

Chapter:	227	MAGISTRATES ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To provide for the jurisdiction of magistrates and the procedure and practice before magistrates in relation to offences punishable on summary conviction, the transfer of charges to the District Court and the committal of persons charged with indictable offences and for other purposes.

[1 January 1933]

(Originally 41 of 1932 (Cap 227 1950))

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

Section:	2	Interpretation	L.N. 172 of 1999	05/07/1999
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Remarks:

Adaptation amendments retroactively made - see 59 of 1999 s. 3

PRELIMINARY

In this Ordinance, unless the context otherwise requires-

- "appellant" (上訴人) means the party appealing under Part VII from a decision of a magistrate;
- "civil debt" (民事債項) means any sum of money claimed to be due which is recoverable before a magistrate otherwise than on information; (Replaced 35 of 1969 Schedule)
- "counsel" (代表律師) means any barrister, advocate or solicitor having the right of audience before any court in Hong Kong; (Amended 59 of 1994 s. 6)
- "deputy magistrate" (暫委裁判官) means a deputy magistrate appointed under section 5A; (Added 21 of 1999 s. 12)
- "District Court" (區域法院) means the District Court of Hong Kong established by the District Court Ordinance (Cap 336); (Added 2 of 1953 s. 2. Amended 25 of 1998 s. 2)
- "fine" (罰款) includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction or order;
- "indictable offence" (可公訴罪行) means any crime or offence for which a magistrate is authorized or empowered or required to commit the accused person to prison for trial before the court;
- "indictment" (公訴) includes an information in the court;
- "information" (告發) includes a charge; (Added 49 of 1965 s. 2)
- "legal officer" (律政人員) has the same meaning as it has in section 2 of the Legal Officers Ordinance (Cap 87); (Added 13 of 1966 Schedule)
- "magistrate" (裁判官) includes a permanent magistrate and a special magistrate; (Replaced 24 of 1949 s. 2)
- "magistrates' clerk" (裁判官書記) includes (where there is more than one) either or any of such clerks or such other person as a magistrate directs to do anything required by this Ordinance to be done by the magistrates' clerk; [cf. 1879 c. 49 s. 48 U.K.]
- "party" (一方) includes the HKSAR and also any person aggrieved within the meaning of section 105 or 113; (Amended 25 of 1998 s. 2; 59 of 1999 s. 3)
- "prescribed" (訂明) means prescribed or provided by any enactment which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings or matters to the punishment, recovery, making or conduct of which this Ordinance expressly or impliedly applies or may be applied; [cf. 1879 c. 49 s. 49 U.K.]
- "prison" (監獄) includes any place or building or portion of a building set apart, or hereafter to be set apart, for the purpose of a prison under any Ordinance relating to prisons;

"Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)

"respondent" (答辯人) means the opposite party whose interest conflicts with the interest of any person appealing within the meaning of section 105 or 113;

"sum adjudged to be paid by a conviction" (根據定罪而判決須繳付的款項) and "sum adjudged to be paid by an order" (根據命令而判決須繳付的款項), respectively, include any costs adjudged to be paid by the conviction or order, as the case may be, of which the amount is ascertained by such conviction or order;

"witness order" (證人令) means an order made under section 84(1). (Added 59 of 1981 s. 2)

Section:	3	Saving of special procedure		30/06/1997
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Nothing in this Ordinance shall affect any special procedure provided in any Ordinance.

Section:	4	Use of forms		30/06/1997
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The forms in the rules made hereunder or forms to the like effect, with such variations or additions as circumstances may require, shall be deemed good, valid and sufficient in law.

Section:	5	Chief Executive may by warrant appoint permanent and special magistrates	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART I

CONSTITUTION OF MAGISTRATES

(1) The Chief Executive may by warrant from time to time appoint such number of permanent and special magistrates as are in his opinion required for the efficient administration of justice in Hong Kong and may in the case of special magistrates by such warrant limit the jurisdiction and powers to be exercised by the person so appointed. Such appointments together with the warrant of appointment where such warrant limits jurisdiction or powers to be exercised by the person appointed shall be notified in the Gazette. (Amended 48 of 1949 s. 3; 3 of 1974 s. 2; 59 of 1994 s. 6; 25 of 1998 s. 2)

(2) A permanent magistrate shall exercise all the jurisdiction and powers conferred on a magistrate by any enactment in force in Hong Kong and also such jurisdiction and powers as may from time to time be conferred on a permanent magistrate. (Amended 59 of 1994 s. 6)

(3) A special magistrate shall, subject to the provisions of his warrant of appointment, exercise all the jurisdiction conferred on a magistrate by any enactment in force in Hong Kong, but his powers of imposing imprisonment and fine shall, in the case of any enactment in force on 20 May 1949, be subject to the limitations as to the maximum term or terms of imprisonment and the maximum fine which such magistrate may lawfully impose under this Ordinance as amended from time to time and in the case of any enactment coming into force after 20 May 1949, be so subject unless such enactment expressly provides to the contrary. (Amended 59 of 1994 s. 6)

(4) (Repealed 47 of 1997 s. 10)

(5) So long as any warrant of appointment of a magistrate issued under this section is in force and unrevoked, it shall continue to have effect notwithstanding his subsequent appointment to some other office.

(6) Any appointment made under the provisions of subsection (1) may be given effect from a date anterior to that of the warrant by which it is made:

Provided that nothing herein contained shall be deemed to authorize the discharge of any magisterial functions by any person so appointed before the date of the warrant or before the requirements of section 17 of the Oaths and Declarations Ordinance (Cap 11) have been fulfilled. (Added 30 of 1958 s. 2. Amended 20 of 1972 s. 24)

(Added 24 of 1949 s. 3)

Section:	5AA	Professional qualifications of permanent magistrates	10 of 2005	08/07/2005
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- (1) A person shall be eligible to be appointed as a permanent magistrate if-
 - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years-
 - (i) practised as a barrister, solicitor or advocate in such a court;
 - (ii) been a legal officer;
 - (iii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap 91);
 - (iv) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap 6); or
 - (v) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap 412).
- (2) Notwithstanding subsection (1), a person shall also be eligible to be appointed as a permanent magistrate if-
 - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) whether before or since becoming so qualified, he has for a period of or periods totalling not less than 5 years been a special magistrate appointed in accordance with section 5.
- (3) For the purposes of calculating the period of 5 years referred to in subsection (1)(b)-
 - (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;
 - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap 100) may be taken into account notwithstanding the repeal of that Ordinance.

(Added 10 of 2005 s. 142)

Section:	5AB	Professional qualifications of special magistrates	10 of 2005	08/07/2005
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- (1) A person shall be eligible to be appointed as a special magistrate if-
 - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years-
 - (i) practised as a barrister, solicitor or advocate in such a court;
 - (ii) been a legal officer;
 - (iii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap 91);
 - (iv) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap 6); or
 - (v) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap 412).
- (2) Notwithstanding subsection (1), a person shall also be eligible to be appointed as a special magistrate if-
 - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) whether before or since becoming so qualified, he has for a period of or periods totalling not less than 5 years served in the grade of Court Prosecutor, Court Interpreter or Judicial Clerk in the Government.
- (3) For the purposes of calculating the period of 5 years referred to in subsection (1)(b)-
 - (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;

- (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap 100) may be taken into account notwithstanding the repeal of that Ordinance.

(Added 10 of 2005 s. 142)

Section:	5A	Appointment of deputy magistrates	10 of 2005	08/07/2005
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(1) The Chief Justice may by warrant appoint any person who is eligible under section 5AA to be appointed as a permanent magistrate or under section 5AB to be appointed as a special magistrate to be a deputy magistrate for such period and on such terms as he thinks fit. Such appointment shall be notified in the Gazette. (Amended 10 of 2005 s. 143)

(2) Subject to the terms of appointment, a deputy magistrate shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform all the duties of a permanent magistrate and any reference in any law to a magistrate shall be construed accordingly.

(3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

(4) Where the hearing of any proceedings before a deputy magistrate is adjourned or where judgment is reserved therein or where the determination of any matter is subject to review, the deputy magistrate shall have power to resume the hearing and determine the proceedings or to deliver as the judgment of the magistrate's court the judgment which he has reserved or to review the determination which he has made, notwithstanding that before the hearing is resumed or judgment is delivered or the review is disposed of, his appointment has expired or has been terminated.

(5) For the purposes of subsection (4), the power of a deputy magistrate to determine the proceedings in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.

(Added 21 of 1999 s. 13)

Section:	6	(Repealed)		30/06/1997
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(Repealed 13 of 1995 s. 31)

Section:	7	(Repealed)		30/06/1997
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(Repealed 47 of 1997 s. 10)

Section:	7A	(Repealed)		30/06/1997
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(Repealed 13 of 1995 s. 36)

Section:	7B	(Repealed)		30/06/1997
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(Repealed 13 of 1995 s. 36)

Section:	7C	(Repealed)		30/06/1997
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(Repealed 13 of 1995 s. 36)

Section:	7D	Notice of prosecution		30/06/1997
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PART II

PROCEDURE IN RESPECT OF SUMMARY OFFENCES

- (1) Where the penalty which may be imposed upon conviction for an offence does not exceed a fine of \$10000

and imprisonment for 6 months (whether with or without any additional order, relating to suspension or cancellation of a licence, disqualification from obtaining or holding a licence, or as to compensation or otherwise), any public officer or body corporate authorized to prosecute in respect of that offence may file in a magistrate's court a notice of prosecution and shall, within 14 days of such filing, serve a copy of that notice by post on the defendant. (See Forms 104, 105)

- (2) A notice under subsection (1)-
 - (a) shall be in the prescribed form;
 - (b) shall be signed by the public officer or on behalf of the body corporate filing the notice;
 - (c) shall state-
 - (i) the name and address of the defendant;
 - (ii) particulars of the offence which is alleged to have been committed and of the time and place at which it is alleged to have been committed; and
 - (iii) the date before which the defendant may file a written notice requiring a hearing being a date not less than 35 days after the date on which the notice of prosecution was filed; and
 - (d) shall be accompanied by a statement of the penalty which may be imposed and any other order which may be made upon conviction.

(Added 18 of 1984 s. 2)

Section:	7E	Procedure where hearing required	L.N. 362 of 1997	01/07/1997
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(1) Where a notice of prosecution has been filed and served and the defendant requires a hearing, he shall, by written notice filed in the magistrate's court in which the notice of prosecution was filed and before the date stated in the notice of prosecution, so state and shall, in that notice, state whether he intends to plead guilty or not guilty to the offence. (See Forms 109, 110, 111)

(2) Where a written notice by the defendant mentioned in subsection (1) is filed, a summons shall be issued under section 8 and the prosecution shall proceed as if an information had been laid under that section by an informant deemed to act on behalf of the Secretary for Justice. (Amended L.N. 362 of 1997)

(Added 18 of 1984 s. 2)

Section:	7F	Procedure where no hearing required	L.N. 362 of 1997	01/07/1997
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(1) Where a notice of prosecution is filed and served and the defendant does not file a written notice under section 7E(1), a magistrate sitting in the absence of the parties and otherwise than in open and public court, shall determine the matter as if the defendant has pleaded guilty to the offence alleged in the notice of prosecution and may order the defendant to pay any fine or costs permitted by law.

(2) In determining the matter under subsection (1), the magistrate may take into account the nature of the offence and the particulars alleged in the notice of prosecution, any previous convictions in the statement accompany in the notice of prosecution, and any matter submitted by the defendant in response to the notice of prosecution.

(3) Where a magistrate sitting under subsection (1) considers that a fine may not be an adequate penalty in the circumstances a summons shall be issued under section 8 and the prosecution shall proceed as if an information had been laid under that section by an informant deemed to act on behalf of the Secretary for Justice. (Amended L.N. 362 of 1997)

(4) Where a prosecution proceeds under subsection (3), the magistrate may, having heard what each party has to say as to sentence, impose any penalty or make any other order permitted by law as in a case where a defendant admits the truth of an information.

(Added 18 of 1984 s. 2)

Section:	7G	Procedure after determination		30/06/1997
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(1) Where a magistrate has determined a matter under section 7F(1) and imposed a fine or ordered costs to be paid, a notice of such fine or costs shall be served by post on the defendant calling upon him to pay such fine or costs within such time, being not less than 21 days after the determination of the matter, as may be specified therein. (See Forms 106, 107)

(2) Where a fine or costs are not paid within the time specified in the notice referred to in subsection (1), a magistrate shall cause a further notice to be served personally on the defendant by a police officer, usher or other

officer of a magistrate's court, requiring him to make payment of the fine or costs within 14 days of the notice failing which a summons or warrant will be issued under section 101A.

(Added 18 of 1984 s. 2)

Section:	7H	Review		30/06/1997
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Where, on application being made at any time by the defendant, a magistrate is satisfied that a notice of prosecution has not come to the personal notice of the defendant, the magistrate shall review his determination in the matter and section 104 (except subsection (1)) shall apply to that review. (See Form 108)

(Added 18 of 1984 s. 2)

Section:	7I	Section 26 not to apply on review		30/06/1997
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Where a magistrate reviews his determination on a matter under section 7H and reverses his decision, proceedings may be taken, notwithstanding section 26, within 6 months from the date of the review.

(Added 18 of 1984 s. 2)

Section:	7J	Withdrawal of notice of prosecution		30/06/1997
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The person filing a notice of prosecution may, at any time before the matter is determined under section 7F(1), by written notice filed in the magistrate's court, withdraw the notice of prosecution.

(Added 18 of 1984 s. 2)

Section:	8	Issue of summons to defendant and mode of service thereof		30/06/1997
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(1) In every case where a complaint is made to or an information laid before a magistrate or an officer of a magistrate's court who is authorized in writing for that purpose by a magistrate, being a complaint or information in respect of which a magistrate has power to convict summarily or to make an order for the payment of money or otherwise, it shall be lawful, subject to this Part, for a summons to be issued by a magistrate or an officer of a magistrate's court who is authorized under this subsection. (See Form 1) (Replaced 18 of 1981 s. 2. Amended 12 of 1992 s. 2)

(1A) Every such summons shall be issued to the person against whom the complaint has been made or information laid, stating the matter of the complaint or information and requiring him to appear at a certain time and place before a magistrate to answer to the complaint or information and to be further dealt with according to law. (Added 18 of 1981 s. 2. Amended 59 of 1994 s. 2)

(1B) (a) (Repealed 12 of 1992 s. 2)

(b) A summons may be issued without consideration of the complaint or information by the magistrate or an officer of a magistrate's court who is authorized under subsection (1), but, if a magistrate does consider the complaint or information, he may for good cause refuse to issue a summons. (Added 18 of 1981 s. 2. Amended 12 of 1992 s. 2)

(1C) (Repealed 12 of 1992 s. 2)

(1D) Every such summons shall be in the prescribed form. (Replaced 12 of 1992 s. 2)

(2) (a) Every such summons shall be served-

- (i) by hand; or
- (ii) by post.

(b) Where a summons is served by post and the person to whom it is directed does not appear at the time and place specified in the summons for the appearance of that person, such service shall be deemed to have never been effected, and the summons shall thereafter be served by hand.

(c) Where a summons is served by hand, the police officer, the usher or other officer of a magistrate's court, or officer of the Independent Commission Against Corruption who served the summons shall, save as provided in subsection (3), attend before a magistrate at any time and place specified by a magistrate to depose, if necessary, to its service. (Amended 48 of 1996 s. 24)

(d) Nothing in this subsection shall oblige a magistrate or an officer of a magistrate's court who is authorized under subsection (1) to issue a summons in any case where the defendant appears

voluntarily or upon his recognizance or is in the custody of the police or charged on the charge sheet in which case it shall be lawful for a magistrate to hear and determine the case in all respects as if the defendant had appeared in answer to a summons.

(e) In this subsection-

"served by hand" (由專人送達) means served by a police officer, usher or other officer of a magistrate's court, or officer of the Independent Commission Against Corruption on the person to whom the summons is directed- (Amended 48 of 1996 s. 24)

(a) by delivering the summons to that person personally; or

(b) by leaving it with a third person for that person at that person's last or most usual place of abode;

"served by post" (以郵遞方式送達) means sent by an usher or other officer of a magistrate's court by ordinary post to the residential or business address of the person to whom it is directed. (Replaced 59 of 1994 s. 2)

(3) A statutory declaration by a police officer, usher or other officer stating that he delivered a summons to the person to whom it is directed personally or that he left it with a third person for that person at that person's last or most usual place of abode, shall on its production be admissible in evidence without further proof, and until the contrary is proved the magistrate before whom it is produced shall presume- (Amended 59 of 1994 s. 2; 14 of 1997 s. 9)

(a) that the facts stated therein are true; and

(b) that the summons was duly served in accordance with subsection (2)(a)(i). (Added 36 of 1976 s. 2)

(4) Notwithstanding subsection (3) a magistrate may require the police officer, usher or other officer who served a summons to attend before him and give evidence on oath as to its service. (Added 36 of 1976 s. 2. Amended 59 of 1994 s. 2)

(5) Subject to subsection (6), at any time before the person to whom a summons is directed has appeared to answer the complaint or information, a magistrate may, where practicable upon first hearing the complainant or informant, cancel the summons by writing under his hand which shall be served in the manner provided for the service of a summons by hand in subsection (2). (Added 18 of 1981 s. 2. Amended 59 of 1994 s. 2)

(6) Where a summons has been cancelled under subsection (5) a magistrate may, within 2 months of the date of such cancellation, order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as he may think fit. (Added 18 of 1981 s. 2)

[cf. 1848 c. 43 s. 1 U.K.]

Section:	8A	Notice to appear before a magistrate in respect of certain offences		30/06/1997
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(1) Notwithstanding section 8, if a public officer specified in the first column of the Fourth Schedule reasonably suspects that a person has committed any offence specified opposite thereto in the second column of that Schedule, the public officer may serve on that person personally a notice requiring him to appear at a time, being not earlier than 3 clear days after the notice has been served on him and place specified in the notice before a magistrate to be dealt with according to law. (See Forms 1A , 1B)

(2) A notice under subsection (1)-

(a) shall be in the prescribed form;

(b) shall be signed by the public officer by whom it is served; and

(c) shall state-

(i) the name and address of the person upon whom the notice is served;

(ii) the offence which is alleged to have been committed with sufficient particulars thereof;

(iii) the time and place at which the offence is alleged to have been committed; and

(iv) the time and place at which the person on whom the notice is served is required to appear.

(3) If a person upon whom a notice under subsection (1) has been served fails to appear before a magistrate at the time and place mentioned in the notice, and it is made to appear to the magistrate by oath that the notice was served on that person personally, the magistrate may issue his warrant for the apprehension of that person and to bring that person before him or another magistrate to be dealt with according to law. (See Form 2A)

(4) If a person upon whom a notice under subsection (1) has been served appears before a magistrate in accordance with the notice, or is brought before a magistrate by a warrant issued under subsection (3), the magistrate may hear and determine the offence alleged in the notice as if a complaint has been made or an information has been

laid against that person in respect of the offence and for such purposes, the provisions under this Ordinance relating to hearing of complaint or information and the proceedings thereon shall apply mutatis mutandis.

(5) If a person upon whom a notice under subsection (1) has been served is brought before a magistrate by a warrant issued under subsection (3), the magistrate shall order that person to pay costs of not less than \$80 and not more than \$1500, whether or not he is convicted of the offence alleged in the notice: (Amended 18 of 1984 s. 3)

Provided that no order shall be made where the magistrate is satisfied that exceptional circumstances existed which rendered it inequitable to require compliance with the notice.

(6) Any costs ordered to be paid under subsection (5) shall be recoverable under section 69(2) in the same manner as costs awarded under section 69(1).

(7) Notwithstanding anything to the contrary in this Ordinance, a magistrate may permit a representative to appear on behalf of a person upon whom a notice under subsection (1) has been served where such representative satisfies the magistrate that he is authorized to enter a plea of guilty and is himself able to pay any fine imposed.

(Added 59 of 1972 s. 2)

Section:	9	Issue of warrant in first instance or subsequently		30/06/1997
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(1) Where a complaint or information laid before a magistrate is substantiated by oath before him, the magistrate may, in the first instance or notwithstanding that a summons has been previously issued, issue a warrant to arrest the defendant and bring him before a magistrate to answer to the complaint or information. (See Form 4)

(2) Where a defendant is arrested under a warrant issued under subsection (1), he shall be brought before a magistrate, who may adjourn the hearing and deal with the defendant in accordance with section 20.

