offence; and

"(c) The court is satisfied that, in the course of committing the offence, and in the course of committing the previous offence, the offender used violence against, or caused danger to the safety of, any other person,—

the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced.

"(3) In determining the length of any sentence of imprisonment to be imposed in any case to which **subsection (1)** or **subsection (2)** of this section applies, the court shall have regard, among other matters, to the need to protect the public.

"(4) This section shall be read subject to section 8 of this Act.

"5A. **Violent offending while on bail, etc.**—(1) Where—

"(a) An offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and

"(b) The offender was, at the time of committing the offence, on bail or remanded at large in respect of any other offence; and

"(c) The court is satisfied that, in the course of committing the offence, the offender used violence against, or caused danger to the safety of, any other person,—

the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced.

"(2) In determining the length of any sentence of imprisonment to be imposed in any case to which **subsection (1)** of this section applies, the court shall have regard, among other matters, to the need to protect the public.

"(3) Any sentence of imprisonment imposed by the court shall be cumulative upon any sentence of imprisonment to which the offender is then subject for the offence for which the offender had been on bail or remanded at large, unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the sentence should be concurrent with the earlier sentence.

"(4) This section shall be read subject to section 8 of this Act."

11. Court not to take into account alcohol or drugs, etc., in certain cases—The principal Act is hereby amended by inserting, after section 12, the following section:

"12A. (1) Subject to **subsection (2)** of this section, where—

"(a) An offender is convicted of an offence; and

"(b) The court is satisfied that, in the course of committing the offence, the offender used violence against, or caused danger to, any other person,—

the court, in imposing a sentence, shall not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by alcohol or any drug or other substance.

"(2) Nothing in **subsection (1)** of this section shall limit the power of the court to impose any sentence or to make any order or to give any direction intended to promote the rehabilitation of the offender."

12. Two new sections (relating to reparation) substituted in principal Act—(1) The principal Act is hereby

amended by repealing sections 22 and 23, and substituting the following sections:

"22. **Court may sentence offender to make reparation**—(1) Where any court by or before which a person is convicted of an offence, or any other court before which the offender appears for sentence, is satisfied that any other person suffered—

"(a) Any emotional harm; or

"(b) Any loss of or damage to property—

through or by means of the offence, the court may sentence the offender to make reparation.

"(2) Where, after giving the prosecutor and the offender an opportunity to be heard on the question, the court—

"(a) Considers that such a sentence should be imposed in respect of loss of or damage to property only; and

"(b) Is satisfied of the value of the loss or damage,—

the court may impose such a sentence without further inquiry.

"(3) Subject to **subsections (2) and (4)** of this section, before imposing such a sentence, the court may (whether before or after giving the prosecutor and the offender an opportunity to be heard) adjourn the proceedings and order a probation officer, or any other person designated by the court for the purpose, to prepare a report for the court in accordance with section 23 of this Act on all or any of the following matters:

"(a) In the case of emotional harm, the nature of that harm:

"(b) In the case of loss of or damage to property, the value of that loss or damage:

"(c) The means of the offender:

"(d) The nature and extent of the offender's existing financial obligations:

"(e) The maximum amount that the offender is likely to be able to pay under a sentence to make reparation:

"(f) The frequency and magnitude of any payments that should be required under a sentence to make reparation, where provision for payment by instalments is thought desirable.

"(4) Where—

"(a) The court considers that such a sentence should be imposed in respect of loss of or damage to property only; and

"(b) It is clear to the court that the maximum amount that the offender could be required to pay does not exceed $250,—

the court shall not require a report to be prepared under **subsection (3)** of this section.

"(5) For the purposes of this section and of **section 23** of this Act, the value of the loss of or damage to property shall be limited to the cost of replacement or (as the case may require) the cost of repair, and shall not include any loss or damage of a consequential nature.

"23. **Preparation of report**—(1) Any probation officer or other person who is required by a court to prepare a report under **section 22** of this Act shall attempt to seek agreement between the offender and the person who suffered the emotional harm or the loss of or damage to property on the amount that the offender should be required to pay by way of reparation.

"(2) Where such agreement is reached, the probation officer or other person shall report the terms of the agreement to the court (in addition to any other matters on which the court has required a report).

"(3) Where no such agreement is reached, the probation officer or other person shall,—

"(a) In respect of emotional harm, state in the report that the matter is unresolved; and

"(b) In respect of loss of or damage to property, either—

"(i) Determine the value of the loss or damage on the evidence available, and include in the report the value so determined; or

"(ii) State in the report that the matter is unresolved.

"(4) Notwithstanding anything in the preceding provisions of this section, the person who suffered the emotional harm or the loss of or damage to property shall not be obliged to meet with the offender.