(Replaced 36 of 1976 s. 3)

Section:	10	Manner of making complaint or laying information	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Every complaint and every information under this Part, unless some enactment otherwise requires, may respectively be made or laid without any oath being made of the truth thereof; except in case of an information where the magistrate receiving the same thereupon issues his warrant in the first instance to apprehend the defendant as aforesaid; and in every such case where the magistrate issues his warrant in the first instance the matter of the information shall be substantiated by the oath of the informant, or of some witness on his behalf, before any such warrant shall be issued. (Amended 25 of 1998 s. 2)

(2) For every distinct offence of which any person is accused there shall be a separate complaint or information, and every such complaint or information shall be tried separately except in the following cases-

(a) when a person is accused of more offences than one of the same or a similar character he may, subject to the provisions of section 26, be charged with and tried at the same time for any such offence, whether it is committed with respect to the same person or not: (Amended 49 of 1965 s. 4)

Provided that if the magistrate is of opinion that a person accused will be prejudiced or embarrassed in his defence, he may order a separate trial of any such charge or charges;

(b) if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at the same time for every such offence; and

(c) if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. (Replaced 24 of 1949 s. 6)

(3) Every such complaint or information may be made or laid by the complainant or informant in person or by his counsel or other person authorized in that behalf.

(4) Every such complaint or information shall comply with the Indictment Rules (Cap 221 sub. leg.) in so far as those rules are applicable mutatis mutandis to any such complaint or information. (Replaced 36 of 1976 s. 4)

Section:	11	Place and manner of hearing		30/06/1997
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The room or place in which a magistrate sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them, unless the magistrate otherwise directs where the evidence is of an indecent character, or where a prosecution is for an offence against the Societies Ordinance (Cap 151) and is an offence relating to or otherwise connected with a Triad Society, in which case he shall make a note on the depositions of the direction which he has given:

Provided that in any case the delivery by the magistrate of his determination and any proceedings subsequent thereto, other than a review under section 104 which requires the hearing of evidence, shall take place in open and public court.

(Amended 24 of 1949 s. 7; 16 of 1960 s. 2)
[cf. 1848 c. 43 s. 12 U.K.]

Section:	12	Prosecution of offences to be under control of Secretary for Justice	L.N. 362 of 1997	01/07/1997
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The Secretary for Justice is hereby entrusted with the duty and discretion of conducting the prosecution of all offences cognizable by a magistrate:

Provided-

- (a) that it shall be lawful for any member of the police force and such other public servant as the Secretary for Justice may from time to time by any general or special direction authorize to lay before a magistrate or an officer of a magistrate's court who is authorized under section 8(1) an information in respect of an offence and any such information shall be deemed to have been laid on behalf of the Secretary for Justice; (Amended 12 of 1992 s. 3)
- (b) that in any such case the Secretary for Justice shall be deemed to be a party to the proceedings and such member or public servant shall not be so deemed.

(Added 24 of 1949 s. 8. Amended L.N. 362 of 1997)

Section:	13	Appointment of official prosecutors by Secretary for Justice*	25 of 2008	11/07/2008
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The Secretary for Justice may appoint any public officer or class of public officers to act as official prosecutor or prosecutors and to conduct generally on his behalf any prosecution before a magistrate or any specified classes of prosecutions or any particular case. Any official prosecutor so appointed may without any written authority appear and plead before a magistrate any case of which he has charge which is being inquired into, tried or reviewed.

(Added 24 of 1949 s. 8. Amended L.N. 362 of 1997; 25 of 2008 s. 3)

Note:

* (Amended 25 of 2008 s. 3)

Section:	14	Private prosecution and intervention by the Secretary for Justice	25 of 2008	11/07/2008
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(1) A complainant or informant who is not acting or deemed to act on behalf of the Secretary for Justice may if he so wishes and without any prior leave conduct in person or by counsel on his behalf the prosecution of the offence to which the complaint or information relates but the Secretary for Justice may at any stage of the proceedings before the magistrate intervene and assume the conduct of the proceedings and may within the time limited by section 104 for applying for a review intervene for the purpose of applying for or being made a party to any review.

(2) As from the date of any such intervention the Secretary for Justice shall be deemed to be a party to the proceedings or the review in lieu of such complainant or informant.

(3) Such intervention may be effected by oral intimation given to the magistrate by a legal officer in the Department of Justice acting under the instructions of the Secretary for Justice or by notice in writing under the hand of the Secretary for Justice of his intervention lodged with the magistrates' clerk. In the event of oral intimation as aforesaid having been given the Secretary for Justice shall as soon as conveniently may be cause notice in writing of his intention to be lodged as aforesaid. (Amended 25 of 2008 s. 4)

(Added 24 of 1949 s. 8. Amended L.N. 362 of 1997)

Section:	15	Secretary for Justice may withdraw case by entering nolle prosequi*	25 of 2008	11/07/2008
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(1) In any case before a magistrate in which an accused person is being tried for an indictable offence pursuant to section 91, 92 or 92A and at any stage thereof before judgment and in any case in which an inquiry is being held by a magistrate for the purpose of determining whether an accused should be committed for trial, the Secretary for Justice may enter a nolle prosequi by informing the magistrate in writing that the HKSAR intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts. (Amended 59 of 1992 s. 13; L.N. 362 of 1997; 25 of 1998 s. 2; 59 of 1999 s. 3)

(2) If the accused shall not be before the magistrate when such nolle prosequi is entered the magistrates' clerk shall forthwith cause notice in writing of the entry of such nolle prosequi to be given to the keeper of the prison in which such accused may be detained.

(Added 24 of 1949 s. 8)

Note:

* (Replaced 25 of 2008 s. 5)

Section:	16	Rights of parties to conduct case personally or by counsel	L.N. 362 of 1997	01/07/1997
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(1) The party against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto and to have the witnesses examined and cross-examined by him or by counsel on his behalf.

(2) Without prejudice to the rights of the Secretary for Justice every complainant or informant shall be at liberty to conduct the complaint or information respectively and to have the witnesses examined and cross-examined by him or by counsel on his behalf. (Amended L.N. 362 of 1997)

(Added 24 of 1949 s. 8)

Section:	17	(Repealed 25 of 2008 s. 6)	25 of 2008	11/07/2008
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Section:	18	Appearance by counsel		30/06/1997
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At the hearing of a complaint or information, a party may be represented by counsel; and an absent party so represented shall be deemed not to be absent:

Provided that appearance of a party by counsel shall not satisfy any provision in any enactment or any condition of a recognizance expressly requiring the appearance of the party.

(Replaced 36 of 1976 s. 5)

Section:	18A	Non-appearance of defendant		30/06/1997
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Subject to sections 18E and 19A(5), in any case where a summons has been served on the defendant a reasonable time before the hearing and at the time and place appointed for the hearing only the complainant or informant appears, the magistrate-

- (a) may issue a warrant to arrest the defendant and bring him before a magistrate and adjourn the hearing for such time as he may think fit; (See Form 2)
- (b) may adjourn the hearing under section 20 and if the defendant does not appear at the time and place to which the hearing is adjourned may issue a warrant to arrest the defendant and bring him before a magistrate; or
- (c) may, upon the application of the complainant or informant, dismiss the complaint or information.

(Added 18 of 1984 s. 4)

(Added 36 of 1976 s. 5. Amended 18 of 1984 s. 4)

Section:	18B	Non-appearance of informant or complainant		30/06/1997
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(1) Where at the hearing the defendant appears, but the complainant or informant does not appear, the magistrate-

- (a) shall, if the defendant is brought before him by virtue of a warrant and the complainant or informant has not had adequate notice of the hearing, adjourn the hearing under section 20; and
- (b) may, in any other case, dismiss the complaint or information or adjourn the hearing under section 20.

(2) Where a complaint or information is dismissed under subsection (1), the magistrate may order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as the magistrate may think fit. (Amended 18 of 1981 s. 3)

(Added 36 of 1976 s. 5)

Section:	18C	Non-appearance of either party		30/06/1997
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(1) Where at the hearing neither the complainant or informant nor the defendant appears, the magistrate may-

- (a) dismiss the information or complaint; or
- (b) adjourn the hearing under section 20.

(2) Where a complaint or information is dismissed under subsection (1), such dismissal shall not operate as a bar to any subsequent proceedings against the defendant in the same matter.

(Added 36 of 1976 s. 5)

Section:	18D	Appearance of both parties		30/06/1997
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Where at the hearing both the complainant or informant and the defendant appear, the magistrate shall proceed to hear and determine the case.

(Added 36 of 1976 s. 5)

Section:	18E	Plea of guilty by letter	L.N. 294 of 2000	01/01/2001
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(1) Subject to subsection (3), the defendant may, in the case of an offence specified in the Third Schedule, plead guilty by letter addressed to the magistrate, and thereupon the magistrate may-

- (a) proceed to hear and determine the case in the absence of the defendant in like manner as if the defendant had appeared before him and pleaded guilty:

Provided that the magistrate shall not impose any fine exceeding \$2000 or any term of imprisonment; or (Amended 51 of 1981 s. 2)

- (b) adjourn the hearing for the purpose of dealing with the complaint or information as if such letter had not been received.

(2) In every case where the defendant may plead guilty by letter, the summons shall contain a footnote or endorsement drawing attention to that fact.

(3) Where-

- (a) a complaint or information is in respect of an offence under section 41(1) of the Road Traffic Ordinance (Cap 374); and
- (b) if the defendant is convicted of the offence on the basis that the complaint or information is true, the conviction will be one to which section 41(3) of that Ordinance applies,

a summons in respect of that offence shall be endorsed to the effect that the defendant may not plead guilty by letter, and in such a case the provisions of this section shall thereupon cease to apply. (Replaced 50 of 2000 s. 5)

(4) The Legislative Council may by resolution amend the Third Schedule.

(Added 36 of 1976 s. 5)

Section:	19	Proceedings at hearing		30/06/1997
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(1) Where the defendant is present at the hearing, the substance of the complaint or the information (or the summons which has been issued under section 8 pursuant to such complaint or information) shall be read over to him, and explained if necessary, and he shall be asked whether he admits or denies the truth of the complaint or

information. If the defendant admits the truth of the complaint or information, his admission shall be recorded as nearly as possible in the words used by him, and the magistrate shall convict him or make an order against him accordingly; but if he does not admit the truth of the complaint or information as aforesaid, then the magistrate shall proceed to hear upon oath the complainant or informant and such witnesses as may be produced in support of the complaint or information, and also to hear the defendant and such evidence as may be adduced in defence; and also to hear and examine such other witnesses as the complainant or informant may examine in rebuttal, if the defendant or his counsel has examined any witnesses or given any evidence other than as to the defendant's general character. (Amended 48 of 1949 s. 5; 49 of 1965 s. 6; 59 of 1994 s. 3)

(2) The magistrate, having heard what each party has to say and the witnesses and evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order against the defendant or dismiss the complaint or information, as the case may be. (See Form 32)

(3) If the magistrate convicts a defendant or makes an order against him, he shall thereupon make a minute or memorandum of such adjudication (for which no fee shall be paid), and he shall cause the same to be lodged with the magistrates' clerk, who shall register the same as hereinafter provided. (Replaced 2 of 1955 s. 2)

(4) If the magistrate dismisses the complaint or information, it shall be lawful for him, if he thinks fit, on being required to do so, to make an order of dismissal of the complaint or information, and he shall give the defendant in that behalf a certificate thereof, which said certificate shall be a bar to any subsequent complaint or information for the same matters respectively against the same party. (See Form 47)

Section:	19A	Plea by a corporation before a magistrate		30/06/1997
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(1) On the hearing by a magistrate of any complaint or information against a corporation, a representative may on behalf of the corporation enter a plea of guilty or not guilty.

(2) Where a representative enters a plea of not guilty under subsection (1), he may exercise the rights under section 16(1) as if he were an individual defendant against whom the complaint is made or the information laid.

(3) Section 49(4) of the Criminal Procedure Ordinance (Cap 221) shall apply mutatis mutandis to a representative for the purposes of subsection (1) as it applies to a representative for the purposes of that section.

(4) A letter under section 18E may be addressed to the magistrate on behalf of a corporation by a director or the secretary of the corporation and that section shall apply in relation to a letter purporting to be so addressed as it applies to a letter purporting to be addressed by an individual defendant. (Amended 36 of 1976 s. 6)

(5) Subject to subsection (4), if at the time and place appointed for the hearing of a complaint or information against a corporation only the complainant or informant appears, the magistrate may, if he is satisfied that a summons was served on the corporation a reasonable time before the hearing, order a plea of not guilty to be entered and may thereupon proceed to hear and determine the case as though the corporation had duly entered a plea of not guilty. (Added 36 of 1976 s. 6)

(Added 6 of 1971 s. 2)
[cf. 1967 c. 80 s. 29 U.K.]

Section:	20	Adjournment of hearing and procedure thereon		30/06/1997
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(1) Before or during the hearing of any complaint or information, a magistrate may adjourn the hearing to such time and place and on such conditions as he thinks fit.

(2) Where the hearing is adjourned-

- (a) by reason of the non-appearance of the complainant or informant, either personally or by counsel, and the magistrate is satisfied that the complainant or informant has had adequate notice of the hearing, he may order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as the magistrate may think fit; or
- (b) on the application of the complainant or informant, either personally or by counsel, and the magistrate is satisfied that the application is occasioned by some default, neglect or omission on the part of the complainant, informant or his counsel, as the case may be, he may order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as the magistrate may think fit. (Amended 18 of 1981 s. 3)

(3) When adjourning the hearing of a complaint or information, the magistrate may admit the defendant to bail or commit him to prison or some other place of security or to such other custody as the magistrate may think fit. (See Forms 5-9, 18) (Amended 56 of 1994 s. 11)

(4) Where a defendant who has been admitted to bail fails to surrender to custody as shall have been appointed, a magistrate may issue a warrant for the arrest of the defendant. (Replaced 56 of 1994 s. 11)

(5) A magistrate may, on being satisfied that a defendant who is accused of an offence triable summarily is by reason of illness or accident unable to appear personally before a magistrate-

- (a) visit the defendant and in his presence exercise any of the powers conferred by subsection (1) or (3); or
- (b) exercise such powers in the absence of the defendant if, in the opinion of the magistrate, it is not practicable for him to visit the defendant.

(6) If, at the time and place to which the hearing or further hearing is so adjourned-

- (a) the complainant or informant does not appear, either personally or by counsel, a magistrate may dismiss the complaint or information on such terms as he may think fit, including a term that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as the magistrate may think fit; or (Amended 18 of 1981 s. 3)
- (b) the defendant does not appear, either personally or by counsel, the magistrate may-
 - (i) issue a warrant for the arrest of the defendant; (See Form 2)
 - (ii) declare any recognizance to be forfeited; and
 - (iii) adjourn the hearing for such time as he may think fit.

(Replaced 36 of 1976 s. 7)

Section:	21	Provisions as to witnesses		30/06/1997
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General

(1) If it is made to appear to a magistrate, by any credible person, that any person within Hong Kong is likely to give material evidence on behalf of the complainant or informant or defendant, the magistrate shall issue his summons to such person, under his hand and seal, requiring him to be and appear at-

- (a) such time and place as specified in the summons; and
- (b) such time and place as may be directed in such manner as is specified in the summons,

before a magistrate to testify what he knows concerning the matter of the complaint or information. (Amended 44 of 1962 s. 2; 59 of 1994 ss. 4 & 6)

(2) If any person so summoned refuses or neglects to appear as required by the summons and no just excuse is offered for such refusal or neglect, then after proof upon oath that the summons was served on such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum (where, in the opinion of the magistrate, necessary) was paid or tendered to him for his costs or expenses in that behalf, it shall be lawful for the magistrate before whom such person should have appeared to issue a warrant, under his hand and seal, to bring and have such person at a time and place to be therein mentioned before a magistrate- (See Form 15)

- (a) to testify as aforesaid, unless the complaint or information as been dismissed; and
- (b) to show cause why he should not be punished under subsection (5) for his refusal or neglect so to appear. (Amended 6 of 1968 s. 2; 59 of 1994 s. 4)

(3) If the magistrate is satisfied, by evidence upon oath, that it is probable that such person will not attend to give evidence without being compelled to do so, then, instead of issuing a summons, it shall be lawful for him to issue his warrant in the first instance. (See Form 16)

(4) If any person having come before a magistrate whether voluntarily or in obedience to a summons or having been brought before him by warrant or otherwise shall refuse to be sworn or having been sworn shall without just excuse refuse to answer such questions as shall be put to him concerning the premises, the magistrate may, by warrant under his hand and seal, order him to be imprisoned for 12 months unless he in the meantime shall consent to be sworn and to answer concerning the premises, or he may impose upon such person a fine not exceeding \$5000. (See Form 17) (Amended 30 of 1958 Schedule; 6 of 1968 s. 2; 51 of 1981 s. 3; 59 of 1981 s. 2)

(5) The magistrate before whom a person is brought pursuant to a warrant under subsection (2) may, unless such person satisfies the magistrate that he had reasonable cause for his refusal or neglect to appear as required by the summons, impose upon such person a fine not exceeding \$5000 and order him to be imprisoned for a period not exceeding 12 months. (Added 6 of 1968 s. 2. Amended 51 of 1981 s. 3; 59 of 1981 s. 2; 59 of 1994 s. 4)

[cf. 1848 c. 43 s. 7 U.K.]

Section:	22	Power to order production of documents		30/06/1997
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The powers contained in sections 21 and 78 enabling a magistrate to issue a summons to any witness to attend to give evidence before a magistrate shall be deemed to include the power to summon and require a witness to produce to such magistrate books, plans, papers, documents, articles, goods and things likely to be material evidence on the hearing of any charge, information or complaint, and the provisions of those sections relating to the neglect or refusal of a witness, without just excuse, to attend to give evidence, or to be sworn, or to give evidence, shall apply accordingly, and a magistrate shall have power to vary or add to the forms in the rules made hereunder accordingly. (See Forms 14-17)

[cf. 1914 c. 58 s. 29 U.K.]

Section:	23	Variance between information and evidence		30/06/1997
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(1) In every case of an information for any offence punishable on summary conviction any variance between the information and the evidence adduced in support thereof as to the time at which the offence or act is alleged to have been committed shall not be deemed material, if it is proved that such information was in fact laid within the time limited by law for laying the same; and any variance between the information and the evidence adduced in support thereof as to the place in which the offence or act is alleged to have been committed shall not be deemed material, provided that the offence or act is proved to have been committed within the jurisdiction of the magistrate by whom the information is heard and determined.

(2) If any such variance, or any variance in any other respect between the information and the evidence adduced in support thereof, appears to the magistrate to be such that the defendant has been thereby deceived or misled the magistrate may-

- (a) adjourn the hearing of the case and if he is satisfied that the variance is due to default or neglect on the part of the complainant, informant or his counsel, as the case may be, he may order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as the magistrate may think fit; and (Amended 18 of 1981 s. 3)
- (b) commit the defendant to prison or some place of security or to such other custody as the magistrate may think fit, or admit him to bail, with or without surety or sureties. (See Forms 5-9) (Replaced 36 of 1976 s. 8)

(3) Where a defendant admitted to bail under subsection (2)(b) does not appear at the time and place appointed for the adjourned hearing, a magistrate may declare any recognizance to be forfeited and issue a warrant for the arrest of the defendant. (See Form 3) (Added 36 of 1976 s. 8)

[cf. 1848 c. 43 s. 9 U.K.]

Section:	24	Description of property of partners in complaint or information	25 of 1998 s. 2; 29 of 1998 s. 105	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2; 29 of 1998 s. 105

(1) In any complaint or information or the proceedings thereon in which it is necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons and to state the property to belong to the person so named and another or others, as the case may be; and whenever in any complaint or information or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in manner aforesaid.

(2) Whenever in any complaint or information or the proceedings thereon it is necessary to state the ownership of any public work or building maintained or repaired at the public expense or any materials or tools provided for the repair of public highways, roads, buildings, gates, bridges, lamps, boards, stones, posts, fences or other things erected or provided for such highways, roads, buildings, gates, bridges, lamps, boards, stones, posts and fences, or of any reservoirs, conduits, sewers, drains or other public works or property of whatsoever description, it shall be sufficient to describe such property as the property of the Government. (Amended 25 of 1998 s. 2; 29 of 1998 s. 105)

[cf. 1848 c. 43 s. 4 U.K.]

Section:	25	Complaint for order to pay money need not be in writing	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

In any case of a complaint upon which a magistrate may make an order for payment of money or otherwise, it shall not be necessary that such complaint shall be in writing unless it is required to be so by the enactment upon which such complaint is framed.

(Amended 25 of 1998 s. 2)
[cf. 1848 c. 43 s. 8 U.K.]

Section:	26	Limit of time for complaint or information	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

In any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose.

(Amended 25 of 1998 s. 2)
[cf. 1848 c. 43 s. 11 U.K.]

Section:	26A	Limitation of time in respect of certain summary offences concerning aviation	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Notwithstanding section 26, in the case of an offence (other than an indictable offence) against any order in force under section 2A of the Civil Aviation Ordinance (Cap 448) or against any regulation made under such an order, a complaint may be made or an information may be laid in respect of the offence within 12 months from the commission of the offence, if- (Amended 66 of 1997 s. 17)

- (a) it was committed in connection with the flight of an aircraft in the course of which an accident occurred; and
- (b) not more than 6 months after the commission of the offence-
 - (i) public notice has been given that an investigation into the accident is being carried out in accordance with the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (See App. I p. L 1); or
 - (ii) the Chief Executive has directed under regulation 16 of the Hong Kong Civil Navigation (Investigation of Accidents) Regulations (See App. I p. L 1) that a public inquiry into the accident be held in accordance with those regulations. (Amended 25 of 1998 s. 2)

(2) The fact that any direction referred to in subsection (1)(b)(ii) has been given on any date may be proved by the production of a certificate to that effect purporting to be signed by the Chief Secretary for Administration. (Amended L.N. 362 of 1997)

(3) For the purposes of this section-

- (a) the flight of an aircraft shall include any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and
- (b) "accident" (意外事故) includes any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened.

(Added 91 of 1970 s. 4)
[cf. 1968 c. 61 s. 23 U.K.]

Section:	27	Defects in and amendment of complaint, information or summons		30/06/1997
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- (1) Where it appears to the adjudicating magistrate that there is-
- (a) a defect in the substance or form of any complaint, information or summons; or
 - (b) a variance between the complaint, information or summons and the evidence adduced in support of it,
- he shall, subject to subsection (2)-
- (i) amend the complaint, information or summons if he is satisfied that no injustice would be caused by that amendment; or
 - (ii) dismiss the complaint, information or summons.
- (2) The adjudicating magistrate shall amend the complaint, information or summons where-
- (a) the defect or variance mentioned in subsection (1) is not material; or
 - (b) any injustice which might otherwise be caused by an amendment would be cured by an order as to costs, an adjournment or leave to recall and further examine witnesses or call other witnesses.
- (3) Following an amendment to a complaint, information or summons, the adjudicating magistrate shall-
- (a) read and explain the amended complaint, information or summons to the defendant;
 - (b) give leave to the parties to call or recall and further examine such witnesses as may be reasonably required by a party having regard to the nature of the amendment;
 - (c) grant such adjournment as may be reasonably necessary to enable the parties to call or recall witnesses and to prepare their cases;
 - (d) if he thinks fit, make an order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5000, as may be occasioned by the amendment; and
 - (e) give judgment upon the substantial merits and facts of the case as proved before him, having regard to the offence charged in the complaint, information or summons as amended:

Provided that, if the amendment is made after the case for the complainant or informant is closed, no further evidence may be called by the complainant or informant other than evidence that would, apart from this section, be admissible in rebuttal.

(4) In this section, "amend" (修訂) includes the substitution of another offence in place of that alleged in the complaint, information or summons.

(Replaced 5 of 1987 s. 2)

Section:	28	Form of conviction and order	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) In every case of a conviction where no particular form of such conviction is given by the enactment creating the offence or regulating the prosecution for the same, and in every case of a conviction upon any past enactment, whether any particular form of conviction is therein given or not, it shall be lawful for the magistrate who so convicts to draw up his conviction in such one of the forms of conviction in the rules made under this Ordinance as may be applicable to such case or to the like effect. (See Forms 20-26)

(2) Where an order is made, and no particular form of order is given by the enactment giving authority to make such order, and in every case of an order to be made under the authority of any past enactment, whether any particular form of order is therein given or not, it shall be lawful for the magistrate by whom such order is to be made to draw up the same in such one of the forms of orders in the rules made under this Ordinance as may be applicable to such case or to the like effect. (See Forms 27, 30-34, 38, 39)

(3) Such convictions and orders shall not be drawn up unless for an appeal or some other legal purpose. (Added 2 of 1955 s. 3) [cf. Summary Jurisdiction Rules 1915 r. 53 U.K.]

(Amended 25 of 1998 s. 2)
[cf. 1848 c. 43 s. 17 U.K.]

Section:	29	Proof of previous convictions		30/06/1997
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Otherwise than in a court sitting in manner provided in section 3 of the Juvenile Offenders Ordinance (Cap 226),

where a magistrate-

(a) has convicted any person; or

(b) has made an order against any person for the payment of money or otherwise,

and it is proved to the satisfaction of the magistrate, on oath or in the prescribed manner, that not less than 7 days previously a notice was served on such person in the prescribed form and in the manner prescribed in section 8(2)(a) for the service of a summons specifying any alleged previous conviction of such person of a summary offence proposed to be brought to the notice of the magistrate in the event of the conviction of such person of the offence charged, and such person is not present in person before the magistrate, the magistrate may take account of any such previous conviction so specified as if such person had appeared and admitted it.

(Added 30 of 1958 s. 5)

Section:	30	(Repealed)		30/06/1997
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(Repealed 47 of 1997 s. 10)

Section:	31	Form and execution of warrant, etc.		30/06/1997
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(1) Every warrant to apprehend a defendant in order that he may answer to any complaint or information shall be under the hand and seal of the magistrate issuing the same, and may be directed either to any police officer by name or generally to all the police officers within Hong Kong. (Amended 59 of 1994 s. 6)

(2) It shall state shortly the matter of the complaint or information on which it is founded, and shall name or otherwise describe as far as practicable the person against whom it has been issued, and it shall order the person to whom it is directed to apprehend the defendant and to bring him before a magistrate to answer to the complaint or information, and to be further dealt with according to law.

(3) It shall not be necessary to make the warrant returnable at any particular time, but the same may remain in full force until it is executed or until it is withdrawn by any magistrate. (Amended 32 of 1966 s. 2)

(4) The warrant may be executed by apprehending the defendant at any place within Hong Kong or the waters thereof; in every case where the warrant is directed to all police officers within Hong Kong, it shall be lawful for any police officer to execute the warrant in like manner as if it were directed specially to such police officer by name: (Amended 59 of 1994 s. 6)

Provided that no objection shall be taken or allowed to any warrant to apprehend a defendant so issued on any such complaint or information as aforesaid under or by virtue of this Ordinance for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant or informant but if any such variance appears to the magistrate at the hearing to be such that the party apprehended has been thereby deceived or misled, it shall be lawful for the magistrate, on such terms as he may think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the defendant to prison or some place of security or to such other custody as the magistrate may think fit, or to admit him to bail. (See Forms 6-9) (Amended 56 of 1994 s. 11)

[cf. 1848 c. 43 s. 3 U.K.]

Section:	32	Non-avoidance of summons or warrant by death of magistrate	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Any warrant or summons issued by a magistrate under this or any other enactment shall not be avoided by reason of the magistrate who signed the same dying or ceasing to hold office.

(Amended 25 of 1998 s. 2)

[cf. 1879 c. 49 s. 37 U.K.]

Section:	33	Description of offences, exceptions, exemptions, etc. warrants, forfeiture, etc.		30/06/1997
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The following provisions shall apply to proceeding before magistrates-

(a) the provisions of the Indictment Rules (Cap 221 sub. leg.) which relate to the description of an offence

- in an indictment; (Replaced 36 of 1976 s. 9)
- (b) (Repealed 5 of 1971 s. 13)
 - (c) a warrant of commitment shall not be held void by reason of any defect therein, if it is alleged that the offender has been convicted or ordered to do or to abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same;
 - (d) a warrant of distress shall not be deemed void by reason only of any defect therein, if it is therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser ab initio by reason only of any defect in the warrant or of any irregularity in the execution of the warrant; but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in execution of a warrant of distress; and
 - (e) all goods forfeited by order of a magistrate may be sold in such manner as the magistrate may direct.

[cf. 1879 c. 49 s. 39 U.K.]

Section:	34	Minute of proceedings		30/06/1997
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(1) In all proceedings under this Part the magistrate at the hearing shall take or cause to be taken a full minute in writing, or a record whether by means of shorthand notes or mechanical means or otherwise, so far as circumstances permit, of the following matters- (See Form 19) (Amended 51 of 1995 s. 15)

- (a) the nature of the complaint, if an oral complaint has been made; (Amended 49 of 1965 s. 7)
- (b) the names of the complainant, informant or prosecutor, and of the defendant, and of the respective witnesses on either side;
- (c) the evidence or depositions of the witnesses;
- (d) objections to the admissibility of evidence and whether the same have been allowed or disallowed; and
- (e) the fines, if any, paid into court.

(2) The minute shall, immediately after the close of the case, be handed to the magistrates' clerk for safe custody.

(3) The minute or record may be kept in either or both of the official languages. (Added 51 of 1995 s. 15)

Section:	35	Register of cases and proof thereof		30/06/1997
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(1) The magistrates' clerk shall keep a register in the prescribed form of the minutes or memoranda of all the convictions and orders of the magistrate and of such other proceedings as are directed by rules made under section 133 to be registered. (Amended 2 of 1955 s. 4)

(2) The register, and also any extract from the register certified by the clerk keeping the same to be a true extract, shall be prima facie evidence of the matters entered therein for the purpose of informing a magistrate, but nothing in this section shall dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.

(3) The entries relating to each minute, memorandum or proceeding shall contain the name of the magistrate before whom the conviction, order or proceeding referred to therein was made or had.

(4) Every sum paid to the magistrates' clerk in accordance with this Ordinance, and the appropriation of such sum, shall be entered and authenticated in the manner directed by rules made under section 133.

(5) (Repealed 14 of 1979 s. 2)

[cf. 1879 c. 49 s. 22 U.K.]

Section:	35A	Inspection etc. of minute and register	L.N. 362 of 1997	01/07/1997
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(1) Every minute taken under section 34(1) and every register kept under section 35(1) shall be open for inspection without fee or reward by-

- (a) a judge;
- (b) the Registrar;
- (c) the Secretary for Justice; (Amended L.N. 362 of 1997)
- (d) a judge or deputy judge of the District Court;
- (e) the registrar of the District Court;
- (f) a magistrate;

- (g) any party to the proceedings to which the minute relates or to any proceedings which may be recorded in the register, or his legal representative;
- (h) any person, or his legal representative, who satisfies the Registrar or the magistrates' clerk that such inspection is reasonably required in connection with actual or potential civil or criminal proceedings by or against that person;
- (i) any person who satisfies the Registrar or the magistrates' clerk that there is good and sufficient reason for that inspection.

(2) Any person aggrieved by the decision of a magistrates' clerk to refuse permission to inspect may appeal to a magistrate whose decision shall be final.

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

(4) The right to inspect under subsection (1) shall include the right to a copy of the minute or register subject, in the case of applicants under subsection (1)(g), (h) and (i), to the payment of the prescribed fee.

(5) Disclosure of the contents of a minute or register under subsection (1) shall not amount to a breach of the Rehabilitation of Offenders Ordinance (Cap 297).

(Replaced 13 of 1995 s. 42)

Section:	36	Power to permit conditional release of offenders	30/06/1997
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Special provisions

(1) Where any person is charged before a magistrate with an offence punishable on summary conviction, and the magistrate thinks that the charge is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, the magistrate, after conviction, may make an order either-

- (a) discharging the offender absolutely; or
- (b) discharging the offender conditionally on his entering into a recognizance, with or without sureties, in a sum not greater than \$2000, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding 3 years, as may be specified in the order. (See Forms 10, 11, 11A) (Replaced 16 of 1960 s. 3. Amended 51 of 1981 s. 4; 55 of 1986 s. 7)

(2) The magistrate may, where he makes an order under this section, further order that the offender shall pay such costs of the proceedings (not exceeding \$2000 or, if a higher limit is fixed by any enactment relating to the offence, that higher limit) as he thinks reasonable. (See Forms 26, 33, 34) (Amended 48 of 1972 s. 4; 51 of 1981 s. 4)

(3) An order made by a magistrate under this section shall, for the purpose of revesting or restoring stolen property and of enabling the magistrate to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restriction or delivery, have the like effect as a conviction.

(4) The magistrate may order the defendant in default of compliance with any order made under subsection (2) to be imprisoned for 6 months. (Amended 48 of 1949 s. 6; 30 of 1958 Schedule)

(Replaced 24 of 1949 s. 11)
[cf. 1907 c. 17 s. 1 U.K.]

Section:	37	Reduction of imprisonment on part payment of fine	30/06/1997
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(1) Subject to the provisions of subsections (2) and (3), where a term of imprisonment is imposed by a magistrate in respect of the non-payment of any sum of money adjudged to be paid by a conviction or order, that term shall, on payment of a part of such sum to any person authorized by a magistrate to receive it, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid.

(2) Notwithstanding the provisions of subsection (1), in reckoning the number of days by which any term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account, and in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a cent shall be omitted. (Replaced 30 of 1958 s. 6)

(3) Notwithstanding the provisions of subsection (1), where any person who has been sentenced to imprisonment in default of payment of a sum of money adjudged to be paid by a conviction or order earns under the Prison Rules (Cap 234 sub. leg.) any remission of the sentence, the term of his imprisonment shall for the purposes of

subsection (1) be deemed, at any given time, to have been reduced by such period of remission as may at the time stand to his credit.

[cf. 1914 c . 58 s. 3 (1) U.K.]

Section:	38	Application of money found on defaulter to satisfy sum adjudged		30/06/1997
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(1) Where a defendant is fined and the same is not forthwith paid, the magistrate may order the defendant to be searched.

(2) Any money found on the arrest of a person adjudged to pay a fine, or on a search as aforesaid, or on his being taken to prison or other place of detention in default of payment of such a fine may, unless the magistrate otherwise directs, be applied towards payment of the fine; and the balance, if any, shall be returned to him.

(3) The magistrate shall not allow the application as aforesaid of any money found on a person if he is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

(Replaced 41 of 1956 s. 2)

[cf. 1952 c. 55 s. 68 U.K.]

Section:	39	Recognizance may be dispensed with		30/06/1997
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Where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognizance and to find sureties for keeping the peace and observing some other condition, or to do any of such things, the magistrate may dispense with any requirement or any part thereof.

Section:	40	Summary order		30/06/1997
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(1) Where a power is given by any future enactment to a magistrate of requiring any person to do or to abstain from doing any act or thing, other than the payment of money, or of requiring any act or thing to be done or left undone, other than the payment of money, and no mode is prescribed of enforcing such requisition, a magistrate may exercise such power by an order and may annex thereto any conditions as to time or mode of action which he may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as he may think just, and generally may make such arrangements for carrying into effect such power as to him may seem meet.

(2) A person making default in complying with any such order shall be punished in the prescribed manner, or, if no punishment is prescribed, may be ordered to pay a sum of \$25 for every day during which he is in default, or to be imprisoned until he has remedied his default: (See Form 68)

Provided that a person shall not, for non-compliance with the requisition of a magistrate, whether made by one or more orders, to do or to abstain from doing any act or thing, be liable under this section to imprisonment for any term or terms amounting in the aggregate to more than 3 months or to payment of any sums exceeding in the aggregate \$1000. (Amended 24 of 1949 s. 13; 30 of 1958 Schedule)

[cf. 1879 c. 49 s. 34 U.K.]

Section:	41	Provision as to mode of payment of sum adjudged to be paid		30/06/1997
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(1) The magistrate by whose conviction or order any sum is adjudged to be paid may do all or any of the following things- (See Form 42)

- (a) allow time for the payment of the sum;
- (b) direct payment to be made of the sum by instalments; and
- (c) direct that the person liable to pay the sum shall be at liberty to give, to the satisfaction of a magistrate or such person as may be specified by the magistrate adjudging the money to be paid, security, with or without a surety or sureties, for the payment of the sum or of any instalment thereof, and such security may be given and enforced in manner provided by this Ordinance.

(2) Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining

unpaid.

(3) A magistrate directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time and in such place and to such person as may be specified by the magistrate, and every person, not being the magistrates' clerk, to whom any such sum or instalment is paid shall as soon as may be account for and pay over the same to such clerk. (See Forms 21-23, 25-27, 30-34, 38)

[cf. 1879 c. 49 s. 7 U.K.]

Section:	42	Return by magistrate's order of property taken from defendant	30/06/1997
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Where any property has been taken from a person charged before magistrate with an offence punishable either on indictment or on summary conviction, a report shall be made by the police on the charge sheet to the magistrate of the fact of such property having been taken from the accused or defendant and of the particulars thereof, and the magistrate may, if he is of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the accused or defendant, direct such property or any portion thereof to be returned to the accused or defendant or such other person as he may direct.

[cf. 1879 c. 49 s. 44 U.K.]

Section:	43	(Repealed)	30/06/1997
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(Repealed 5 of 1971 s. 13)

Section:	44	Rule as to cumulative sentences for assault	30/06/1997
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A special magistrate shall not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding

6 months; but nothing in this section shall be deemed to affect the provisions contained in section 94.

(Amended 24 of 1949 s. 14)

[cf. 1879 c. 49 s. 18 U.K.]

Section:	45	(Repealed)	30/06/1997
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(Repealed 21 of 1970 Second Schedule)

Section:	46	(Repealed)	30/06/1997
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(Repealed 21 of 1970 Second Schedule)

Section:	47	Order for delivery of goods stolen or fraudulently obtained and in possession of dealer in second-hand property	30/06/1997
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(1) If any goods are stolen or unlawfully obtained from any person, or, having been lawfully obtained, are unlawfully deposited, pledged, sold or exchanged, and complaint is made thereof to a magistrate, and that such goods are in the possession of any broker, dealer in marine stores or other dealer in second-hand property, or of any person who has lent money upon the credit of such goods, it shall be lawful for the magistrate to issue a summons or warrant for the appearance of such broker, dealer or lender and for the production of such goods to be delivered up to the owner thereof, either without payment or on payment of such sum and at such time as the magistrate may think fit.

(2) Every broker, dealer or lender who, having been so ordered, refuses or neglects to deliver up the goods, or who disposes of or makes away with the same after notice that such goods were stolen or unlawfully obtained as aforesaid, shall forfeit to the owner of the goods the full value thereof:

Provided that no such order shall bar any such broker, dealer or lender from recovering possession of such goods by action from the person into whose possession they may come by virtue of the magistrate's order, provided that such action is commenced within 6 months next after such order has been made.

(3) Nothing in this section shall affect pawnbrokers.

Section:	48	Restoration of property unlawfully pledged, etc.		30/06/1997
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(1) It shall be lawful for a magistrate to order that any goods brought before him which have been unlawfully pledged or exchanged, and the ownership of which is established to his satisfaction, shall be delivered up to the owner by the person with whom they were so unlawfully pledged or exchanged, either without compensation or with such compensation to that person as he may think fit.

(2) Nothing in this section shall affect pawnbrokers.

Section:	49	(Repealed)		30/06/1997
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(Repealed 70 of 1967 s. 7)

Section:	50	Penalty on common informer for compounding without permission of magistrate		30/06/1997
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In case any person lays any information before a magistrate for any offence alleged to have been committed, by which he was not personally aggrieved, and afterwards directly or indirectly receives, without the permission of a magistrate, any sum of money or reward for compounding, delaying or withdrawing the information, it shall be lawful for a magistrate to issue his warrant or summons, as he may deem best, for bringing before him the person charged with such compounding, delay or withdrawal; and if such offence is proved by the confession of the said informer or by the oath of any credible witness, he shall be liable to a penalty of \$500.

(Amended 24 of 1949 s. 17)

Section:	51	Warrant of distress		30/06/1997
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Distress and committal warrants

Where a conviction adjudges a fine to be paid or where an order requires the payment of a sum of money and by the enactment authorizing such conviction or order such fine or sum of money is to be levied on the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the enactment in that behalf no mode of raising or levying such fine or sum of money or of enforcing the payment of the same is stated or provided, it shall be lawful for a magistrate to issue his warrant of distress for the purpose of levying the same, which shall be in writing under his hand and seal: (See Forms 21, 30, 48, 49)

Provided that whenever it appears to the magistrate to whom application is made for any such warrant that the issuing thereof would be ruinous to the defendant and his family, or whenever it appears to the magistrate, by the confession of the defendant or otherwise, that he has no goods or chattels whereon to levy the distress, or whenever in the opinion of the magistrate it is inexpedient to issue such warrant, then and in every such case it shall be lawful for the magistrate, instead of issuing the warrant of distress, to commit the defendant to prison for such time and in such manner as by law the defendant might be so committed in case such warrant had issued and no goods or chattels could be found whereon to levy such fine or sum and costs aforesaid. (See Form 69)

(Amended 30 of 1958 Schedule)

[cf. 1848 c. 43 s. 19 U.K.]