"(5) Without limiting section 17 of this Act, a copy of any report prepared under this section shall be given to the person who suffered the emotional harm or the loss of or damage to property, unless the court orders that the whole or any part of the report shall not be so disclosed.

"(6) Failure to give a copy of any report in accordance with **subsection (5)** of this section shall not affect the validity of the proceedings in a court or of any order made or sentence passed by a court."

(2) Section 2 of the Criminal Justice Amendment Act 1986 is hereby consequentially repealed.

13. Conditions of sentence—Section 24 of the principal Act is hereby amended by omitting from paragraph (c), and also from paragraph (e), the words "loss or damage", and substituting in each case the words "emotional harm or the loss of or damage to property".

14. Whole or part of fine may be awarded to victim of offence suffering physical or emotional harm—(1) Section 28 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) Where an offender is convicted of an offence arising out of any act or omission that occasioned physical or emotional harm to any other person (whether or not the occasioning of such harm constitutes a necessary element of the offence at law) and the court before which the offender appears for sentence imposes a fine on the offender, the court shall consider whether or not it should award, and, subject to **subsection (2)** of this section, may if it thinks fit award, by way of compensation to the victim the whole or such portion of the fine as it thinks just."

(2) Section 28 (2) of the principal Act is hereby amended by omitting from paragraph (b) the words "bodily injury", and substituting the words "physical or emotional harm".

(3) Section 28 (3) of the principal Act is hereby amended by inserting, after the words "to pay", the words "the fine or".

15. New heading and section (relating to conditions of parole) inserted in principal Act—(1) The principal Act is hereby amended by inserting, after section 77, the following heading and section:

"Conditions of Parole

"77A. **Court on imposing sentence of imprisonment or preventive detention may impose conditions of parole**—On imposing a sentence of imprisonment or of preventive detention, a court may impose such special conditions (if any) as it thinks fit to which the offender shall be subject if the offender is released on parole in respect of the sentence in accordance with Part VI of this Act; and every such condition shall be deemed for the purposes of that Part of this Act to have been imposed under that Part."

(2) Section 99 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to **section 77A** of this

Act for the period on which the offender is on parole; and".

(3) Section 99 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to **section 77A** of this Act for the period on which the offender is on parole; and".

(4) Section 99 (3) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to **section 77A** of this Act for the period on which the offender is on parole; and".

16. Eligibility for parole—(1) Section 93 (1) of the principal Act is hereby amended by omitting the expression "subsection (2)", and substituting the expression "**subsections (2) and (2A)**".

(2) Section 93 (1) of the principal Act is hereby further amended by repealing paragraph (b), and substituting the following paragraphs:

"(b) Where the sentence is for a term of 14 years or more, after the expiry of 7 years of that sentence:

"(c) Where the sentence is for life, after the expiry of 10 years of that sentence."

(3) Section 93 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

"(2A) An offender shall not be eligible to be released on parole in respect of any sentence of imprisonment for a term of more than 2 years imposed on the offender for any offence against any of the following provisions of the Crimes Act 1961:

"Section 128 (sexual violation):

"Section 171 (manslaughter):

"Section 173 (attempt to murder):

"Section 188 (1) (wounding with intent to cause grievous bodily harm):

"Section 188 (2) (wounding with intent to injure):

"Section 189 (1) (injuring with intent to cause grievous bodily harm):

"Section 189 (2) (injuring with intent to injure):

"Section 198A (as inserted by section 3 of the Crimes Amendment Act (No. 2) 1986) (using any firearm against law enforcement officer, etc.):

"Section 198B (as so inserted) (commission of crime with firearm):

"Section 234 (robbery):

"Section 235 (aggravated robbery)."

(4) Section 93 (3) of the principal Act is hereby amended by omitting the expression "7", and substituting the expression "10".

(5) Nothing in this section shall apply in respect of any sentences imposed before the passing of this Act.

17. Matters to be considered by Parole Board or District Prisons Board—Section 96 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

"(aa) Generally, the likelihood of the offender committing further offences of violence upon his or her release:".

Local Government

18. Sections to be read with Local Government Act 1974—This section and the **next succeeding** section shall be read together with and deemed part of the Local Government Act 1974* (in that section referred to as the principal Act).

*R.S. Vol. 5, p. 77
Amendments: 1980, No. 82; 1981, No. 13; 1981, No. 111; 1982, No. 3; 1982, No. 166; 1983, No. 132; 1984, No. 18; 1985, No. 60; 1986, No. 21; 1986, No. 24; 1986, No. 50

19. Removal of fences, structures, and vegetation—The principal Act is hereby amended by inserting, after section 695, (as enacted by section 2 of the Local Government Act 1979), the following section:

"695A. (1) Any officer of a territorial authority authorised in that behalf or any constable may apply to a District Court for an order requiring the occupier of any property to remove or alter any fence, or any structure (whether or not forming part of any dwellinghouse or other building), or any vegetation, and the District Court shall make such an order if it is satisfied that the fence, structure, or vegetation—

"(a) Facilitates or is intended or likely to facilitate the commission of offences; or

"(b) Impedes or is intended or likely to impede lawful access to the property; or

"(c) Is intended or likely to cause injury to any person exercising any lawful right.

"(2) Every order under this section shall specify a date by which the occupier of the property shall remove or alter the fence, structure, or vegetation that is subject to the order.

"(3) Where any order under this section is not complied with by the date so specified, the territorial authority or the Police may remove or alter the fence, structure, or vegetation, or arrange for its removal or alteration, and recover the costs of doing so from the occupier of the property.

"(4) Nothing in this section shall limit the powers of the territorial authority or any officer or agent of the territorial authority under section 623 or section 692 of this Act or any bylaw."

Misuse of Drugs

20. Sections to be read with Misuse of Drugs Act 1975—This section and the **next 2 succeeding** sections shall be read together with and deemed part of the Misuse of Drugs Act 1975*.

*1975, No. 116
Amendments: 1978, No. 65; 1979, No. 2; 1979, No. 132; 1980, No. 64; 1982, No. 151; 1985, No. 130

21. Inadmissibility of evidence of private communications unlawfully intercepted—(1) Section 25 (1) of the Misuse of Drugs Amendment Act 1978 is hereby amended by omitting the expression "and (3)", and substituting the expression "to (4)".

(2) Section 25 of the Misuse of Drugs Amendment Act 1978 is hereby further amended by adding the following subsection:

"(4) Subsection (1) of this section shall not render inadmissible evidence of a private communication by any person who intercepted that communication by means of a listening device with the prior consent of any party to the communication."

22. Inadmissibility of evidence of private communications lawfully intercepted—Section 26 of the Misuse of Drugs Amendment Act 1978 is hereby amended by adding, as subsection (2), the following subsection:

"(2) If, in any proceedings for any offence described in **section 312B (1) (a)** of the Crimes Act 1961,—

"(a) Evidence is sought to be adduced of a private communication intercepted in pursuance of an interception warrant or an emergency permit issued under this Part of this Act; and

"(b) The Judge is satisfied, on the evidence then before the Judge,—

"(i) That a warrant or permit could have been issued under **Part XIA** of the Crimes Act 1961; and

"(ii) That the evidence sought to be adduced would have been admissible if the warrant or permit had been issued under that Part of that Act,—

the evidence may be admitted notwithstanding **subsection (1)** of this section."

Summary Offences

23. Sections to be read with Summary Offences Act 1981—This section and the **next succeeding** section shall be read together with and deemed part of the Summary Offences Act 1981* (in that section referred to as the principal Act).

*1981, No. 113
Amendments: 1982, No. 102; 1982, No. 159; 1986, No. 72

24. Forfeiture of knives—Section 13A of the Summary Offences Act 1981 (as inserted by section 2 of the Summary Offences Amendment Act 1986) is hereby amended by adding, as subsection (2), the following subsection:

"(2) On convicting any person of an offence against subsection (1) of this section, the Court may order that the knife be forfeited to the Crown."

Summary Proceedings

25. Sections to be read with Summary Proceedings Act 1957—This section, the **next 7 succeeding** sections, and the **Second Schedule** to this Act shall be read together with and deemed part of the Summary Proceedings Act 1957* (in those sections referred to as the principal Act).

*R.S. Vol. 9, p. 583
Amendments: 1982, No. 47; 1982, No. 131; 1982, No. 158; 1985, No. 51; 1985, No. 55; 1985, No. 99; 1985, No. 162; 1985, No. 191; 1986, No. 73; 1986, No. 76

26. Seven new sections (relating to grant of bail) substituted in principal Act—The principal Act is hereby amended by repealing sections 46 to 50, and substituting the following sections:

"46. **Dealing with defendant on adjournment**—(1) Where any hearing is adjourned, and the defendant is liable on conviction to a sentence of imprisonment or the defendant has been been arrested, the Court or Justice may—

"(a) Allow the defendant to go at large; or

"(b) Grant the defendant bail; or

"(c) Remand the defendant in custody—

for the period of the adjournment.

"(2) **Subsection (1)** of this section shall be read subject to section 319 of the Crimes Act 1961, section 30 of the Misuse of Drugs Amendment Act 1978, and section 142 of the Criminal Justice Act 1985.

"47. **Warrant for detention of defendant remanded in custody**—(1) Where, pursuant to **section 46** of this Act, the defendant is remanded in custody, the Court or Justice shall issue a warrant in the prescribed form for the detention of the defendant in custody for the period of the adjournment.