Section:	52	Allowing defendant to go at large until return made to warrant, etc.		30/06/1997
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Where a magistrate issues any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or, by a written warrant in that behalf or verbally, to order the defendant to be kept and detained in safe custody until return is made to the warrant, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the magistrate, for his appearance before a magistrate at the time and place appointed for the return of the warrant: (See Forms 64, 65)

Provided that in any case where a defendant gives security by recognizance as aforesaid, and does not afterwards appear at the time and place mentioned therein, the magistrate then present may forthwith declare the same to be

forfeited in manner hereinafter provided. (Amended 56 of 1994 s. 11)

[cf. 1848 c. 43 s. 20 U.K.]

Section:	53	Commitment in default of sufficient distress		30/06/1997
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If at the time and place appointed for the return of any such warrant of distress the police officer or other officer who has had the execution of the same returns that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the magistrate before whom the same is returned to issue his warrant of commitment under his hand and seal, directed to the same or any other police officer or other officer, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such police officer or other officer to convey the defendant to prison, and there to deliver him to the Commissioner of Correctional Services, and requiring the said Commissioner to receive the defendant and to imprison him in such manner and for such time as the enactment on which the conviction or order mentioned in the warrant of distress is founded directs, unless the sum or sums adjudged to be paid, and all costs and charges of the distress (the amount thereof being ascertained and stated in the commitment) shall be sooner paid. (See Forms 57, 63)

[cf. 1848 c. 43 s. 21 U.K.]

Section:	54	Commitment of defendant where no remedy or punishment in default of sufficient distress		30/06/1997
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Whenever it is returned to a warrant of distress issued for the recovery of a fine or sum of money ordered to be paid under a conviction or order that no sufficient goods of the party against whom such warrant has been issued can be found, and by the enactment under the provisions of which such conviction or order was made no further remedy or punishment is provided for the non-payment of such fine or sum of money, it shall nevertheless be lawful for a magistrate, if he thinks fit, by his warrant as aforesaid, to commit the defendant to prison for such period as may be in accordance with the scale provided by section 68, unless the fine or sum adjudged to be paid, and all costs and charges of the distress (the amount thereof being ascertained and stated in the commitment), shall be sooner paid. (See Form 63)

(Amended 30 of 1958 Schedule)

[cf. 1848 c. 43 s. 22 U.K.]

Section:	55	Commitment of defendant in first instance		30/06/1997
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(1) Where the enactment by virtue of which a conviction for a fine or an order for the payment of money is made makes no provision for such fine or sum being levied by distress, but directs that, if the same be not paid forthwith or within a certain time therein mentioned or to be mentioned in the conviction or order, the defendant shall be imprisoned for a certain time unless such fine or sum shall be sooner paid, in every such case such fine or sum shall not be levied by distress; but if the defendant does not pay the same, together with costs, if awarded, forthwith, or at the time specified in the conviction or order for the payment of the same, it shall be lawful for a magistrate to issue his warrant of commitment under his hand and seal, requiring the police officer to whom the same is directed to take and convey the defendant to prison and there to deliver him to the Commissioner of Correctional Services, and requiring the said Commissioner to receive the defendant and to imprison him for such time as the enactment on which the conviction or order is founded as aforesaid directs, unless the fine or sum adjudged to be paid shall be sooner paid. (See Forms 27, 59, 61) (Amended 30 of 1958 Schedule)

(2) A warrant issued under subsection (1) may remain in full force until it is executed or until it is withdrawn by any magistrate. (Added 32 of 1966 s. 3)

[cf. 1848 c. 43 s. 23 U.K.]

Section:	56	Commitment for disobedience of order to do some act, etc., not being payment of money	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) Where a conviction does not order the payment of any fine but that the defendant be imprisoned, or where an order is not for the payment of money but for the doing of some other act, and directs that, in case of the defendant's refusal or neglect to do such act, he shall be imprisoned, and the defendant refuses or neglects to do such act, in every such case it shall be lawful for a magistrate to issue his warrant of commitment under his hand and seal, requiring the police officer to whom the same is directed to take and convey the defendant to prison and there to deliver him to the Commissioner of Correctional Services, and requiring the said Commissioner to receive the defendant and to imprison him for such time as the enactment on which the conviction or order is founded as aforesaid directs. (See Forms 66, 68) (Amended 30 of 1958 Schedule; 25 of 1998 s. 2)

(2) In any such case, where by the conviction or order any sum for costs is adjudged to be paid by the defendant to the complainant or informant, such sum may, if the magistrate thinks fit, be levied by warrant of distress in manner aforesaid, and, in default of distress, the defendant may be also committed to prison there to be kept for one month to commence at the termination of the imprisonment which he is then undergoing, unless such sum for costs and all costs and charges of the distress shall be sooner paid. (See Forms 50, 51, 69) (Amended 30 of 1958 Schedule) [cf. 1848 c. 43 s. 24 U.K.]

Section:	57	Consecutive or partly consecutive sentences of imprisonment		30/06/1997
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Where a term of imprisonment is imposed by a magistrate, either in the first instance or in respect of the non-payment of any sum of money adjudged to be paid by a conviction or order, the magistrate may order that the said term shall commence at any time during or at the expiration, in whatever manner, of any other term of imprisonment which has previously been imposed by any court:

Provided that where 2 or more terms of imprisonment imposed by a magistrate are ordered to run consecutively in whole or in part the aggregate of the said terms of imprisonment shall not, in the case of a special magistrate, exceed 12 months and in the case of a permanent magistrate exceed 3 years. Nothing in the foregoing proviso shall be deemed to affect the provisions of section 44.

(Replaced 24 of 1949 s. 18. Amended 48 of 1949 s. 7; 13 of 1995 s. 44)

Section:	58	On payment of fine and expenses distress not to be levied, or party, if imprisoned, to be discharged		30/06/1997
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Where any person against whom a warrant of distress issues as aforesaid pays or tenders to the police officer or other officer having the execution of the same the sum mentioned in the warrant, together with the amount of the expenses of the distress up to the time of such payment or tender, such police officer or other officer shall cease to execute the same; and where any person is imprisoned as aforesaid for non-payment of any fine or other sum he may pay or cause to be paid to the Commissioner of Correctional Services the sum mentioned in the warrant of commitment, together with the amount of the costs therein mentioned, and the said Commissioner shall receive the same, and shall thereupon discharge such person if he is in his custody for no other matter.

[cf. 1848 c. 43 s. 28 U.K.]

Section:	59	Provisions as to warrants of distress		30/06/1997
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The following provisions shall apply with respect to warrants of distress issued by a magistrate under this Ordinance-

- (a) a warrant of distress shall be executed by or under the direction of a police officer or other officer;
- (b) save in so far as the person against whom the distress is levied otherwise consents the distress shall be sold by public auction, and 5 clear days at the least shall intervene between the making of the distress and the sale, unless the goods distrained are perishable, and when consent is so given as aforesaid the sale may be made in accordance with such consent;
- (c) subject as aforesaid the distress shall be sold within the period fixed by the warrant, and, if no period is so fixed, then within the period of 14 days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the distress, are sooner paid;
- (d) subject to any directions to be contrary given by the warrant of distress, when the distress is levied on household goods, the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall

be impounded as are, in the opinion of the person executing the warrant, sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark; and every person removing any goods so marked or defacing or removing the said mark shall upon summary conviction be liable to a fine of \$100; (Amended 22 of 1950 Schedule)

- (e) where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress or otherwise exacts any greater costs and charges than those to which he is for the time being entitled by law or makes any improper charge, he shall upon summary conviction be liable to a fine of \$100; (Amended 22 of 1950 Schedule)
- (f) a written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the officer charged with the execution of the warrant as soon as practicable to the magistrates' clerk; and it shall be lawful for the person on whose goods the distress was levied, within 1 month after the levy of the distress, to inspect such account without fee or reward, at any reasonable time to be appointed by a magistrate, and to take a copy of such account; (See Form 58)
- (g) an officer charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realized by the sale all costs and charges actually incurred in effecting the sale, and shall render to the owner the surplus, if any, after retaining the amount for which the warrant was issued and the proper costs and charges of the execution of the warrant;
- (h) where a person pays or tenders to the officer charged with the execution of a warrant of distress the sum mentioned in the warrant or produces the receipt for the same of the magistrates' clerk, and also pays the amount of the costs and charges of the distress up to the time of such payment or tender, the officer shall not execute the warrant; and
- (i) where a claim is made to or in respect of property taken in execution under this section by any person other than the party against whom such execution issued, such claim shall be heard and determined by the magistrate upon a summons calling before him as well such claimant as the party on whose behalf such execution issued, and the decision of the magistrate upon such claim shall be final.

[cf. 1879 c. 49 s. 43 U.K.]

Section:	60	Special provisions as to warrant of commitment for non-payment of money and as to warrant of distress		30/06/1997
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(1) A magistrate to whom application is made either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order, or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction or, in the case of a sum not a civil debt, by an order, or for default of sufficient distress to satisfy any such sum, may, if he deems it expedient to do so, postpone the issue of such warrant until such time and on such conditions, if any, as to him may seem just.

(2) The wearing apparel and bedding of a person and his family and, to the value of \$1000, the tools and implements of his trade shall not be taken under a distress issued by a magistrate. (Amended 24 of 1949 s. 19; 51 of 1981 s. 5)

(3) Where, on application made to a magistrate to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction or, in the case of a sum not a civil debt, by an order, or for default of sufficient distress to satisfy any such sum, it appears to the magistrate to whom the application is made that, either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the magistrate shall, by his warrant of commitment revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term instead of the term originally mentioned in the conviction or order. (See Form 71)

[cf. 1879 c. 49 s. 21 U.K.]

Section:	61	Exercise on complaint of power to bind over to keep the peace		30/06/1997
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Recognizances, etc.

(1) The power of a magistrate, on complaint of any person, to adjudge a person to enter into a recognizance and

find sureties to keep the peace or to be of good behaviour towards such first-mentioned person shall be exercised by an order upon complaint, and the provisions of this Ordinance shall apply accordingly, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint. (See Forms 34-36)

(2) The magistrate may order the defendant, in default of compliance with such last-mentioned order, to be imprisoned for 6 months. (Amended 30 of 1958 Schedule)

[cf. 1879 c. 49 s. 25 U.K.]

Section:	62	Power to reduce or vary security	30/06/1997
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Where, other than in criminal proceedings, a person has been committed to prison by a magistrate for default in finding sureties, a magistrate may, on application made to him in manner directed by rules made under section 133 by such person or by some one acting on his behalf, inquire into the case of the person so committed, and if, on new evidence produced to the magistrate or proof of a change of circumstances, the magistrate thinks, having regard to all the circumstances of the case, that it is just to do so, he may reduce the amount for which it is proposed the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as he may think just. (See Forms 40, 41)

(Amended 56 of 1994 s. 11)

[cf. 1879 c. 49 s. 26 U.K.]

Section:	63	Recognizance taken out of court	30/06/1997
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When a magistrate has fixed, as respects any recognizance, the amount in which the principal and the sureties, if any, are to be bound, the recognizance, notwithstanding anything in this or any past enactment, need not be entered into before such magistrate, but may, subject to rules made under section 133, be entered into by the parties before another magistrate or before the magistrates' clerk or before a superintendent or inspector of police or, where any of the parties is in prison, before the Commissioner of Correctional Services; and thereupon all the consequences of law shall ensue and the provisions of this Ordinance with respect to recognizances taken before a magistrate shall apply as if the recognizance had been entered into before a magistrate as heretofore by law required. (See Forms 6-9)

[cf. 1879 c. 49 s. 42 U.K.]

Section:	64	Mode of giving security and enforcement thereof	30/06/1997
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(1) A person shall give security under this Part, whether as principal or surety, either by the deposit of money with the magistrates' clerk or by an oral or written acknowledgement of the undertaking or condition by which and of the sum for which he is bound, and evidence of such security may be provided by the entry thereof in the register of the proceedings of the magistrates. (See Forms 6-9, 42)

(2) Any sum which may become due in pursuance of a security under this Part from a surety shall be recoverable summarily in manner directed by this Ordinance with respect to a civil debt on complaint by a police officer or by the magistrates' clerk or by some other person authorized for the purpose by a magistrate.

(3) A magistrate may enforce payment of any sum due by a principal in pursuance of a security under this Part which appears to him to be forfeited, in like manner as if that sum were adjudged to be paid as a fine, if the security was given for a sum adjudged by a conviction, and in any other case in like manner as if it were a sum adjudged to be paid as a civil debt: (See Forms 12, 13, 56)

Provided that, before a warrant of distress for the sum is issued, notice of the forfeiture shall be served on the said principal in manner prescribed by rules made under section 133.

(4) Any sum paid by a surety on behalf of his principal in respect of a security under this Part, together with all costs, charges and expenses incurred by such surety in respect of that security, shall be deemed a civil debt due to him from the principal, and may be recovered before a magistrate in manner directed by this Ordinance with respect to the recovery of a civil debt which is recoverable summarily.

(5) Where security is given under this Part for payment of a sum of money, the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment.

[cf. 1879 c. 49 s. 23 U.K.]

Section:	65	Enforcing recognizance for appearance	30/06/1997
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(1) Where a recognizance is conditioned for the appearance of a person before a magistrate or for his doing some other matter or thing to be done before or by order of a magistrate or in a proceeding before a magistrate, such magistrate, if the recognizance appears to him to be forfeited, may declare the recognizance to be forfeited and enforce payment of the sum due under it in the same manner as if the sum were a fine adjudged by a magistrate to be paid and the amount of the same were ascertained by a conviction: (See Forms 6-9, 38, 43, 54)

Provided that, at any time before the sale of goods under a warrant of distress for the said sum, a magistrate may cancel or mitigate the forfeiture on the person liable applying and giving security, to the satisfaction of the magistrate, for the future performance of the condition of the recognizance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or on such other conditions as the magistrate may think just. (See Form 39)

(2) Where a recognizance conditioned to keep the peace, or to be of good behaviour, or not to do or commit some act or thing has been entered into by any person as principal or surety before a magistrate, any magistrate, on proof of the conviction of the person bound as principal by the recognizance of any offence which is in law a breach of the condition of the same, may by conviction adjudge the recognizance to be forfeited, and adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound. (See Forms 35-38)

(3) All sums paid in respect of a recognizance declared or adjudged by a magistrate in pursuance of this section to be forfeited shall be paid to the magistrates' clerk, and shall be paid and applied by him in such manner as the Director of Accounting Services may direct. (See Form 55) (Amended L.N. 16 of 1977)

[cf. 1879 c. 49 s. 9 U.K.]

Section:	66	(Repealed)	30/06/1997
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Civil debts

(Repealed 35 of 1969 Schedule)

Section:	67	Enforcing civil debt	30/06/1997
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(1) Any sum of money recoverable summarily as a civil debt within the meaning of this or any other Ordinance, or in respect of the recovery of which jurisdiction is given by such Ordinance to a magistrate, shall be deemed to be a sum for payment of which a magistrate has authority by law to make an order on complaint under this Ordinance: (See Forms 71A-77)

Provided as follows-

- (a) a warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint; and
- (b) an order made by a magistrate for the payment of any such civil debt as aforesaid or of any instalment thereof or for the payment of the costs in the matter of any such complaint, whether ordered to be paid by the complainant or the defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it is proved, to the satisfaction of a magistrate, that the person making the default in payment of such civil debt, instalment or costs either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default and has refused or neglected or refuses or neglects to pay the same, and in any such case the magistrate shall have power to imprison the defendant for 3 weeks, unless the same shall be sooner paid.

(2) Proof of the means of the person making default may be given in such manner as the magistrate to whom application is made for commitment to prison may think just.

(3) The payment of any costs ordered to be paid by the complainant or the defendant in proceedings for the recovery of a civil debt shall, subject to paragraph (b) of the proviso to subsection (1), be enforced in like manner as such civil debt. (Added 35 of 1969 Schedule)

[cf. 1879 c. 49 s. 35 U.K.]

Section:	68	Scale of imprisonment for non-payment of money, etc.	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

Scale of imprisonment for non-payment of money, etc.

(1) Unless in any enactment it is otherwise provided, the period of imprisonment, which may be imposed by a magistrate exercising summary jurisdiction, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, whether it be a fine or in respect of the property the subject of the offence, or in respect of the injury done by the offender, or in respect of the default of a sufficient distress to satisfy any such sum, shall be such period as, in the opinion of the magistrate, will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale- (Amended 30 of 1958 Schedule)

Where the amount-	the period of imprisonment is not to exceed-
does not exceed \$2000	7 days
exceeds \$2000 but does not exceed \$5000	14 days
exceeds \$5000 but does not exceed \$10000	1 month
exceeds \$10000 but does not exceed \$25000	3 months
exceeds \$25000 but does not exceed \$50000	6 months
exceeds \$50000	12 months

(Amended 13 of 1995 s. 57)

(2) Where the fine or other sum adjudged to be paid is imposed by a sentence in addition to a term of imprisonment, the imprisonment imposed under this section or any other enactment shall commence from the expiration of the term of imprisonment imposed by the sentence.

(3) The Chief Executive in Council may by order published in the Gazette amend the monetary amounts in the scale in subsection (1). (Added 13 of 1995 s. 57. Amended 25 of 1998 s. 2)

[cf. 1879 c. 49 s. 5 U.K.]

Section:	69	(Repealed)		30/06/1997
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(Repealed 39 of 1996 s. 24)

Section:	70	(Repealed)		30/06/1997
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(Repealed 39 of 1996 s. 24)

Section:	71	(Repealed)		30/06/1997
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(Repealed 13 of 1995 s. 58)

Section:	71A	Interpretation	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART III

INDICTABLE OFFENCES

In this Part, unless the context otherwise requires-
 "committal" (交付審判、交付) means committal for trial or sentence in the Court of First Instance; (Amended 25

of 1998 s. 2)

"committal proceedings" (交付審判程序) means proceedings under this Part for the committal of an accused;

"juvenile" (少年) means a person who is, in the opinion of the magistrate presiding at the committal proceedings, under the age of 16 years;

"preliminary inquiry" (初級偵訊) means proceedings pursuant to an election by the accused under section 80C(1) to have a charge against him heard at a preliminary inquiry;

"return day" (提訊日) means a day appointed as such under section 80A(1) or (2) or a day to which proceedings are adjourned under section 80B(6).

(Added 48 of 1983 s. 3)

Section:	72	Procedure on information being laid		30/06/1997
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(1) In every case where a complaint is made to or an information laid before a magistrate alleging the commission of any indictable offence then, if the accused is not then in custody, it shall be lawful for the magistrate to issue his warrant to apprehend the accused and to cause him to be brought before a magistrate to answer to the complaint or information and to be further dealt with according to law; but in any case it shall be lawful for the magistrate to whom the complaint is made or before whom the information is laid, if he so thinks fit, instead of issuing his warrant in the first instance to apprehend the accused, to issue his summons directed to the accused requiring him to appear before a magistrate at a time and place to be therein mentioned; and if, after being served with the summons in manner hereinafter mentioned, he fails to appear at such time and place in obedience to such summons, then and in every such case any magistrate may issue his warrant to apprehend the accused and to cause him to be brought before a magistrate to answer to the complaint or information and to be further dealt with according to law: (See Forms 1, 2, 4) (Amended 49 of 1965 s. 9; 50 of 1991 s. 4)

Provided that a warrant shall not be issued in the first instance unless the complaint or information is supported by evidence on oath. (Added 49 of 1965 s. 9)

(2) Nothing in this section shall prevent a magistrate from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in the summons for the appearance of the accused.

[cf. 1848 c. 42 s. 1 U.K.]

Section:	73	Warrant to apprehend for offence committed on high seas, etc.	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

In every case of an offence committed on the high seas, or outside Hong Kong, or in any creek, harbour, haven or other place within the jurisdiction of the courts of Hong Kong for which an indictment may be preferred by the Secretary for Justice, it shall be lawful for any magistrate, if the accused resides or is supposed to reside or be within Hong Kong or the waters thereof, to issue his warrant to apprehend the accused and to cause him to be brought before a magistrate to answer to the charge and to be further dealt with according to law.

(Amended 50 of 1991 s. 4; 59 of 1994 s. 6; L.N. 362 of 1997; 25 of 1998 s. 2)

[cf. 1848 c. 42 s. 2 U.K.; 1952 c. 55 s. 1(4) U.K.]