"(2) Where, pursuant to **section 46** of this Act, the defendant is granted bail but is not released immediately, the Court or Justice shall—

"(a) Issue a warrant in the prescribed form for the detention of the defendant in custody for the period of the adjournment; and

"(b) Certify on the back of the warrant the fact that the Court or Justice has granted the defendant bail, the number of sureties (if any) to be required, the sum or sums fixed, and the condition or conditions imposed.

"48. **Defendant, if bailable as of right, to be brought before Court on request**—(1) Where—

"(a) A defendant who is bailable as of right has been remanded in custody pursuant to **section 46** of this Act; and

"(b) The defendant did not make application for bail at the time of the remand,—

the defendant shall, if he or she so requests, be brought before a Court for the purpose of making an application for bail.

"(2) Any such application may be granted as if it were an application made at the time the defendant was remanded.

"(3) Where bail is granted under this section, the particulars required by **section 47 (2)** of this Act to be certified by the Court or Justice remanding the defendant shall be certified by the Court granting bail, in writing, forwarded to the Superintendent of the penal institution in which the defendant is detained pursuant to the remand warrant.

"49. **Conditions of bail**—(1) Subject to the provisions of **section 50A** of this Act, where a defendant is granted bail, the defendant shall be released on condition that the defendant attend personally—

"(a) At the time and place to which the hearing is adjourned; or

"(b) At every time and place to which, during the course of the proceedings, the hearing may be from time to time adjourned,—

as the Court or Justice thinks fit.

"(2) The Court or Justice may impose as a further condition of the defendant's release—

"(a) That the defendant report to the police at such time or times and at such place or places as the Court or Justice orders; and

"(b) Any other condition that the Court or Justice considers reasonably necessary to ensure that the defendant—

"(i) Appears in Court on the date to which the defendant has been remanded; and

"(ii) Does not interfere with any witness or any evidence against the defendant; and

"(iii) Does not commit any offence while on bail.

"(3) Without limiting anything in **subsection (1)** of this section, the Court or Justice may require as a further condition of the defendant's release the entering into of a surety bond by one or more persons, and in such sum or sums, as the Court or Justice may direct, to secure compliance by the defendant with the terms of the condition imposed under **subsection (1)** of this section.

"50. **Surety bonds**—(1) Every surety bond shall be in the prescribed form and may be entered into by any party before any District Court Judge or Justice or Registrar.

"(2) It shall not be necessary for all the parties to the bond to be present at the same time or at the same place, and more than one form of bond may be signed.

"(3) Every proposed party to a surety bond shall be given a copy of the notice of bail, and the District Court Judge or Justice or Registrar before whom the bond is entered into shall satisfy himself or herself that the proposed party is entering into the bond with full knowledge of the conditions of bail.

"50A. **Release of defendant granted bail**—(1) Where a defendant is granted bail, the Registrar shall prepare a notice of bail in the prescribed form setting out the conditions of bail imposed by or under **section 49** of this Act.

"(2) The Registrar shall give the notice of bail to the defendant, satisfy himself or herself that the defendant

understands the conditions of bail, and require the defendant to sign the notice of bail.

"(3) Subject to **subsection (4)** of this section, where bail is granted to a defendant who has been remanded in custody and is in custody only under the warrant issued in pursuance of the remand, the defendant shall be released from custody forthwith upon signing the notice of bail.

"(4) Where the Court or Justice has required the entering into of a surety bond, the defendant shall not be released until the required number of persons has entered into such a bond in accordance with **section 50** of this Act.

"(5) A copy of the notice of bail shall be given to the defendant on his or her release or as soon as practicable thereafter.

"(6) Subject to **subsection (8)** of this section, in any case where a warrant has been issued under **section 47 (2)** of this Act, a warrant of deliverance in the prescribed form shall be issued and sent to the Superintendent of the penal institution in which the defendant is detained.

"(7) The warrant of deliverance may be issued by any District Court Judge or Justice or Registrar on being satisfied that the defendant is entitled to be released and that the preceding requirements of this section have been met.

"(8) No warrant of deliverance need be issued if the Registrar before whom the defendant signs the notice of bail endorses on the remand warrant a certificate that the defendant has signed the notice of bail, that the required number of persons (if any) has entered into a surety bond, and that the defendant is accordingly entitled to be released.

"50B. **Variation of conditions of bail**—(1) Where the defendant has been granted bail, any District Court Judge may, on the application of the defendant, make an order varying or revoking any condition of bail.

"(2) Where any Court or Justice has, in granting bail to any defendant, imposed the condition that the defendant report to the police at such time or times and at such place or places as the Court or Justice orders, the Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report."

27. Two new sections (relating to breach of bail) substituted in principal Act—The principal Act is hereby

amended by repealing sections 53 and 54, and substituting the following sections:

"53. **Defendant on bail may be arrested without warrant in certain circumstances**—(1) Where, in respect of any defendant who has been released on bail, any member of the Police believes on reasonable grounds that—

"(a) The defendant has absconded or is about to abscond for the purpose of evading any further appearance in court; or

"(b) Has contravened or failed to comply with any condition of bail,—

the member of the Police may arrest the defendant without warrant.

"(2) Every defendant who is arrested under **subsection (1)** of this section shall be brought before a District Court Judge or Justice as soon as possible.

"(3) In any such case, the District Court Judge or Justice, on being satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, shall reconsider the question of bail; and, notwithstanding anything in the Crimes Act 1961, the defendant shall thereafter be bailable only at the discretion of the District Court Judge or Justice.

"54. **Failure to answer bail**—Every defendant commits an offence and is liable on summary conviction to imprisonment for a term of 1 year or a fine not exceeding $2,000 who, having been released on bail,—

"(a) Fails without reasonable excuse to attend personally at the time and place specified in the notice of bail; or

"(b) Fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned."

28. Estreat of bonds—The principal Act is hereby amended by repealing section 58, and substituting the following section:

"58. (1) This section applies to every case where—

"(a) Under **section 56** of this Act a District Court Judge or Justice certifies the non-performance of a condition of a bail bond; or

"(b) A surety bond has been entered into under **section 50** of this Act in respect of any defendant, and a District Court Judge or Justice certifies under **section 57** of this Act the non-performance by that defendant of the condition imposed under **section 49 (1)** of this Act.

"(2) In any case to which this section applies, the Registrar shall fix a time and place to consider the estreat of the bond and shall, not less than 7 days before the time fixed, cause to be served on the defendant (if he or she can be found and the case relates to a bail bond) and on each surety (if any) notice that, unless at the time and place fixed some person bound by the bond proves to the satisfaction of the Court that it ought not to be estreated, the bond will be estreated.

"(3) If at the time and place fixed by the Registrar under **subsection (2)** of this section no sufficient cause to the contrary is shown, a Court presided over by a District Court Judge, on proof of the non-performance of the condition of the bond or of bail (of which the certificate of the District Court Judge or Justice shall be sufficient prima facie evidence), may make an order in the prescribed form to estreat the bond to such an amount as it thinks fit as to any person bound by the bond upon whom notice is proved to have been served in accordance with **subsection (1)** of this section.

"(4) Notwithstanding anything in **subsection (3)** of this section, if the Court is satisfied that the defendant cannot be found, the Court may estreat the bond as against the defendant although notice has not been served on the defendant.

"(5) Any penalty payable in accordance with **subsection (3)** of this section shall be recoverable as if it were a fine."

29. Appeal against condition of bail—The principal Act is hereby amended by inserting, after section 115C (as inserted by section 5 (1) of the Summary Proceedings Amendment Act (No. 5) 1985), the following section:

"115D. (1) Where a District Court Judge has imposed any condition of bail under **subsection (2) or subsection (3) of section 49** of this Act, the defendant may appeal to the High Court against the imposition of that condition; and the provisions of sections 116 to 144 of this Act, as far as they are applicable, shall apply to any such appeal as if the defendant was a defendant who had been convicted on an information and sentenced.

"(2) Nothing in **subsection (1)** of this section shall limit or affect the jurisdiction of the High Court to hear and determine an application for bail by a person who has been refused bail by a District Court Judge or Justice."

30. Failure to answer bail where determination appealed against—The principal Act is hereby amended by repealing section 139, and substituting the following section:

"139. (1) Where an appellant who has been granted bail pursuant to section 125 of this Act fails to attend personally at the High Court in accordance with the condition of bail, the Registrar of that Court shall, if a surety bond has been entered into in respect of the appellant, certify upon the back of the notice of bail the non-performance of the condition, and shall return the notice of bail to the Registrar of the District Court whose determination was appealed against.

"(2) In every such case the provisions of **section 58** of this Act shall apply as if the certificate of the Registrar were the certificate of a District Court Judge or Justice given under section 57 of this Act."

31. First Schedule amended—Part II of the First Schedule to the principal Act (as amended by section 75 of the Arms Act 1983) is hereby amended by inserting, after the item relating to section 44 (1) of the Arms Act 1983, the following items:

"45. (1) Carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for lawful, proper, and sufficient purpose:

"46. (1) Carrying of imitation firearm, except for lawful, proper, and sufficient purpose."

32. Consequential repeals and amendments—(1) Section 126 of the principal Act is hereby repealed.

(2) The provisions of the principal Act specified in the first column of the **Second** Schedule to this Act are hereby amended in the manner indicated in the second column of that Schedule.