Section:	74	Warrant to apprehend where indictment is filed by Secretary for Justice pursuant to direction or with consent of a judge	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Where the Secretary for Justice files an indictment against any person pursuant to the direction or with the consent of a judge under section 24A of the Criminal Procedure Ordinance (Cap 221), the Registrar, on application by or on behalf of the Secretary for Justice, shall issue a certificate certifying that the indictment has been filed against that person. (Amended L.N. 362 of 1997)

(2) Where a certificate issued under subsection (1) is produced to a magistrate, he shall, if the person named in

the indictment-

- (a) is at large, issue a warrant to arrest that person; or (See Form 4)
- (b) is in custody, issue a warrant directed to the Commissioner of Correctional Services requiring that person to be brought before magistrate.

(3) Where the person named in a warrant issued under subsection (2) is brought before a magistrate, or a person is otherwise brought before magistrate, and the magistrate is satisfied by evidence on oath that such person is the person named in the indictment referred to in a certificate issued under subsection (1), he shall without further inquiry or examination order that that person shall stand committed for trial before the Court of First Instance on the charge in the indictment and shall either remand such person in custody or admit him to bail.

(Replaced 36 of 1976 s. 12. Amended 25 of 1998 s. 2)

Section:	75	Complaint or information to be in writing and defects therein	30/06/1997
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(1) Every complaint or information alleging the commission of an indictable offence shall be in writing and shall contain or consist of a statement of the offence alleged to have been committed, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence.

(2) No objection shall be allowed to any complaint or information for any defect in it in substance or in form or for any variance between it and the evidence adduced on behalf of the prosecution at the committal proceedings.

(Amended 48 of 1983 s. 3)

(Replaced 49 of 1965 s. 10)

Section:	76	Service of summonses	30/06/1997
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The provisions with reference to summonses contained in Part II in relation to offences punishable on summary conviction shall apply equally, mutatis mutandis, to summonses under this Part.

[cf. 1848 c. 42 s. 9 U.K.]

Section:	77	Forms, etc., of warrants	30/06/1997
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The provisions with reference to the form of warrants, the directions to be contained therein and the execution thereof contained in Part II in relation to offences punishable on summary conviction shall apply equally, mutatis mutandis, to warrants under this Part.

Section:	78	Summons or warrant for witness, etc.	30/06/1997
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(1) If it is made to appear to a magistrate, by any credible witness, that any person is likely to give material evidence on the part of the prosecution the magistrate may enforce the attendance of such person in the manner provided in Part II for enforcing the attendance of a witness under the summary jurisdiction of such magistrate. (See Form 16) (Amended 58 of 1967 s. 2)

(2) If, on the appearance of such person so summoned, he refuses to be examined upon oath concerning the matter of the charge, or refuses to take such oath or having taken such oath refuses to answer such questions concerning the premises as may then be put to him, the magistrate may, by warrant under his hand and seal, commit such person to prison there to remain and be imprisoned for 2 months, unless he shall in the meantime consent to be examined and to answer concerning the premises. (See Form 17) (Amended 49 of 1965 s. 11)

[cf. 1848 c. 42 s. 16 U.K.]

Section:	79	Power to remand accused	30/06/1997
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(1) If, in the course of committal proceedings, it becomes necessary or desirable in the opinion of the magistrate-

- (a) to defer any stage of those proceedings; or
- (b) in the event of a preliminary inquiry, to defer the examination or further examination of the witnesses for any time,

the magistrate before whom the accused appears or is brought may from time to time by his warrant remand the

accused to a prison or, some place of security, for such time as the magistrate may think reasonable, not exceeding 8 clear days, unless the accused and the prosecutor consent to a longer remand; or, if the remand is for a time not exceeding 3 clear days, it shall be lawful for the magistrate verbally to order the police officer or other person in whose custody the accused may then be, or any other police officer or person to be named by the magistrate in that behalf to continue and keep the accused in his custody and to bring him before the same magistrate at the time appointed for continuing the committal proceedings: (See Forms 18, 84) (Amended 24 of 1949 s. 23; 49 of 1965 s. 12)

Provided that-

- (a) the magistrate may order the accused to be brought before himself or another magistrate at any time before the expiration of the time for which the accused is so remanded, and the gaoler or officer in whose custody he then is shall duly obey such order; and
- (b) instead of detaining the accused in custody during the period for which he is so remanded, a magistrate before whom the accused so appears or is brought as aforesaid may admit him to bail. (See Forms 85-87) (Amended 48 of 1983 s. 3; 56 of 1994 s. 11)

(2) A magistrate may, on being satisfied that a person accused of an indictable offence is by reason of illness or accident unable to appear personally before a magistrate-

- (a) visit the accused and in his presence exercise any of the powers conferred by subsection (1); or
- (b) exercise such powers in the absence of the accused if, in the opinion of the magistrate, it is not practicable for him to visit the accused. (Replaced 91 of 1970 s. 5)

(3) (Repealed 56 of 1994 s. 11)

[cf. 1848 c. 42 s. 21 U.K.; 1914 c. 58 s. 20(2) U.K.]

Section:	80	Place where examination taken not an open court		30/06/1997
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The room or building in which a magistrate conducts a preliminary inquiry shall not be deemed an open court for that purpose; and it shall lawful for the magistrate, in his discretion, to order that no person shall have access to or be or remain in such room or building without the consent or permission of the magistrate, if it appears to him that the ends of justice will be best answered by so doing.

(Amended 49 of 1965 s. 13; 48 of 1983 s. 3)
[cf. 1848 c. 42 s. 19 U.K.]

Section:	80A	Appointment of return day		30/06/1997
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(1) When the accused appears or is brought before a magistrate upon an allegation of the commission of an indictable offence the magistrate may, and shall if the prosecutor so requires, appoint a day for the continuation of the committal proceedings (hereinafter referred to as "the return day").

(2) Any magistrate may, from time to time thereafter, on the application of the prosecutor or of the accused, and upon reasonable cause, appoint another return day in the place of the return day previously appointed.

(3) The return day shall not, unless the prosecutor and the accused consent or the magistrate, upon reasonable cause being shown, determines otherwise, be less than 10 days nor more than 42 days from the day on which the return day is appointed.

(4) Upon first appointing the return day, the magistrate shall inform the accused-

- (a) of his right to apply for legal aid;
- (b) that not less than 7 clear days before the return day he will receive a copy of the complaint made or information laid together with copies of witness statements and any documentary evidence in support thereof, being the statements and evidence upon which the prosecutor will seek the accused's committal;
- (c) on the return day, he will have the right to require a preliminary inquiry and, if he does so require, he may, at the inquiry, call witnesses to give evidence on his behalf;
- (d) where there is more than one charge that, in the event of his requiring a preliminary inquiry on any charge, the inquiry will be held into all the charges against him and that only at the conclusion of the inquiry will he have the opportunity to plead guilty to any charge;
- (e) if he does not require a preliminary inquiry, he will be committed for trial without an inquiry unless he pleads guilty to the charge, in which case he will be committed for sentence on that charge.

(Added 48 of 1983 s. 3)

Section:	80B	Service of documents on accused		30/06/1997
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(1) Not less than 7 clear days before the return day, or such shorter period as the accused may consent to, the prosecutor shall serve on the accused-

- (a) a copy of the complaint made or information laid;
- (b) copies of the statements of those witnesses whom the prosecution intends to call at the trial;
- (c) copies of documentary exhibits; and
- (d) a list of exhibits.

(2) A statement of a witness of which a copy is served under subsection (1) shall-

- (a) be signed by the person who made it;
- (b) contain a declaration by the witness to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that wilfully making a statement which he knows to be false or does not believe to be true may render him liable to prosecution for a criminal offence; (Amended 6 of 1990 s. 8)
- (c) if in a language other than English, be accompanied by an English translation and, if in a language other than Chinese, be accompanied by a Chinese translation;
- (d) if made by a person under 21, give his age;
- (e) purport to have been read over to the person who made the statement in the language used by that person in making the statement or to have been read by that person.

(3) A documentary exhibit of which a copy is served under subsection (1) shall, if written in a language other than English, be accompanied by an English translation certified under section 27 of the Evidence Ordinance (Cap 8) and, unless the magistrate on cause shown otherwise directs, if written in a language other than Chinese, be accompanied by a Chinese translation.

(4) An exhibit which is mentioned in the list of exhibits served under subsection (1) shall be clearly identified in a statement of a witness of which a copy is served under that subsection and the accused or his legal representative shall be given reasonable opportunity to examine any such exhibit.

(5) Failure to comply with the requirements of subsections (2), (3) and (4) shall not render the service of any documents under subsection (1) ineffective or prevent such documents being handed into court under the provisions of section 80C(1) or admitted in evidence under the provisions of section 81A(1) provided that the magistrate is satisfied that accused is not prejudiced by such failure.

(6) If the documents specified in subsection (1) are served on the accused outside the period which is specified in that subsection, such service shall not thereby be ineffective; but on the return day the magistrate shall adjourn the proceedings to such later day as will ensure that the requirements of subsection (1) are satisfied unless the accused consents to a shorter adjournment or the continuation of proceedings without an adjournment.

(Added 48 of 1983 s. 3)

Section:	80C	Procedure on return day		30/06/1997
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(1) When the accused appears or is brought before the magistrate on the return day the prosecutor shall, if the requirements of section 80B(1) are satisfied, hand into court the originals of the documents referred to in that section and the magistrate shall then inform the accused that-

- (a) the prosecutor seeks his committal; and
- (b) unless he elects to have the charge heard at a preliminary inquiry or, in the event of there being more than one charge, any of those charges so heard, he will be committed without such an inquiry,

and the accused shall, thereupon, be asked whether or not he elects to have the charge against him heard at a preliminary inquiry; and the accused may make such an election.

(2) If the accused elects or is, by virtue of subsection (5), deemed to have elected, to have the charge against him heard at a preliminary inquiry the magistrate shall-

- (a) inform the accused that at the inquiry a witness for the prosecution whose statement was served on him under section 80B(1) will not be called to give evidence and his written statement will be received in evidence unless the accused, either then or not less than 7 days before the inquiry, notifies the magistrate and prosecutor of his desire to have the witness called; and
- (b) ascertain, without prejudice to any right of the accused to give notice thereafter, what prosecution witnesses the accused wishes to have called at the hearing and whether or not the accused wishes to

call any witnesses of his own,
and thereafter the preliminary inquiry shall be conducted in accordance with the provisions of sections 81, 81A, 82, 83, 84 and 85.

(3) If the accused does not elect, and is not deemed to have elected by virtue of subsection (5), to have the charge against him heard at a preliminary inquiry, the magistrate shall inform the accused that-

- (a) he is not obliged to say anything in respect of the charge but that he may plead guilty to the charge and that such a plea will result in his being committed for sentence on that charge;
- (b) unless he pleads guilty to charge, he will forthwith be committed for trial on that charge without an inquiry; and
- (c) after committal for trial he has the right to apply once only to a judge for discharge on the grounds that there is no prima facie case against him.

(4) After complying with the provisions of subsection (3), the magistrate shall then-

- (a) except where the accused is a juvenile or the offence is punishable by death, ascertain if the accused desires to plead guilty to the charge and, if he does so desire, the provisions of section 81B shall apply; and
- (b) if the accused is a juvenile or if the offence is punishable by death or if the accused does not then plead guilty and is not committed for sentence under section 81B(2), commit the accused for trial.

(5) An election by the accused to have a charge against him heard shall be deemed, if there is more than one charge, to relate to all charges.

(Added 48 of 1983 s. 3)

Section:	81	Taking of evidence at hearing		30/06/1997
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(1) At a preliminary inquiry where the accused is present at the hearing, the magistrate shall, before committing the accused to prison for trial or before admitting him to bail to take his trial, in the presence of the accused proceed to take evidence for and on behalf of the prosecutor and his witnesses in the same manner, subject to subsection (3), as is hereinbefore provided for the taking of the evidence of the complainant or informant and his witnesses on a complaint or information for an offence punishable on summary conviction. (See Form 19) (Amended 49 of 1965 s. 14; 48 of 1983 s. 3)

(2) The accused or his counsel shall be at liberty to put questions to any witnesses produced against him, and, subject to subsection (3), the depositions or evidence of the prosecutor and his witnesses shall, in the presence of the accused, be read over to and signed respectively by the witnesses who have been so examined, and shall also be signed by the magistrate taking the same.

(3) The magistrate may cause the deposition or evidence of a witness who is examined under subsection (2) to be recorded by way of shorthand note or mechanical or electrical recording device and, thereafter, reduced into writing; and where-

- (a) that writing is made available to the accused or his counsel; and
- (b) the witness thereafter, on oath and in the presence of the accused, confirms the accuracy of that writing,

the deposition or evidence of that witness shall be treated, for all purposes, including section 70 of the Evidence Ordinance (Cap 8), as if it had been reduced into writing immediately, read over to the witness and signed by him in the presence of the accused. (Added 75 of 1984 s. 2)

(Amended 75 of 1984 s. 2)
[cf. 1848 c. 42 s. 17 U.K.]

Section:	81A	Admission of statements and exhibits in committal proceedings		30/06/1997
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(1) Subject to the provisions of this section, at a preliminary inquiry-

- (a) any witness statement handed into court under the provisions of section 80C(1); and
- (b) any exhibit clearly identified in such statement, shall be deemed to have been admitted in evidence on behalf of the prosecution notwithstanding that the person who made the statement is not called as witness to give oral evidence at the hearing unless the accused objects to the admissibility of the statement or exhibit or any part of the statement or exhibit and the magistrate, after hearing any reply which the prosecutor may make allows the objection.

- (2) A magistrate shall, on the application of the prosecutor or the accused made-
- (a) on the return day; or
 - (b) 7 days (or such shorter period as the magistrate may allow) prior to the day on which the evidence of the witness is required,

require a person who has made a witness statement which has been handed into court under section 80C to give oral evidence at the hearing in accordance with section 81.

(Replaced 48 of 1983 s. 3)

Section:	81B	Committal for sentence on a plea of guilty	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Where, by section 80C(4)(a) or section 82(1), the magistrate is required to ascertain whether the accused desires to plead guilty to the charge, he shall inform the accused that the court proposes to commit him for trial; but that the accused may, if he so desires now, plead guilty to the charge and, if he pleads guilty, he will be committed to the Court of First Instance for sentence. (Amended 25 of 1998 s. 2)

- (2) If the accused then pleads guilty the magistrate, before he accepts the plea shall-
- (a) where the accused pleads guilty in proceedings under section 80C, require the prosecutor to outline to the accused, to the satisfaction of the magistrate, the alleged facts upon which the charge is based;
 - (b) explain to the accused the offence with which he is charged and the ingredients which at law constitute such offence; and
 - (c) record any statement made by the accused in pleading guilty to the charge and that the offence and the ingredients which at law constitute the offence were explained to the accused,

and, if the magistrate is satisfied that the plea is made voluntarily and with an understanding of the nature of the charge, he shall commit the accused for sentence.

(3) No objection shall be taken to any information or complaint to which the accused has pleaded guilty, and the accused shall not afterwards be allowed to withdraw the plea except with the leave of a judge of the Court of First Instance. (Amended 25 of 1998 s. 2)

(4) Where a judge grants leave to withdraw a plea of guilty in accordance with the provisions of subsection (3) he may, at the same time, exercise his powers under section 24A(1) of the Criminal Procedure Ordinance (Cap 221) to direct or consent to the preferment of an indictment charging the accused with the offence in respect of which the plea has been withdrawn or any related offence.

(5) An accused who is committed for sentence shall as soon as practicable be brought before the Court of First Instance for sentence, and any judge of that Court shall have the same powers of sentencing or otherwise dealing with the accused, and of finally disposing of the charge and of all incidental matters, as he would have had if the accused on arraignment at any criminal sittings of the Court of First Instance had pleaded guilty to the offence charged on an indictment duly presented. (Amended 25 of 1998 s. 2)

(6) The magistrate committing an accused for sentence shall have the like powers to commit the accused to prison or to admit him to bail as in the case of an accused committed for trial and the accused shall have the like rights and obligations.

(Replaced 48 of 1983 s. 3)

Section:	82	Provisions as to taking of depositions, and caution to and statement of accused on proceedings before examining justices		30/06/1997
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(1) After the examination of all the witnesses and the admission of any statements for the prosecution has been completed, subject to the rejection of any submission made that there is no case which the accused should be called upon to answer, the magistrate shall read the charge to the accused and explain the nature thereof to him in ordinary language, and inform him that he has the right to call witnesses, and, if he so desires, to give evidence on his own behalf. After so doing the magistrate shall then-

- (a) except where the offence is punishable by death, ascertain whether the accused desires to plead guilty to the charge in accordance with the provisions of section 81B; and
- (b) if the offence is punishable by death or if the accused does not then plead guilty, address to him the following words or words to the like effect-

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial." (Amended 49 of 1965 s. 16; 48 of 1983 s. 3)

(2) Before the accused makes any statement in answer to the charge, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat. [cf. 1925 c. 86 s. 12(3) U.K.]

(3) Whatever the accused says in answer to the charge shall be taken down in writing and read over to the accused and signed by the magistrate and, if the accused so desires, by him, and shall be transmitted with the depositions as hereinafter mentioned. On the trial the statement of the accused taken down as aforesaid, and whether signed by him or not, may be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to sign the statement did not in fact sign it. (See Form 78) [cf. 1925 c. 86 s. 12(4) U.K.]

(4)-(5) (Repealed 48 of 1983 s. 3)

(Replaced 24 of 1949 s. 24)

Section:	83	Evidence of accused and defence witnesses		30/06/1997
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(1) Immediately after complying with the requirements of the preceding section relating to the statement of the accused, and whether the accused has or has not made a statement, the magistrate shall ask the accused whether he desires to give evidence on his own behalf and whether he desires to call witnesses.

(2) If the accused in answer to the question states that he wishes to give evidence but not to call witnesses, the magistrate shall proceed to take forthwith the evidence of the accused, and after the conclusion of the evidence of the accused his counsel shall be heard on his behalf if he so desires.

(3) If the accused in answer to the question states that he desires to give evidence on his own behalf and to call witnesses, or to call witnesses only, the magistrate shall proceed to take either forthwith, or, if a speech is to be made by counsel on behalf of the accused, after the conclusion of that speech, the evidence of the accused, if he desires to give evidence himself, and of any witness called by him who knows anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused.

(4) All statements by the accused and all evidence given by him or any such witness as aforesaid shall be taken down in writing. (Amended 5 of 1954 s.2)

(5) Nothing contained in this section shall prevent the prosecutor in any case from putting in evidence at the trial any admission or confession or other statement of the accused made at anytime which is by law admissible as evidence against the accused.

(Replaced 24 of 1949 s. 25)

[cf. 1925 c. 86 s. 12(5) & (6) U.K.]

Section:	84	Order by committing magistrate for attendance at trial of witnesses	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) At a preliminary inquiry the magistrate shall in respect of any witness examined by him, other than the accused and any witness of his merely to his character, make an order in the prescribed form requiring the witness to attend and give evidence at the trial of the accused before the Court of First Instance. (See Form 79) (Amended 48 of 1983 s. 3; 25 of 1998 s. 2)

(2) Where it appears to the magistrate, after taking into account any representation made by the accused or the prosecutor, that the attendance of any witness at the trial is unnecessary on the ground that the evidence of that witness is unlikely to be required or is unlikely to be disputed-

- (a) any witness order to be made by the magistrate in the case of that witness shall be a conditional order, that is to say, an order in the prescribed form requiring the witness to attend the trial if notice in that behalf is given to him and not otherwise; and
- (b) if a witness order other than a conditional order has previously been made by the magistrate in the case of that witness, the magistrate shall direct that that order be treated as a conditional order. (See Form

80)

(3) A magistrate-

(a) on committing an accused for trial shall inform him-

(i) of his right to require the attendance at the trial of any witness in respect of whom a conditional witness order, or an order treated as a conditional witness order, has been made; and

(ii) that the accused should inform the Registrar not less than 10 days before the trial if he requires such a witness to attend; and

(b) if he determines not to commit the accused for trial, shall cause notice to be given in the prescribed form to any witness in respect of whom a witness order has been made, informing the witness that he is no longer required to attend. (See Form 81)

[cf. 1965 c. 69 s. 1 U.K.]

(4) In this section, "witness" (證人) includes a person whose written statement is admitted in evidence under section 81A.

(Replaced 59 of 1981 s. 2)

Section:	85	Discharge or committal of accused	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) If after hearing all the evidence offered on the part of the prosecution and the evidence, if any, of the accused and his witnesses and after taking into consideration any statement made by the accused, the magistrate is of opinion that there is not sufficient evidence to put the accused upon his trial for any indictable offence, the magistrate shall forthwith order the accused, if in custody, to be discharged as to the complaint or information then under inquiry, but such discharge shall not be a bar to any subsequent complaint or information in respect of the same facts.