(3) The following enactments are hereby consequentially repealed:

(a) Section 4 (1) (c) of the Summary Proceedings Amendment Act 1961:

(b) Section 6 (1) of the Summary Proceedings Amendment Act 1964:

(c) Sections 6 (1), 16, and 19 of the Summary Proceedings Amendment Act 1973:

(d) Section 14 of the Summary Proceedings Amendment Act 1976:

(e) Section 2 (1) of the Summary Proceedings Amendment Act 1978:

(f) Section 13 (1) of the Summary Proceedings Amendment Act 1980:

(g) So much of the First Schedule to the Criminal Justice Act 1985 as relates to section 46 of the principal Act.

PART II

VICTIMS OF OFFENCES

33. Interpretation—In this Part of this Act, the term "victim" means a person who, as a result of a criminal offence by another person (whether or not that person is convicted of the offence), suffers physical or emotional harm, or loss of or damage to property; and where the offence resulted in the death of any person, the term includes the members of the immediate family of the deceased.

Declaration of Principles

34. Treatment of victims—Members of the Police, prosecutors, Judges, officials, and other persons dealing with victims should treat them with courtesy, compassion, and respect for their personal dignity and privacy.

35. Access to services—Victims and, where required, their families should have access to welfare, health, counselling, medical, and legal assistance responsive to their needs.

36. Early information for victims—(1) Members of the Police, officers of the court, and health and social services personnel should inform victims at the earliest practicable opportunity of the services and remedies available to them.

(2) Victims should also be told of available protection against unlawful intimidation.

37. Information about proceedings—The prosecuting authority or officers of the court, as the case may require, should make available to a victim information about the progress of the investigation of the offence, the charges laid or the reasons for not laying charges, the role of the victim as a witness in the prosecution of the offence, the date and place of the hearing of the proceedings, and the outcome of the proceedings, including any proceedings on appeal.

38. Return of property—Law enforcement agencies and the courts should return the property of a person (other than the defendant) that is held for evidentiary purposes as promptly as possible so as to minimise inconvenience to that person.

39. Victim impact statements—(1) Appropriate administrative arrangements should be made to ensure that a sentencing Judge is informed about the effects of the offence upon the victim, including any physical or emotional harm, or

loss of or damage to property, suffered by the victim as a result of the offence.

(2) Any such information should be conveyed to the Judge either by the prosecutor orally or by means of a written statement about the victim.

40. Residential address of victim—A victim's residential address should not be disclosed in court unless to exclude it would be contrary to the interests of justice.

41. Victim's views on bail in certain cases—On an application for bail in respect of a charge of sexual violation or other serious assault or injury, the prosecutor should convey to the judicial officer any fears held by the victim about the release on bail of the alleged offender.

42. Notification of release or escape of offender in certain cases—(1) The victim of an offence of sexual violation or other serious assault or injury should be given the opportunity to request notification of the offender's impending release, or escape, from penal custody.

(2) Where, in any such case, the victim makes such a request, then so long as the victim has supplied a current address and telephone number to the Secretary for Justice, the victim should be promptly notified of the offender's impending release, or escape, from penal custody.

Victims Task Force

43. Establishment of Victims Task Force—(1) For the purposes of this Part of this Act, there is hereby established a task force to be called the Victims Task Force.

(2) The Victims Task Force shall comprise the following:

(a) The Secretary for Justice or the Secretary's nominee, who shall chair the Task Force:

(b) The Commissioner of Police or the Commissioner's nominee:

(c) Not more than 4 other persons from time to time appointed by the Minister of Justice.

(3) The Victims Task Force is hereby declared to be a board within the meaning of the Fees and Travelling Allowances Act 1951.

44. Functions of Victims Task Force—The functions of the Victims Task Force shall be as follows:

(a) As a matter of priority, to work with Judges, Registrars, prosecutors, Government departments, and community organisations involved with victims in order to develop guidelines to promote the principles set out in **sections 34 to 42** of this Act:

(b) To assess the adequacy of existing services available to victims and to identify any shortcomings:

(c) To co-ordinate and promote the distribution of comprehensive information about the services and facilities available to victims:

(d) To consider whether further measures are needed to assist victims:

(e) To receive requests for financial assistance from community organisations working to assist victims, and to make recommendations on those requests to the Secretary for Justice:

(f) To consider whether provision should be made in law, in cases where an offender is sentenced to make reparation pursuant to section 22 of the Criminal Justice Act 1985, for the Crown to make an immediate advance to the victim of part of the sum ordered to be paid by the offender:

(g) To consider any other matter relating to victims referred to it by the Minister of Justice:

(h) To make recommendations to the Minister of Justice, as it sees fit, on matters relating to victims.

45. Victims Task Force Fund—(1) For the purposes of the Victims Task Force, the Secretary for Justice shall cause to be established a fund, to be called the Victims Task Force Fund.

(2) There shall be credited to the Victims Task Force Fund in each financial year, without further appropriation than this section, 1 percent of all money received by the Crown in payment of fines.

(3) The Victims Task Force Fund shall be under the control and supervision of the Secretary for Justice.

(4) The Victims Task Force Fund shall be used to meet the costs of, and for the purposes of, the Victims Task Force.

(5) The Victims Task Force Fund shall not be used to pay compensation to victims.

46. Expiry—**Sections 43 to 45** of this Act shall expire with the close of the 31st day of March 1993, and on the close of that day the Victims Task Force and the Victims Task Force Fund shall cease to exist.

SCHEDULES

Section 8

FIRST SCHEDULE

NEW SIXTH SCHEDULE ADDED TO CRIMES ACT 1961

Section 312D (1)

"SIXTH SCHEDULE

"INTERCEPTION WARRANT

(Sections 312B to 312D, Crimes Act 1961)

1. To [*Full name of commissioned officer of Police*] and every other member of the Police for the time being assisting you.

2. I am satisfied on an application made to me in writing and on oath that—

(a) There are reasonable grounds for believing that—

(i) There is an organised criminal enterprise; and

(ii) A member of that organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence described in section 312B (1) (a) of the Crimes Act 1961, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

(b) There are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and

(c) [*Whichever of the following is applicable*]:

* Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; and

or

* Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; and

or

* The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client; and

(e) It would be in the best interests of the administration of justice to grant an interception warrant.

3. The offence in respect of which the warrant is granted is ..... (*being an offence described in section 312B (1) (a) of the Crimes Act 1961*).

4. This is to authorise you at any time or times within ..... days from the date of this warrant—

* To use a listening device to intercept the private communications of [*Name and address of suspect*]:

or

* To intercept private communications at [*Premises or place, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise*]:

or

* To enter, with force where necessary, [*State vehicle, place, or premises that may be entered*] for the purpose of placing, servicing, or retrieving the listening device.

*5. The following terms and conditions are imposed in the public interest:

.....

*6. The following conditions are imposed to avoid so far as practicable the interception of communications of a professional character:

.....

Dated at this day of 19 .

.....

Judge of the High Court.

* To be deleted where not applicable."

Section 32 (2) SECOND SCHEDULE

CONSEQUENTIAL AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

Provision	Amendment
Section 20	By repealing subsections (4A) to (4D) (as inserted by section 6 (1) of the Summary Proceedings Amendment Act 1973), and substituting the following subsections: "(4A) Any person who is arrested pursuant to a warrant issued under subsection (4) of this section shall be brought as soon as possible before a District Court Judge, who may— "(a) By warrant in the prescribed form order that the person be committed to a prison to be detained until the hearing; or "(b) Grant the person bail. "(4B) Any person committed to prison pursuant to **subsection (4A)** of this section shall be treated in the same way as an inmate awaiting trial.

SECOND SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957—*continued*

Provision	Amendment
	"(4C) Where any person who is arrested pursuant to **subsection (4)** of this section is committed to prison pursuant to **subsection (4A)** of this section, that person shall, if he or she so requests, be brought before a District Court Judge for the purpose of making an application for bail, and the Judge may grant or refuse to grant bail on that application. "(4D) Where any person is granted bail pursuant to **subsection (4A)** or **subsection (4C)** of this section, the provisions of **subsection (2)** of **section 47**, **subsection (3)** of **section 48**, **section 49** except **subsection (2) (a)**, and **sections 50**, **50A**, **50B**, **53**, **54**, **55**, **57**, and **58** of this Act, as far as they are applicable and with any necessary modifications, shall apply as if— "(a) That person were a defendant remanded in custody who had been granted bail; and "(b) For the words 'for the period of the adjournment' in **subsection (2)** of **section 47** there were substituted the words 'until the date of the hearing'; and "(c) There were inserted in **subsection (1) (b)** of **section 49**, after the words 'time to time adjourned', the words 'unless that person is released by the Court from further attendance'; and "(d) There were substituted for the words 'evading any further appearance in Court' in **subsection (1) (a)** of **section 53** the words 'avoiding giving evidence'".
Section 55	By omitting the word "bond", and substituting the words "notice of bail".
Section 57	By omitting the words "his bond", and substituting the word "bail". By omitting the words "bail bond", and substituting the words "notice of bail". By adding, as subsection (2), the following subsection:

SECOND SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957—*continued*

Provision	Amendment
	"(2) Every certificate given by a District Court Judge under **subsection (1)** of this section shall be prima facie evidence, for the purposes of **section 54** of this Act, that the defendant has failed to comply with the condition of the bond specified in the certificate."
Section 115 (4)	By inserting, after the words "or section 115C" (as inserted by section 2 (2) of the Summary Proceedings Amendment Act (No. 5) 1985), the words "or **section 115D**".
Section 116	By inserting in subsection (1A) (as inserted by section 2 (4) of the Summary Proceedings Amendment Act (No. 5) 1985), after the words "under section 115C", the words "or **section 115D**".
Section 117 (2)	By repealing paragraph (a), and substituting the following paragraph: "(a) Any notice of bail, and any surety bond, relating to the defendant;".
Section 125	By repealing subsections (2) and (3), and substituting the following subsections: "(2) Subject to the provisions of **section 50A** of this Act (as applied by **subsection (3)** of this section), where an appellant is granted bail, the appellant shall be released on condition that the appellant attend personally at the High Court on the day on which the appeal is to be heard and on any day to which the hearing may be from time to time adjourned. "(3) Where an appellant is granted bail under this section, the provisions of **sections 49, 50, 50A, 50B, 53, and 54** of this Act, as far as they are applicable and with any necessary modifications, shall apply as if the appellant were a defendant remanded in custody who had been granted bail."
Section 128	By omitting from subsection (1) the words "his bail bond", and substituting the word "bail". By omitting from subsection (2) the words "bail bond", and substituting the words "surety bond".

SECOND SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957—*continued*

Provision	Amendment
	By omitting from subsection (3) the words "bail bond", and substituting the words "surety bond".
Section 153	By repealing paragraphs (d) to (j), and substituting the following paragraphs: "(d) Section 49 (which relates to conditions of bail): "(e) Section 50 (which relates to surety bonds): "(f) Section 50A (which relates to the release of a defendant granted bail): "(g) Section 50B (which relates to the variation of conditions of bail): "(h) Section 53 (which relates to the arrest without warrant of a defendant on bail in certain circumstances): "(i) Section 54 (which relates to a failure to answer bail): "(j) Section 57 (which relates to the non-performance of a condition of bail): "(ja) Section 58 (which relates to the estreat of bonds):".
Section 171	By repealing subsection (1), and substituting the following subsection: "(1) Where a defendant committed for trial is granted bail, the provisions of **subsection (2)** of **section 47**, **subsection (3)** of **section 48**, and **sections 49**, **50**, **50A**, **50B**, **53**, **54**, **55**, **57**, and **58** of this Act, as far as they are applicable and with any necessary modifications, shall apply as if— "(a) That person were a defendant remanded in custody who has been granted bail; and

SECOND SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957—*continued*

Provision	Amendment
	"(b) For all the words in **paragraphs (a) and (b)** of **section 49 (1)** there were substituted the words "and report to the Registrar of the Court specified in the notice of bail, at the place so specified, on such date during the sittings of that Court then current for the trial of criminal cases at that place as shall be notified by the Registrar, in writing, to the defendant or to his or her counsel and also to the sureties under any surety bond, or, if the defendant is not so notified to report during the then current sittings, that the defendant so report on the first day of the next such sitting at that place, and that the defendant attend personally after the date so notified, or, as the case may be, after the first day of those next sittings, on such other day or days during the sittings as may be notified by the Registrar, in writing, to the defendant or his or her counsel." By omitting from subsection (1A) (as inserted by section 3 (2) of the Summary Proceedings Amendment Act 1980) the words "order under section 49A of this Act (which relates to the variation of the conditions of bail)", and substituting the words "variation of the conditions of bail under **section 50B** of this Act". By repealing the second sentence of subsection (2), and substituting the following sentence: "Where the defendant is granted bail, the provisions of **subsection (2)** of **section 47**, and **sections 50, 50A, 50B, 53, 54, 55, 57, and 58** of this Act, as far as they are applicable and with any necessary modifications, shall apply as if—

SECOND SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957—*continued*

Provision	Amendment
	"(a) That person were a defendant remanded in custody who had been granted bail; and "(b) For all the words in **paragraphs (a)** and **(b)** of **section 49 (1)** there were substituted the words "at the High Court at the place and on the date specified in the notice of bail."
Section 182 (as substituted by section 20 (1) of the Summary Proceedings Amendment Act 1976)	By omitting from subsection (1) the words "the bail bond (if any)" and substituting the words "the notice of bail (if any) and any surety bond". By omitting from subsection (2) the words "the bail bond (if any)", and substituting the words "the notice of bail (if any) and any surety bond".
Section 185	By repealing subsection (2), and substituting the following subsection: "(2) Where any person is arrested under **subsection (1)** of this section, the provisions of **subsections (4A)** to **(4D)** of **section 20** of this Act, so far as they are applicable and with any necessary modifications, shall apply."

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