(2) If in the opinion of the magistrate, after hearing such evidence as aforesaid and taking into consideration any statement of the accused, such evidence is sufficient to put the accused upon his trial for an indictable offence, or if the evidence given raises a strong or probable presumption of the guilt of the accused, then the magistrate shall order that the accused stand committed for trial at the Court of First Instance and shall so inform the accused or cause him to be so informed. (Amended 5 of 1954 s. 4; 63 of 1971 s. 13; 25 of 1998 s. 2)

(3) (Repealed 48 of 1983 s. 3)

(Replaced 24 of 1949 s. 26)

[cf. 1848 c. 42 s. 25 U.K.; 1925 c. 86 s. 12(8) U.K.]

Section:	85A	Procedure following committal		30/06/1997
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(1) A magistrate who commits an accused for trial under section 80C(4) or section 85(2) shall-

(a) issue his warrant committing the accused to prison until delivery by due course of law:

Provided that he may admit the accused to bail in any case where he has power to grant bail under the provisions of this Ordinance;

(b) if he commits the accused to prison, inform him of his right to apply to a judge for bail;

(c) inform the accused, unless he is already in receipt of legal aid, of his right to apply for legal aid;

(d) say to the accused-

"I must warn you that at your trial you may not be permitted to give evidence of an alibi or call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the prosecutor not less than 10 days prior to the commencement of your trial."

or words to that effect and, if it appears to the magistrate that the accused may not understand the meaning of the term "alibi", he shall explain it to him; and

(e) if the accused was committed under section 80C(4) inform him that he has the right to apply to a judge for discharge on the grounds there is no prima facie case against him.

(2) Where the magistrate has given the warning required by subsection (1)(d) the clerk of the court shall give the accused written notice of the provisions of section 65D of the Criminal Procedure Ordinance (Cap 221).

(Added 48 of 1983 s. 3)

Section:	86	Depositions and exhibits after committal	L.N. 362 of 1997	01/07/1997
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- (1) There shall be transmitted to the Registrar as soon as may be after the committal of the accused-
- (a) the written charge;
 - (b) in the event of a committal under section 80C(4) or 81 B(2), the documents handed in by the prosecutor under section 80C(1);
 - (c) in the event of a committal under section 81B(2), a certificate signed by the magistrate that he has observed the requirements of that section;
 - (d) in the event of a committal under section 85(2), the depositions of the prosecutor and the witnesses, including witnesses (if any) called by the accused, the statements (if any) admitted, or deemed to be admitted, in evidence on behalf of the prosecution, the statement of the accused and his evidence (if any), certificates signed by the magistrate stating that he has observed the requirements of sections 82, 83 and 85(2), a statement as to the witness orders or conditional witness orders made under section 84 and the recognizances of the bail, if any, any documents which have been produced in evidence, and a list, signed by the magistrate, of all exhibits produced in evidence;
 - (e) a certificate signed by the magistrate stating that he has observed the requirements of section 85A; and
 - (f) where the magistrate has made an order under section 87A(2), a statement to that effect,
- together with as many copies thereof, certified by the magistrate, as the Registrar may require; and a copy similarly certified shall at the same time be transmitted to the Secretary for Justice:

Provided that the Secretary for Justice may waive his right to receive any document or class of documents served under section 80B(1). (Replaced 48 of 1983 s. 3. Amended L.N. 362 of 1997)

- (2) An accused committed for trial shall, on application by himself or by his solicitor made on his behalf, be furnished free of charge before his trial with one copy of such depositions, documents and list relating to his case as are referred to in subsection (1): (Amended 48 of 1983 s. 3)

Provided that nothing in this subsection shall entitle an accused to receive copy of any document which has been served on him under section 80B(1). (Added 48 of 1983 s. 3)

- (3) If the accused or his solicitor notify the magistrates' clerk in writing of such requirement, further copies of all or any of the documents referred to in subsection (1) shall be supplied on payment of 15 cents for each folio of 72 words.

- (4) All exhibits other than documentary exhibits shall, unless the magistrate otherwise directs, be taken charge of by the Commissioner of Police and shall be produced at the trial by him or by a police officer deputed for that purpose.

(Replaced 5 of 1954 s. 6)

Section:	87	Procedure on charge of indictable offence against corporation		30/06/1997
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- (1) Subject to the provisions of this section, where a corporation is charged, whether alone or jointly with some other person, with an indictable offence, the provisions of this Part shall apply as they do in the case of a natural person. (Replaced 48 of 1983 s. 3)

(1A) Documents required to be served on the accused under section 80B(1) may be served on a director or other officer concerned in the management of the corporation. (Added 48 of 1983 s. 3. Amended L.N. 15 of 1988)

(1B) Subsections (1) and (3) of section 19A shall apply to a plea of guilty by a corporation under section 81B as they do in the case of a plea of guilty to an offence tried summarily. (Added 48 of 1983 s. 3)

- (2) If the corporation appears before the magistrate by a representative appointed in writing by the corporation to represent it for the purpose of this section, any question or statement required by any enactment to be put or made to the accused may be put or made to such representative, and any such question may be answered on behalf of the corporation by such representative, but if the corporation does not so appear it shall not be necessary to put or make the questions or statements, and the magistrate may, notwithstanding, commit the corporation. (Amended 48 of 1983 s. 3)

- (3) Nothing in this section shall have the effect of taking away from a magistrate any power which he may possess of dealing with a charge summarily.

[cf. 1925 c. 86 s. 33 U.K.]

Section:	87A	Restrictions on reports of committal proceedings	L.N. 362 of 1997	01/07/1997
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(1) No person shall publish in Hong Kong a written report, or broadcast in Hong Kong a report, of any committal proceedings in Hong Kong containing any matter other than that permitted by subsection (7). (Amended 59 of 1994 s. 6)

(2) Notwithstanding subsection (1), a magistrate shall, on an application for the purpose made with reference to any committal proceedings by the accused or one of the accused, as the case may be, order that subsection (1) shall not apply to reports of those proceedings, and any such order shall be entered in the Magistrate's Case Register.

(3) If the accused is not represented at any preliminary inquiry by counsel or by a solicitor, the magistrate shall, immediately before taking depositions of witnesses, explain to the accused the restrictions on reports of committal proceedings imposed by subsection (1) and inform him of his right to apply to the court for an order removing those restrictions. (Amended 48 of 1983 s. 3)

(4) Where a magistrate has made an order under subsection (2) removing the restrictions on reports of committal proceedings and has adjourned those proceedings to another day, he shall, at the beginning of the adjourned hearing of the proceedings, state that the order has been made.

(5) Notwithstanding subsection (1) a report of committal proceedings containing matter other than that permitted by subsection (7) may be published or broadcast-

- (a) where the magistrate determines not to commit the accused for trial, after he has so determined;
- (b) where the magistrate commits the accused or any of the accused for trial, after the conclusion of his trial or, as the case may be, the trial of the last to be tried.

(6) Notwithstanding subsection (1), where at any time during committal proceedings the magistrate assumes power to deal with the offence summarily under section 91 or 92, a report of so much of the committal proceedings containing any such matter as takes place before the magistrate assumes such power may be published or broadcast, after the magistrate has assumed power, as part of a report of the summary trial.

(7) A report of committal proceedings published or broadcast without any order under subsection (2) and before the time specified in subsections (5) and (6) may contain-

- (a) the identity of the court and the name of the magistrate;
- (b) the names, addresses, occupations and ages of the parties and witnesses;
- (c) the offence, or a summary thereof, with which the accused is charged;
- (d) the names of counsel and solicitors engaged in the proceedings;
- (e) any decision of the magistrate to commit the accused for trial, and any decision of the magistrate on the disposal of the case of any defendants not committed;
- (f) where the magistrate commits the accused for trial, the charge, or a summary thereof, on which he is committed and the court to which he is committed;
- (g) where the committal proceedings are adjourned, the date and places to which they are adjourned;
- (h) (Repealed 56 of 1994 s. 11)
- (i) whether legal aid was granted to the accused.

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

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

shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

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

(10) Subsection (1) shall be in addition to, and not in derogation from, the provisions of any other Ordinance with respect to the publication of reports and proceedings of magistrates' and other courts.

(11) In this section-

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

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

(Added 6 of 1971 s. 5)
[cf. 1967 c. 80 ss. 3 & 36 U.K.; S.I. 1968/1920 r. 2 U.K.]

Section:	87B	Notice of result of committal proceedings		30/06/1997
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If a magistrate commits any person for trial or determines to discharge him, the magistrates' clerk shall, on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access a notice in English and in Chinese-

- (a) in either case giving that person's name, address and age (if known);
- (b) in a case where the magistrate commits him, stating the charge on which he is committed and the court to which he is committed;
- (c) in a case where the magistrate determines to discharge him, describing the offence charged and stating that the magistrate has so determined.

(Added 6 of 1971 s. 5)
[cf. 1967 c. 80 s. 4 U.K.]

Section:	87C	Application to transferred proceedings	L.N. 362 of 1997	01/07/1997
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(1) Where any proceedings are transferred for a preliminary inquiry pursuant to section 77A of the District Court Ordinance (Cap 336), the Secretary for Justice shall, if he wishes to seek the committal of the accused person, file a charge sheet against him within 21 days of the date of the order transferring the proceedings, and thereupon, unless otherwise provided, the provisions of this Part shall apply in relation thereto as if the accused person were charged under this Part with an indictable offence before the magistrate. (Amended L.N. 362 of 1997)

(2) Subsection (1) shall, without prejudice to any other provision in this Ordinance, be applicable to indictable offences.

(Added 59 of 1992 s. 14)

Section:	87D	Discharge of the accused where committal proceedings are not instituted	L.N. 362 of 1997	01/07/1997
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(1) Where the Secretary for Justice fails to file a charge sheet under section 87C(1) within the period specified in that section- (Amended L.N. 362 of 1997)

- (a) on the date appointed under section 77A(7) of the District Court Ordinance (Cap 336), or where that date is adjourned, on such later date, the magistrate shall, on his own motion; or
- (b) where, before the appointed date referred to in paragraph (a) or if that date is adjourned, before such later date, the accused person applies to a magistrate for his discharge on the ground of such failure, the magistrate shall,

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

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

(Added 59 of 1992 s. 14)

Section:	88	Transfer of certain indictable offences	L.N. 362 of 1997	01/07/1997
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PART IV

TRANSFER OF OFFENCES TO THE DISTRICT COURT

(Amended 16 of 1970 s. 2)

(1) Notwithstanding anything contained in any other provision of this Ordinance but subject to subsection (3), whenever any person is accused before a magistrate of any indictable offence not included in any of the categories specified in Part III of the Second Schedule, the magistrate, upon application made by or on behalf of the Secretary for Justice- (Amended 59 of 1992 s. 15; L.N. 362 of 1997)

- (a) shall make an order transferring the charge or complaint in respect of the indictable offence to the District Court; and
- (b) may, if the person is also accused of any offence triable summarily only, make an order transferring the charge or complaint in respect of the summary offence to the District Court. (Replaced 16 of 1970 s. 3)

(2) An application under subsection (1) may be made either orally in open court or in writing.

(3) Subsection (1) shall not apply in relation to any proceedings transferred to be dealt with summarily by a magistrate pursuant to section 65F of the Criminal Procedure Ordinance (Cap 221) or section 77A of the District Court Ordinance (Cap 336) or transferred for a preliminary inquiry pursuant to section 77A of the District Court Ordinance (Cap 336). (Added 59 of 1992 s. 15)

(Added 2 of 1953 s. 3)

Section:	89	Effect of order of transfer		30/06/1997
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(1) An order of transfer shall operate as a stay of proceedings before the magistrate touching the charge or complaint to which the order refers and all process relating to the transferred charge or complaint shall be transmitted to the District Court.

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

(Added 2 of 1953 s. 3)

Section:	90	Procedure on making an order of transfer		30/06/1997
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(1) Upon making an order of transfer under section 88, a magistrate shall-

- (a) appoint a day whereon the accused person is to appear or be brought before the District Court;
- (b) remand the accused person in prison custody or admit him to bail;
- (c) inform the accused person of the effect of the order of transfer; and
- (d) say to the accused person-

"I must warn you that at your trial you may not be permitted to give evidence of an alibi or call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the prosecutor not less than 10 days prior to the commencement of your trial.",

or words to that effect and, if it appears to the magistrate that the accused person may not understand the meaning of the term "alibi", he shall explain it to him. (Added 6 of 1990 s. 9)

(1A) Where the magistrate has given the warning required by subsection (1)(d) the clerk of the court shall give the accused person written notice of the provisions of section 75A of the District Court Ordinance (Cap 336). (Added 6 of 1990 s. 9)

(2) The provisions of section 79 (which relates to a magistrate's power to remand an accused person) shall apply, mutatis mutandis and subject to the substitution in subsection (1) of that section of "20 clear days" for "8 clear days", in relation to the exercise by a magistrate of the powers conferred by subsection (1)(b), but the application of such provisions shall be without prejudice to any of the powers of the District Court to enforce the attendance of a person accused of an indictable offence in respect of which the charge or complaint has been transferred to that court. (Amended 41 of 1981 s. 2)

(Added 2 of 1953 s. 3)

Section:	91	Indictable offences which may be dealt with by special magistrate summarily		30/06/1997
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PART V

SUMMARY TRIAL OF INDICTABLE OFFENCES

Whenever any person is accused before a special magistrate of any indictable offence except an offence specified in the Second Schedule, the magistrate, instead of committing the accused for trial before the court, may deal with the case and convict the accused summarily, and on conviction may sentence the accused to imprisonment for 6 months and to a fine of \$50000: (See Form 93) (Amended 51 of 1981 s. 6)

Provided that nothing in this section shall affect the provisions of section 94 or any lesser punishment specifically provided in any other Ordinance.

(Replaced 24 of 1949 s. 29. Amended 30 of 1958 s. 7; 13 of 1995 s. 59)

Section:	92	Indictable offences which may be dealt with by permanent magistrate summarily		30/06/1997
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Whenever any person is accused before a permanent magistrate of any indictable offence except an offence specified in Part I of the Second Schedule, the magistrate, instead of committing the accused for trial before the court, may deal with the case and convict the accused summarily, and on conviction may sentence the accused to imprisonment for 2 years and to a fine of \$100000: (See Form 93) (Amended 51 of 1981 s. 7)

Provided that nothing in this section shall affect any greater or less punishment specifically provided for in any other Ordinance.

(Replaced 24 of 1949 s. 29. Amended 30 of 1958 s. 7; 13 of 1995 s. 60)

Section:	92A	Summary disposal of transferred cases		30/06/1997
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Whenever any proceedings are transferred to be dealt with summarily by a magistrate pursuant to section 65F of the Criminal Procedure Ordinance (Cap 221) or section 77A of the District Court Ordinance (Cap 336), notwithstanding anything in section 91 or 92, a permanent magistrate shall deal with the case and may convict the accused summarily and on conviction sentence him to imprisonment for 2 years and to a fine of \$100000:

Provided that nothing in this section shall affect any greater or lesser punishment specifically provided for in any other Ordinance.

(Added 59 of 1992 s. 16. Amended 13 of 1995 s. 61)

Section:	93	Procedure as to indictable offences triable summarily		30/06/1997
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Where an indictable offence is triable summarily-

- (a) the procedure shall, until the magistrate assumes the power to deal with the offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the magistrate assumes the power to deal with the offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of this Ordinance relating to offences punishable on summary conviction shall apply accordingly;
- (b) the evidence of any witness taken before the magistrate has assumed the said power need not be taken again, but every such witness shall, if the defendant so requires, be recalled for the purpose of cross-examination;
- (ba) any statement that has been admitted in evidence under section 81A shall be disregarded, but the prosecutor may call the person who made the statement to give verbal evidence as a witness and his evidence shall be taken in the manner set out in section 34; (Added 49 1965 s. 18)
- (c) the conviction for any such offence shall be of the same effect as a conviction for the offence on indictment before the court, and the magistrate may make the like order for the restitution of property as might have been made by the court; and (See Forms 46, 93)
- (d) the order of dismissal shall be filed by the magistrates' clerk in like manner as the conviction is hereby required to be filed, and together with the order of dismissal or the conviction, as the case may be, there shall be filed by such clerk in each case the written charge, the depositions of the witnesses and the statement, if any, of the accused. (See Form 94)

Section:	93A	Procedure as to transferred proceedings		30/06/1997
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Where proceedings are transferred under section 65F of the Criminal Procedure Ordinance (Cap 221) or section 77A of the District Court Ordinance (Cap 336) to be dealt with summarily by a magistrate-

- (a) within 21 days after the date of the order of transfer a charge sheet setting forth the charge or charges preferred against the accused shall be delivered to the first clerk of the magistracy to which the

- proceedings are transferred and served on the accused;
- (b) section 10(2), (3) and (4) shall apply to a charge sheet referred to in paragraph (a) as it does to a complaint or an information;
 - (c) subject to this section, the procedure shall be the same as if the relevant offence were an offence punishable on summary conviction and not on indictment, and the provisions of this Ordinance relating to offences punishable on summary conviction shall apply accordingly;
 - (d) in the case of a transfer under section 65F of the Criminal Procedure Ordinance (Cap 221) any statement that may have been admitted in evidence under section 81A before the accused was committed for trial shall be disregarded, but the prosecutor may call the person who made the statement to give verbal evidence as a witness and his evidence shall be taken in the manner set out in section 34;
 - (e) the conviction for the relevant offence shall be of the same effect as a conviction for the offence on indictment before the court, and the magistrate may make the like order for the restitution of property as might have been made by the court; and (See Forms 46, 93)
 - (f) the order for dismissal shall be filed by the magistrates's clerk in like manner as the conviction is hereby required to be filed, and together with the order for dismissal or the conviction, as the case may be, there shall be filed by such clerk in each case the written charge, the depositions of the witnesses and the statement, if any, of the accused. (See Form 94)

(Added 59 of 1992 s. 17)

Section:	93B	Discharge of accused where charge sheet is not delivered		30/06/1997
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(1) Where a charge sheet is not delivered against the accused under section 93A(a) within the period specified in that paragraph-

- (a) on the date appointed under section 77A(7) of the District Court Ordinance (Cap 336), or where that date is adjourned, on such later date, the magistrate shall, on his own motion; or
- (b) where, before the appointed date referred to in paragraph (a) or if that date is adjourned, before such later date, the accused applies to a magistrate for his discharge on the ground that a charge sheet is not delivered as required under section 93A(a), the magistrate shall,

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

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

(Added 59 of 1992 s. 17)

Section:	94	Special powers for summary trial of certain indictable offences		30/06/1997
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Where any person is accused of stealing from the person or of any offence within the meaning of either of sections 42 and 43 of the Offences against the Person Ordinance (Cap 212) it shall be lawful for a special magistrate to hear the case and convict the accused summarily and to sentence him to imprisonment for 1 year or to commit the accused for trial before the court.

(Replaced 24 of 1949 s. 30)

Section:	94A	Consent of prosecutor to be obtained		30/06/1997
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Notwithstanding anything contained in section 91, 92 or 94, an indictable offence shall not be dealt with summarily, unless the consent of the prosecutor has been obtained.

(Added 49 of 1965 s. 19)

Section:	95	(Repealed)		30/06/1997
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PART VI

SPECIAL POWERS

Miscellaneous

(Repealed 13 of 1970 s. 6)

Section:	96	Supplementary powers over persons under 16		30/06/1997
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Where a person apparently under the age of 16 years is convicted of any offence, the magistrate may, in addition to or in lieu of any other punishment for such offence, order the offender-

- (a) to be discharged after due admonition; or
- (b) to be delivered to his parent, guardian or nearest adult relative or, if the offender is an apprentice or servant, to his master or mistress or, if the offender is a pupil, to the person in charge of the school at which the offender is attending, on such parent, guardian, relative, master, mistress or person in charge of a school executing a bond, with or without sureties, that he will be responsible for the good behaviour and also, if the magistrate thinks it necessary, for the proper education of the offender for any period not exceeding 12 month.

(Replaced 13 of 1970 s. 6)

Section:	97	General power to fine		30/06/1997
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(1) Where a person is convicted of an offence other than an indictable offence the magistrate may, if he is not precluded from sentencing the person by the exercise of some other power (such as the power to make a probation order under section 3 of the Probation of Offenders Ordinance (Cap 298)), impose a fine in lieu of or in addition to dealing with the person in any other way in which the magistrate has power to deal with him, subject however to any enactment requiring the person to be dealt with in a particular way.

(2) In the exercise of the power under subsection (1) a magistrate shall not impose on an offender, in default of payment of the fine, any greater term of imprisonment than that to which the offender would have been liable under the enactment authorizing the imprisonment.

(3) A fine imposed in exercise of the power under subsection (1) shall not-

- (a) in the case of a special magistrate, exceed \$50000;
- (b) in the case of a permanent magistrate, exceed \$100000,

except where a greater sum is specifically provided for in any other Ordinance.

(Replaced 13 of 1995 s. 62)
[cf. 1879 c. 49 s. 4 U.K.]

Section:	98	Power to award compensation		30/06/1997
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Where a magistrate makes an order under section 36(1) or convicts a person of an offence and passes such sentence (if any) as may otherwise by law be passed, he may, in addition to the order or sentence, order the offender to pay to any aggrieved person such compensation for-

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

not exceeding \$100000, as he thinks reasonable.

(Replaced 48 of 1972 s. 4. Amended 13 of 1995 s. 63)

Section:	99	Power to sentence person using insulting language to or concerning magistrate	21 of 1999	11/06/1999
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If any person behaves in an insulting manner or uses any threatening or insulting expression to or concerning or in the presence of a magistrate when acting in the discharge of any magisterial duty, the magistrate may summarily sentence the offender to a fine at level 3 and to imprisonment for 6 months.

(Amended 24 of 1949 s. 34; 51 of 1981 s. 9; 21 of 1999 s. 29)

Section:	100	Power to award compensation for malicious prosecution		30/06/1997
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(1) If it appears to a magistrate that any charge or complaint was maliciously preferred without reasonable or probable cause, the magistrate may, on the application of the person against whom the charge or complaint was made, order the complainant to pay to that person reasonable compensation not exceeding \$10000.

(2) Before making any order under subsection (1) the magistrate shall give the complainant an opportunity to show cause why the order should not be made, and shall, if so requested by the complainant, adjourn the proceedings in order to enable him to instruct counsel on his behalf.

(3) If any compensation ordered under subsection (1) is not paid forthwith, the magistrate may commit the person against whom the order is made to prison in accordance with section 68.

(Replaced 13 of 1995 s. 45)

Section:	101	Imprisonment for non-payment of a pecuniary penalty or amends awarded for an offence under the Ordinance or any other enactment		30/06/1997
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Whenever a magistrate awards a pecuniary penalty or amends for an offence under this or any other enactment and the same is not paid forthwith, the magistrate may, in the absence of express provision to the contrary in any such enactment, commit the offender to prison in accordance with the provisions of section 68: (Amended 30 of 1958 Schedule)

Provided that where the enactment creating the offence lays down a term of imprisonment either in addition to any pecuniary penalty or in lieu thereof, the period of imprisonment awarded under this section shall not exceed such a term.

(Replaced 2 of 1955 s. 5)

Section:	101A	Issue of summons or warrant for non-payment of fine		30/06/1997
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(1) Where under any enactment a fine is imposed by a magistrate on a person and the fine is not paid forthwith or in such manner as may be allowed or directed, subject to such enactment, a magistrate may-

(a) issue a summons to such person to appear before a magistrate, and, if that person does not appear in answer to the summons, issue a warrant to apprehend him; or (See Form 28)

(b) issue, in the first instance, a warrant to apprehend such person. (See Form 29)

(2) On the appearance of such person before a magistrate in consequence of a summons or warrant issued under subsection (1), the magistrate may commit him to prison for such period as may be in accordance with the scale provided by section 68: (See Form 60)

Provided that-

(a) where the enactment under which the fine was imposed lays down a term of imprisonment either in addition to any pecuniary penalty or in lieu thereof, the period of imprisonment imposed under section 68 shall not exceed such a term;

(b) in respect of the non-payment of a fine by a person to whom time has been allowed for payment or who has been directed to pay by instalments under section 41-

(i) a warrant of commitment to prison shall not be issued unless the magistrate first makes inquiry as to his means in his presence; and (See Form 62)

(ii) after making such inquiry, the magistrate may, if he thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the instalments or the times at which the instalments were, by the previous direction of a magistrate, directed to be paid.

(Added 32 of 1966 s. 4)

Section:	102	Provisions relating to bail		30/06/1997
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Bail

(1) (Repealed 56 of 1994 s. 11)

(2) Where a person is charged with an indictable offence a magistrate may admit the accused person to bail. (Replaced 56 of 1994 s. 11)

(3) It shall be lawful for a magistrate, on issuing a warrant for the apprehension of any person charged with a bailable offence, to certify on the warrant his consent to the accused being bailed, and thereupon it shall be lawful for an inspector of police to admit the accused to bail. (Amended 56 of 1994 s. 11)

(4) In every case where a person charged with any bailable indictable offence is committed to prison to take his trial for the same before the court, it shall be lawful, at any time afterwards and before the date of his trial, for the magistrate who has signed the warrant for his commitment, in his discretion, to admit the accused to bail in manner aforesaid; or if the committing magistrate is of opinion that the accused ought to be admitted to bail, such magistrate shall certify on the warrant of commitment his consent to the accused being bailed and it shall be lawful for a magistrate or for the magistrates' clerk, on production of such certificate, to admit the accused to bail in manner aforesaid. (See Form 91) (Amended 9 of 1950 Schedule; 63 of 1971 s. 13; 50 of 1991 s. 4; 56 of 1994 s. 11; 47 of 1997 s. 10)

(5) In every case where the accused in custody is admitted to bail by a magistrate other than the committing magistrate as aforesaid, such magistrate shall forthwith transmit the recognizance of bail to the committing magistrate to be transmitted with the depositions. (Amended 47 of 1997 s. 10)

(Amended 24 of 1949 s. 37)

Section:	103	Warrant of deliverance where accused is in prison when bail granted		30/06/1997
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(1) In every case where a magistrate admits to bail any person who is then in prison charged with the offence for which he is so admitted to bail, the magistrate shall send to or cause to be lodged with the Commissioner of Correctional Services a warrant of deliverance, under his hand and seal, requiring the said Commissioner to discharge the person so admitted to bail, if he is detained for no other offence, and, on such warrant of deliverance being delivered to or lodged with the said Commissioner, he shall forthwith obey the same. (See Form 92)

(2) Where, however, the bail of the person in prison is taken by the magistrates' clerk in pursuance of section 102(4) a written certificate, signed by such magistrates' clerk, that the bail has been duly given shall be a good authority to the said Commissioner to discharge the person so bailed from custody forthwith, unless he is also in custody for some other cause. (Amended 47 of 1997 s. 10)

[cf. 1848 c. 42 s. 24 U.K.]

Section:	104	Review of decision by magistrate		30/06/1997
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Rehearing

(1) Within 14 clear days after the determination in any manner by a magistrate of any matter which he has power to determine in a summary way it shall be lawful for either party thereto to apply to the magistrate to review his decision in the matter. (Amended 69 of 1972 s. 2)

(2) An application may be made whether by the party himself or by his counsel, and shall be made in writing to the magistrates' clerk. (Replaced 13 of 1995 s. 64)

(3) If either party to the said matter is in the custody of the Commissioner of Correctional Services, the magistrate shall, unless he dismisses the application forthwith, inform the Commissioner of Correctional Services in writing that an application for a review has been made, and thereafter the Commissioner of Correctional Services shall produce the said party whenever so required in writing by a magistrate for the purposes of the review or of the application therefor.

(4) It shall be lawful for the magistrate to grant the application for a review at any time provided that the application for the review shall have been duly made in accordance with the provisions of subsections (1) and (2).

(4A) A magistrate shall not reject an application for a review without giving the applicant or his counsel an opportunity to make representations to him in open court. (Added 13 of 1995 s. 64)

(5) It shall also be lawful for a magistrate on his own initiative, within 14 clear days after the determination in any manner of any matter which he has power to determine in a summary way, to re-open the case, and thereafter, whether within the said period of 14 clear days or after its expiration, to review his decision in the matter. (Amended 69 of 1972 s. 2)

(6) If the magistrate on his own initiative reviews his decision or grants an application for a review, it shall be

lawful for him upon the review to re-open and re-hear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous decision.

(7) If the magistrate upon the review decides that the case is one which should be re-opened and wholly re-heard and if he is of the opinion that in the interests of justice the case should be re-heard by another magistrate, it shall be lawful for some other magistrate to re-hear and determine the case accordingly.

(8) For the purpose of the review a magistrate shall have all the powers, as to securing the attendance of the parties and witnesses and otherwise, that he would have if the matter were brought before him as an original complaint or information.

(9) No application for a review shall be granted and no exercise by a magistrate shall be made of the power conferred on him by subsection (5) subsequent to the commencement of proceedings by either party with a view to questioning the decision of the magistrate by way of appeal, mandamus or certiorari, unless such proceedings shall have been abandoned. (Replaced 24 of 1949 s. 38)

(10) For the purpose of determining the time within which an appeal whether by way of case stated under section 105 or under section 113 may be lodged, the determination of a case by way of review under this section or the refusal to grant a review shall, in the event of such determination or refusal and notwithstanding anything contained in the sections aforesaid, or in section 114 be the date as from which the respective periods for lodging an appeal shall run but nothing in this Ordinance shall authorize an appeal, whether by way of case stated or otherwise, from the refusal of a magistrate to grant a review. (Replaced 24 of 1949 s. 38)

Section:	104A	Evidence in absence of accused in proceedings for his return to Hong Kong		30/06/1997
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Evidence in proceedings for return of fugitive offender

(1) If it is made to appear to any magistrate, by any credible person, that any person within Hong Kong is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, in any proceedings relating to the return to Hong Kong of any person accused or convicted of an offence the magistrate shall issue his summons to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in the summons before a magistrate to give evidence or to produce the document or thing, and may take depositions in the absence of the person accused in like manner as he might take the same if such person were present and accused of an offence before him.

(2) A magistrate may enforce the attendance of a person summoned under subsection (1) in the manner provided in Part II for enforcing the attendance of a witness.

(3) If, on the appearance of a person summoned under subsection (1), he refuses to be examined upon oath, or refuses to take such oath or having taken such oath refuses without just excuse to answer such questions concerning the premises as may then be put to him, the magistrate may, by warrant under his hand and seal, commit such person to prison there to remain and be imprisoned for 2 months, unless he shall in the meantime consent to be examined and to answer concerning the premises.

(4) In this section, "person accused or convicted of an offence" (被控人或被定罪的人) includes a person wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of an offence. (Added 23 of 1997 s. 28(2))

(Added 65 of 1977 s. 3)

Section:	105	Application to state case on point of law	L.N. 362 of 1997	01/07/1997
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PART VII

APPEALS

Appeal by way of case stated

Within 14 clear days after the hearing and determination by a magistrate of any complaint, information, charge or other proceeding which he has power to determine in a summary way, either party thereto or any person aggrieved thereby who desires to question by way of appeal any conviction, order, determination or other proceeding as

aforesaid on the ground that it is erroneous in point of law, or that it is in excess of jurisdiction, may apply in writing to the magistrate to state and sign a case setting forth the facts and the grounds on which the conviction, order or determination was granted and the grounds on which the proceeding is questioned, for the opinion of a judge. In the case of any determination which a magistrate has power to determine in a summary way and which relates to or is connected with an offence the Secretary for Justice shall notwithstanding that he may not be deemed to be a party, have a similar right to apply for a case to be stated as that hereinbefore afforded to the parties and upon the exercise of such right by the Secretary for Justice the complainant or informant shall cease to be a party to any further proceedings. (See Forms 95, 97)

(Replaced 24 of 1949 s. 39. Amended 69 of 1972 s. 3; 92 of 1975 s. 58; L.N. 362 of 1997)
[cf. 1857 c. 43 s. 2 U.K.; 1879 c. 49 s. 33 U.K.]

Section:	106	Transmission of case to Registrar and notice to respondent	L.N. 362 of 1997	01/07/1997
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The appellant shall, within 14 days after the delivery of the case to him as hereinafter mentioned, transmit the case to the Registrar, first giving notice in writing of such appeal and sending with it a copy of the case to the other party to the proceeding before the magistrate, hereinafter referred to as the respondent, and, in any case in which the Secretary for Justice is neither the appellant nor deemed to be a party but is entitled to apply for a case to be stated, also to the Secretary for Justice.

(Replaced 24 of 1949 s. 39. Amended L.N. 362 of 1997)

Section:	107	Amendment of case by magistrate		30/06/1997
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After the delivery of a case to the appellant as aforesaid but before the commencement of the hearing by a judge, it shall be lawful for the magistrate on application by either party and on notice of such application to the other party previously given, to amend the case stated and signed by him in any way he may think fit:

Provided that if the case is so amended the provisions of sections 106 and 108 shall be complied with in respect of the amended case as if it were the case as originally delivered to the appellant and as if the delivery to the appellant of the amended case were the delivery to him of the original case.

(Replaced 24 of 1949 s. 39)

Section:	108	Setting down case for argument	L.N. 362 of 1997	01/07/1997
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When the case has been transmitted to the Registrar as aforesaid, it shall be set down for argument on the request of either party 4 clear days at least before the day appointed for argument, and shall be heard, save as hereinafter provided, by a judge: (Amended 92 of 1975 s. 58)

Provided that the party setting down the case for argument shall give to the Secretary for Justice and the respondent 4 clear days' notice of the day appointed therefor.

(Replaced 24 of 1949 s. 39. Amended L.N. 362 of 1997)

Section:	109	Judge may send case back for amendment		30/06/1997
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The judge shall have power, if he thinks fit, to cause the case stated for his opinion to be sent back to the magistrate for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after the same has been amended.

(Replaced 24 of 1949 s. 39)
[cf. 1957 c. 43 s. 7 U.K.]

Section:	110	Giving of security by appellant and fees for appeals under section 105	L.N. 362 of 1997	01/07/1997
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(1) The appellant shall, within 3 weeks from the making of an application under section 105, enter into a recognizance with or without sureties as any magistrate may have directed, and in such reasonable sum as, having regard to the purpose of the recognizance and to his means, the magistrate may have thought necessary to fix, conditioned to prosecute his appeal with diligence to abide by and duly perform the order of the judge or Court of

Appeal and to pay such costs as may be awarded by the judge or Court of Appeal or, with the magistrate's consent, he may, as respects the whole or any part of the sum so fixed, give such other security, by deposit of money with the magistrates' clerk, or otherwise, as the magistrate may deem sufficient. (See Forms 98, 99)

(2) The appellant, if in custody, may, by order of a magistrate, be brought up for the purpose of entering into the recognizance. (See Form 100)

(3) The appellant shall not be entitled to have the case delivered to him unless he completes the recognizance within the prescribed time, and if he makes default in so doing the appeal shall be deemed to be abandoned.

(4) The appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the magistrates' clerk or other proper officer, in respect of the said case and recognizance, the fees following-

- 1. For the recognizance..... \$5.00
- 2. For drawing the case and copy thereof for appellant,
if not exceeding 5 folios of 72 words each 5.00
- 3. Or if the case exceeds 5 folios, for every additional folio 1.00

(5) This section shall not apply where the application is made by or under the direction of the Secretary for Justice. (Amended L.N. 362 of 1997)

(Replaced 24 of 1949 s. 39)

Section:	111	Refusal to state or amend a case	L.N. 362 of 1997	01/07/1997
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If the magistrate is of opinion that the application to state a case is merely frivolous, but not otherwise, he may refuse to state a case and shall, on the request of the party or person applying therefor, sign and deliver to him a certificate of such refusal, on payment of the sum of \$2: (See Form 96)

Provided that the magistrate shall not refuse to state a case where the application therefor is made to him by or under the direction of the Secretary for Justice.

(Replaced 24 of 1949 s. 39. Amended 41 of 1956 s. 3; L.N. 362 of 1997)
[cf. 1857 c. 43 s. 4 U.K.]

Section:	112	Compelling magistrate to state or amend a case		30/06/1997
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Where a magistrate refuses to state a case or amend the case stated, the judge may, on the application of the person who applied for a case to be stated or the case stated to be amended, make an order of mandamus requiring the magistrate to state a case or amend the case stated.

(Replaced 2 of 1955 s. 6. Amended 92 of 1975 s. 58)
[cf. 1952 c. 55 s. 87(6) U.K.]

Section:	113	Right of appeal from magistrate in any matter		30/06/1997
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Alternative procedure

(1) Any person aggrieved by any conviction, order or determination of a magistrate in respect of or in connection with any offence, who did not plead guilty or admit the truth of the information or complaint, may appeal from the conviction, order or determination, in manner hereinafter provided to a judge.
[cf. 1914 c. 58 s. 37(1) U.K.]

(2) Any person who after pleading guilty or admitting the truth of the information or complaint is convicted of any offence by a magistrate may appeal to a judge against his sentence unless the sentence is one fixed by law.
[cf. 1925 c. 86 s. 25 U.K.]

(3) After the hearing and determination of any complaint or other proceeding which a magistrate has power to determine in a summary way other than a determination or proceeding relating to or in connection with an offence either party thereto may appeal from such order or determination of such magistrate to a judge.

(Replaced 24 of 1949 s. 39. Amended 92 of 1975 s. 58)

Section:	113A	Review by a judge	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Where any person has been convicted by a magistrate of any offence (including an indictable offence triable summarily), or been made the subject of any order or determination by a magistrate relating to or in connection with an offence, the Chief Executive may, if he thinks fit, at any time thereafter either- (Amended 25 of 1998 s. 2)

- (a) subject to subsection (2), refer the whole case to a judge and the case shall then be treated as an appeal to that judge by that person; or
- (b) if he desires the assistance of a judge on any point arising in the case, refer that point to a judge for that judge's opinion thereon, and the judge shall consider the point so referred and furnish the Chief Executive with his opinion thereon accordingly. (Amended 25 of 1998 s. 2)

(2) The Fifth Schedule shall have effect for the purpose of regulating references to a judge under subsection (1)(a) in respect of the sections specified in that Schedule.

(3) A reference by the Chief Executive under this section- (Amended 25 of 1998 s. 2)

- (a) may be made by him either on an application by the person referred to in subsection (1), or without any such application; and
- (b) shall be made in writing to the Registrar.

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

(Added 12 of 1992 s. 4)

Section:	114	Procedure for appeals under section 113 prior to entry of appeal	L.N. 362 of 1997	01/07/1997
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Where a person is authorized by section 113 to appeal to a judge, the following provisions shall apply-

- (a) the appellant shall, within 14 days after the day of his conviction or the order or determination by the magistrate or within such extended time as may be ordered upon application made in accordance with section 114A, give to the magistrates' clerk notice in writing of his appeal, stating the general grounds of his appeal, and signed by him or his agent on his behalf, and thereupon the magistrates' clerk shall give a copy of such notice to the respondent and, if he is not the respondent, also to the Secretary for Justice; (See Forms 101, 102) (Amended 6 of 1968 s. 3)
- (b) when a notice of appeal has been given to the magistrates' clerk the magistrate whose conviction, order or determination is the subject of the notice of appeal shall prepare a signed statement of his findings on the facts and other grounds of his decision and within 15 days after the day on which the notice of appeal was given cause a copy to be served upon the appellant and respondent and, if he is not the respondent, also upon the Secretary for Justice; (Amended 6 of 1968 s. 3)
- (c) (Repealed 13 of 1995 s. 65)

(Replaced 24 of 1949 s. 39. Amended L.N. 362 of 1997)
[cf. 1933 c. 38 s. 1 U.K.]

Section:	114A	Extension of time for giving notice of appeal under section 114	L.N. 362 of 1997	01/07/1997
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(1) Where it appears to a magistrate or to a judge, on application made in accordance with subsection (2), that any person wishing to appeal against any conviction, order or determination by any magistrate has failed to give the notice of appeal required by section 114 within the period of 14 days prescribed by paragraph (a) thereof, the magistrate or the judge, as the case may be, may, on good cause being shown by the applicant, order that such notice may be given within such further time as shall be specified in such order.

(2) An application under subsection (1) shall be made in writing and- (See Form 103)

- (a) where the application is being made to a magistrate, shall be sent by the applicant to the magistrates' clerk; or
- (b) where the application is being made to a judge, shall be sent by the applicant to the Registrar.

- (3) Where an order is made under subsection (1)-
- (a) the magistrates' clerk or the Registrar, as the case may be, shall give notice of the order to the applicant and to the respondent and, if he is not the respondent, to the Secretary for Justice; and (Amended L.N. 362 of 1997)
 - (b) if the order was made by a judge, the Registrar shall also give notice thereof to the magistrates' clerk.
- (4) An application may be made under subsection (1) to a judge notwithstanding the refusal by a magistrate of an application thereunder.

(Added 6 of 1968 s. 4)
[cf. 1952 c. 55 s. 84 U.K.]

Section:	115	Service and notice	L.N. 362 of 1997; 59 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 59 of 1999 s. 3

General provisions as to appeals

(1) Despite the provisions of this Part it shall be unnecessary to serve any notice or document on the Secretary for Justice if the appeal relates to any order or determination other than an order or determination relating to or in connection with an offence. (Amended L.N. 362 of 1997)

(2) Any notice or document required to be served on the Secretary for Justice shall be served upon the clerk in the Department of Justice from time to time discharging the duties of prosecution clerk or by addressing the same to the Secretary for Justice by registered post. (Amended L.N. 362 of 1997; 59 of 1999 s. 3)

(3) Any notice or document required to be given to or served upon any other party shall be deemed to have been duly served on such person if given to or served upon his solicitor or if dispatched by registered post addressed, in the case of a person in prison custody, to the Commissioner of Correctional Services and, in the case of any other person, addressed to him at his last or usual place of abode or business. A notice of document dispatched by registered post shall be deemed to be given or received at the time when it would have been delivered in the ordinary course of post.

(4) Where it is made to appear to a judge that for any reason any notice which is required cannot be given or that service of any document required to be served cannot conveniently be effected in the manner hereinbefore provided he may order that such notice be given or such document served- (Amended 92 of 1975 s. 58)

- (a) by delivery thereof to some agent within Hong Kong of the person to be served, or to some other person within Hong Kong through whom it appears in his opinion that there is a reasonable probability that the notice or document will come to the knowledge of the person to whom notice is to be given or upon whom the document is to be served; or (Amended 59 of 1994 s. 6)
- (b) by advertisement thereof in one or more newspapers published in Hong Kong; or (Amended 59 of 1994 s. 6)
- (c) by notice thereof put up at the court house or at some other place of public resort.

(Replaced 24 of 1949 s. 39)

Section:	116	Provision as to entry of appeal	21 of 1999	11/06/1999
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(1) As soon as practicable after the appellant has lodged a notice of appeal, the magistrates' clerk shall transmit to the Registrar the notice of appeal, the depositions and such copies thereof as the Registrar may require, and the statement by the magistrate of his findings on the facts and other grounds of his decision, and thereupon the Registrar shall enter the appeal, and shall in due course give notice, together with a copy of the depositions, to the appellant, to the respondent and to the Secretary for Justice as to the date, time and place fixed for the hearing of the appeal. (Amended L.N. 362 of 1997; 21 of 1999 s. 30)

(2) Where an appellant has for the purposes of section 119(a) entered into a separate recognizance or given other security for his appearance, the clerk to the magistrate against whose decision the appeal is brought shall, before the date fixed for the hearing of the appeal, transmit to the Registrar the recognizance, if any, and a statement as to any other such security given by the appellant. (Amended 48 of 1949 s. 8)

(3) Where any recognizance for the purposes of such an appeal as aforesaid is entered into otherwise than

before the magistrate against whose decision the appeal is brought, or his clerk, the officer concerned in the taking of the recognizance shall forthwith transmit it to the clerk to such magistrate.

(Replaced 24 of 1949 s. 39)
[cf. 1933 c. 38 s. 3 U.K.]

Section:	117	Abandonment of appeal		30/06/1997
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(1) In the case of an appeal under section 105 or 113 the appellant may at any time, not less than 2 clear days before the date fixed for the hearing, abandon the appeal by giving notice in writing to the clerk of the magistrate against whose decision the appeal is brought, and, if he gives such notice, the clerk shall forthwith give notice of the abandonment to the respondent and to the Registrar.

(2) Where an appeal has been abandoned-

- (a) any magistrate may issue process for enforcing the decision against which the appeal was brought, subject to anything already suffered or done thereunder by the appellant; and
- (b) any magistrate may, on the application of the respondent, order the appellant to pay to him such costs as the Registrar shall determine to be just and reasonable in respect of expenses properly incurred by him in connection with the appeal before notice of the abandonment was given to him; and
- (c) any recognizance entered into in connection with the appeal shall be dealt with by a magistrate instead of by the judge, and accordingly the Registrar shall retransmit any such recognizance to the magistrates' clerk, and the provisions of subsections (1) and (3) of section 65 (except the words from "and paying or giving security" to the end of the said subsection (1)) shall apply in relation to any such recognizance as they apply to such recognizances as are mentioned therein, but any condition for the appearance of the appellant at the hearing of the appeal shall be deemed to be performed if he duly surrenders himself.

(3) The payment of any costs ordered to be paid under subsection (2) may be enforced as a civil debt recoverable on a magistrate's summons by the party to whom they are ordered to be paid, and shall not be enforced in any other manner.

(Replaced 24 of 1949 s. 39)
[cf. 1933 c. 38 s. 4 U.K.]

Section:	118	Procedure on hearing appeal	23 of 2003	04/07/2003
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(1) In the case of any appeal to which section 105 or 113 applies-

- (a) the depositions taken before the magistrate or a certified copy thereof shall, without prejudice to any other method of proof, be admissible as evidence of the evidence which was given and of the statements which were made before the magistrate, and generally that the proceedings therein recorded took place;
- (b) when the appeal comes on for hearing the appellant shall be first heard in support of the appeal, the respondent if present and if he so desires shall be heard against it and the appellant thereafter shall be entitled to reply. If the judge thinks additional evidence to be necessary he may receive such evidence, and for that purpose shall have the like powers under subsections (1) and (6) to (10) of section 83V of the Criminal Procedure Ordinance (Cap 221) that the Court of Appeal would have had if the appeal had been an appeal to which that section applied, and the judge may issue any process necessary for enforcing the exercise of such powers; (Amended 34 of 1972 s. 22; 23 of 2003 s. 11)
- (c) the appeal shall not operate as a stay of execution except in the case of-
 - (i) (Repealed 13 of 1995 s. 2)
 - (ii) an order for payment of compensation; (Replaced 36 of 1976 s. 14)
- (d) the judge may reserve the appeal, or any point in the appeal for the consideration of the Court of Appeal, or may direct the appeal, or point in the appeal, to be argued before the Court of Appeal; and the Court of Appeal shall have power to hear and determine any such appeal or point so reserved or so directed to be argued and may in connection therewith exercise all or any of the powers conferred on a judge by this Part or may remit the matter to the judge with the opinion or decision of the Court of Appeal and may also make any such other order in relation to the matter and such orders as to costs as to the Court of Appeal shall seem fit; (Amended 92 of 1975 s. 58) [cf. 1857 c. 43 s. 6 U.K.; 1873 c. 66 s. 46 U.K.]

- (e) the powers and duties of a judge shall be exercised and performed by the Chief Judge of the High Court or by such one of the judges as the Chief Judge of the High Court shall from time to time appoint; (Amended 92 of 1975 s. 58; 79 of 1995 s. 50; 25 of 1998 s. 2)
- (f) if any step in or in connection with any appeal or intended appeal is rendered impossible by the death, absence or incapacity of a magistrate, a judge upon motion shall have power for good cause to order that the case be heard de novo by a magistrate and the case shall be so heard accordingly. (Amended 92 of 1975 s. 58)

(2) Either party to any appeal under section 105 or 113 may be heard in person or by any barrister and in any appeal under section 113(1) and (2), not being appeals reserved for hearing or directed to be argued before the Court of Appeal, either party may be heard by any counsel.

(Replaced 24 of 1949 s. 39)

Section:	119	Release from custody by a magistrate and powers of the judge on appeal		30/06/1997
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- (1) In the case of any appeal to which section 105 or 113 applies-
 - (a) where an appellant is in custody, any magistrate may, if he thinks fit, release him from custody on his complying with the provisions of sections 110 and 114 relating to entering into recognizances, if he has not already done so, and may admit him to bail. (See Forms 98, 99) (Amended 56 of 1994 s. 11)
 - (b) recognizances for the purpose of section 110 or 114 and this section may, if it be convenient, be combined in one recognizance;
 - (c) the judge may from time to time adjourn the hearing of any appeal;
 - (d) the judge may by his order confirm, reverse or vary the magistrate's decision or may direct that the case shall be heard de novo by a magistrate or may remit the matter with his opinion thereon to a magistrate, or may make such other order in the matter as he thinks just, and by such order exercise any power which the magistrate might have exercised; and any decision or order made by the judge shall have the like effect and may be enforced in the like manner as if it had been made by the magistrate;
 - (e) the powers of the judge under paragraph (d) shall be construed as including power to award any punishment, whether more or less severe than that awarded by the magistrate, which the magistrate might have awarded;
 - (f) the Registrar shall send to the magistrates' clerk, for entry in his record, a memorandum of the judge's decision, and shall endorse a like memorandum on the conviction, and whenever any copy or certificate of the conviction is made, a copy of the memorandum shall be added thereto and shall be sufficient evidence of the judge's decision in every case where the copy or certificate would be sufficient evidence of the conviction; (Replaced 24 of 1949 s. 39)
 - (g) where an appellant has been convicted of an offence and the magistrate could on the complaint or information have found him guilty of some other offence, the judge may, if he considers that the magistrate must have been satisfied of facts which proved the appellant guilty of that other offence, substitute for the conviction recorded by the magistrate a conviction of that other offence and pass such sentence in substitution for the sentence passed by the magistrate as may be warranted in law for that other offence. (Added 49 of 1965 s. 20)

Section:	120	Provisions as to costs		30/06/1997
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(1) On any appeal to which section 105 or 113 applies, the judge may make such orders as to costs, as he may think fit, and may-

- (a) where he allows the appeal, direct that there shall be included in an costs to be paid by the respondent to the appellant the costs properly incurred by the appellant in the proceedings before the magistrate, or such fixed sum as the judge may consider reasonable in respect of the costs so incurred by him;
- (b) in any case, in which the appeal is from an order or determination in respect of or in connection with an offence, in lieu of directing a taxation of costs, fix the sum to be paid by way of costs by either party to the appeal,

and in fixing, for the purposes of this subsection, the amount of any costs to be paid to a party to an appeal shall have regard to his means.

(2) (Repealed 39 of 1996 s. 24)

(Replaced 24 of 1949 s. 39)
[cf. 1933 c. 38 s. 5 U.K.]

Section:	121	Provisions as to forfeited recognizances	30/06/1997
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(1) The following provisions of this section shall have effect in any case where a recognizance entered into in connection with any appeal to which this Ordinance applies has become forfeited.

(2) (a) The Registrar shall, during or after the hearing of the appeal, make out a list or lists of persons bound by such recognizance and, if he is able to do so, state the cause why each such person has therein made default.

(b) The list or lists so made shall be examined, and, if necessary corrected and signed by the judge, and shall be delivered by the Registrar to the bailiff of the court or his deputy, and thereupon payment of the sum due by the recognizance shall, save as hereinafter in this section provided, be enforced in the manner provided for the enforcing of recognizances by sections 110 to 113 of the Criminal Procedure Ordinance (Cap 221).

(3) The judge may, in lieu of signing a list in accordance with subsection (2), make an order wholly discharging the recognizance.

(4) The judge, unless he makes an order wholly discharging the recognizance-

(a) shall, at the time when he signs as aforesaid, make an order fixing the term of imprisonment which the person bound by the recognizance is to undergo if any sum due in respect thereof is not duly paid and cannot be recovered by distress; and

(b) may at the same time make an order directing that the sum due in respect of the recognizance be paid on some future date specified in the order, or that the said sum be paid by instalments of such amount, on such dates respectively, as he may specify in such order.

(5) Any order under subsection (4)(b) postponing the payment of any sum due in respect of a recognizance, shall operate as a direction to the Registrar to proceed with the enforcement of payment of the sum due in respect of the recognizance only if and when default is made in complying with the order.

(6) The Registrar shall enter upon the record any order made by the judge under this section.

(7) The powers conferred by this section shall be in addition to, and not in derogation of any other powers conferred by this or any other Ordinance, and this section shall not, save as otherwise expressly provided therein, be taken to affect the law relating to the procedure for enforcing recognizances.

(Added 24 of 1949 s. 39)
[cf. 1933 c. 38 s. 6 U.K.]

<*Note-Exp.x-Ref:110,111,112,113*>

Section:	122	Treatment of appellants pending appeal or re-hearing	30/06/1997
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(1) A judge may, on the application of an appellant who is in custody, order the appellant to be brought up to the court in custody for the purpose of attending his appeal or any application or any proceeding therein.

(2) Without prejudice to subsection (1), a judge may, on the application of an appellant who is in custody, admit the appellant to bail pending the determination of his appeal or any proceeding therein.

(3) The time during which an appellant is held in custody pending the determination of his appeal or any application or proceeding therein shall, subject to any direction which a judge may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

(4) Where an appellant is admitted to bail under subsection (2) or under section 119(a), the time during which he is at large after being so admitted shall not be reckoned as part of the term of any sentence to which he is for the time being subject.

(5) The term of any sentence passed by a judge on an appeal shall, unless a judge otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

(6) Section 119(a) and subsections (1) to (5) of this section shall apply to the case of a review under the provisions of section 104, in like manner as if the convicted person were an appellant, save that references to a judge shall be construed as references to the magistrate and references to an appeal shall be construed as references to a review.

(Replaced 58 of 1974 s. 3)

<*Note-Exp.x-Ref:(1),(2),(3),(4),(5) of section 122*>

Section:	123	Right of Secretary for Justice to substitute himself as a party in appeals in certain cases	L.N. 362 of 1997	01/07/1997
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In the case of any appeal to which section 105 or 113 applies from a determination relating to or connected with an offence it shall be lawful for the Secretary for Justice, if he is not already a party to cause himself to be substituted as a party in lieu of the complainant or informant at any time before the date fixed for the hearing of the appeal by notice in writing to such complainant or informant and to the Registrar and thereupon such complainant or informant shall cease to be a party to any further proceedings and the Secretary for Justice shall be deemed to be a party.

(Replaced 24 of 1949 s. 39. Amended L.N. 362 of 1997)

Section:	124	Provisions for costs in cases where the Secretary for Justice has intervened	L.N. 362 of 1997	01/07/1997
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Notwithstanding the provisions of sections 14 and 123 a complainant or informant shall remain liable to pay and be entitled to recover, as the case may be, the costs incurred prior to the date when he ceases to be a party to the proceedings by reason of the intervention of the Secretary for Justice, and in making any order as to costs a magistrate and the court shall have regard to such intervention and may in his or their discretion and in such manner as he or they may think fit apportion the right to recover costs or the liability to pay costs, as the case may be, between such complainant or informant and the Secretary for Justice:

Provided that no order shall be made which would result in a defendant being called upon to pay by way of costs a greater sum than would have been payable had intervention not taken place.

(Added 9 of 1950 Schedule. Amended L.N. 362 of 1997)

Section:	125	Action against magistrate for act within his jurisdiction		30/06/1997
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PART VIII

PROTECTION OF MAGISTRATES

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

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

Section:	126	Action for act done without or in excess of jurisdiction		30/06/1997
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(1) For any act done by a magistrate in a matter over which by law he has no jurisdiction or in which he has exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by the magistrate in any such matter, may maintain an action against the magistrate in the same form and in the same case as he might have done before the commencement of this Ordinance, without making any allegation in his pleadings that the act complained of was done maliciously and without reasonable and probable cause:

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

appear according to the exigency of the summons, in such case no such action shall be maintained against the magistrate for anything done under warrant.

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

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

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

Section:	127	Action to be against convicting magistrate		30/06/1997
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Where a conviction or order is made by one magistrate and a warrant of distress or of commitment is granted thereon by another magistrate bona fide and without collusion, no action shall be brought against the magistrate who so granted the warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the magistrate who made the same, but the action, if any, shall be brought against the magistrate who made the conviction or order.

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

Section:	128	Compelling magistrate to do act and immunity for doing it	25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

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

(Replaced 30 of 1958 s. 9. Amended 25 of 1998 s. 2)
[cf. 1938 c. 63 s. 19(1) & Second Schedule U.K.]

Section:	129	After appeal no action for anything done under warrant upon it		30/06/1997
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In any case where a warrant of distress or warrant of commitment is granted by a magistrate on any conviction or order which, either before or after the granting of such warrant, has been or is confirmed on appeal, no action shall be brought against the magistrate who so granted the warrant for anything which may have been done under the same by reason of any defect in the conviction or order.

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

Section:	130	Setting aside of action prohibited by the Ordinance		30/06/1997
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In any case where by this Ordinance it is enacted that no action shall be brought in particular circumstances, if any such action is brought, it shall be lawful for a judge, on summons taken out by the defendant and on an affidavit of facts, to set aside the proceedings in the action, with or without costs, as to him may seem meet.

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

Section:	131	Provisions as to limitation of actions, costs, tender, payment and notice		30/06/1997
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Where any action is brought against any magistrate for any act done by him in a matter over which by law he has no jurisdiction or in which he has exceeded his jurisdiction, or in respect of any alleged neglect or default in the exercise of his jurisdiction, the following provisions shall apply-

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

- next after the ceasing thereof;
- (b) whenever in any action a judgment is obtained by the defendant it shall carry costs to be taxed as between solicitor and client;
 - (c) in any action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment;
 - (d) if, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends, before the commencement of the action, the court may award to the defendant costs to be taxed as between solicitor and client.

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

Section:	132	Amount of damages in certain cases		30/06/1997
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In any case where the plaintiff in any such action is entitled to recover, and he proves the levying or payment of any fine or sum of money under any conviction or order as part of the damages which he seeks to recover, or if he proves that he was imprisoned under such conviction or order, and seeks to recover damages for such imprisonment, he shall not be entitled to recover the amount of such fine or sum so levied or paid, or any sum beyond the sum of 5 cents as damages for such imprisonment, or any costs of suit whatsoever, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum which he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted or for non-payment of the sum which he was so ordered to pay.

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

Section:	133	Rules		30/06/1997
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PART IX

MISCELLANEOUS

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

Section:	134	Regulations as to costs and fees		30/06/1997
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- (1) The Chief Justice, with the approval by resolution of the Legislative Council, may make regulations-
 - (a) as to the fees to be taken (if any) at the magistrates' court in respect of any proceedings or of the issuing, service or execution of any process or otherwise;
 - (b) as to the costs (if any) to be allowed for the attendance of witnesses or for legal assistance or otherwise;
 - (c) fixing a scale of such fees and costs;
 - (d) exempting any particular class of cases from the payment of any such fees or costs;
 - (e) as to the fees to be taken for the supply of copies of minutes and extracts from registers under section 35A. (Added 14 of 1979 s. 4)
- (2) A table of the fees and costs for the time being in force shall be hung up in some conspicuous part of the magistrates' court.
- (3) A magistrate may refuse to do any act for which any fee is payable unless such fee has been paid, and, where any such act is done and the fee due thereon remains unpaid, any magistrate may summon the person from whom such fee is due and the fee may be recovered in the manner provided in this Ordinance for the recovery of a fine.

Section:	135	Amendment of First Schedule and Fourth Schedule	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

The Chief Executive in Council may by order amend the First Schedule and the Fourth Schedule.

(Amended 59 of 1972 s. 3; 25 of 1998 s. 2)

(Part IX replaced 32 of 1966 s. 5)

Schedule:	1	(Repealed)		30/06/1997
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(Repealed 59 of 1994 s. 5)

Schedule:	2		25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

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

PART I

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

PART II

1. Perjury and subornation of perjury.
2. Making or suborning any other person to make a false oath punishable as perjury. (Amended 50 of 1991 s. 4)
3. Any offence against the provisions of the laws relating to bankrupts.
4. Bigamy.

5. Bribery. (Replaced 24 of 1950 Schedule)
6. (Repealed 48 of 1972 s. 4)
7. An offence against section 22(1) of the Theft Ordinance (Cap 210). (Replaced 21 of 1970 s. 35)

PART III

[section 88]

1. Any offence which is punishable with death.

2. Any offence which is punishable with imprisonment for life except an offence against section 37C, 37D, 37O or 37P of the Immigration Ordinance (Cap 115), an offence against section 53 or 123 of the Crimes Ordinance (Cap 200), an offence against Part VIII of the Crimes Ordinance (Cap 200), an offence against section 4 or 6 of the Dangerous Drugs Ordinance (Cap 134), an offence against section 10 or 12 of the Theft Ordinance (Cap 210), section 17, 28 or 29 of the Offences against the Person Ordinance (Cap 212) or section 16, 17 or 18 of the Firearms and Ammunition Ordinance (Cap 238). (Replaced 49 of 1965 s. 21. Amended L.N. 165 of 1967; 41 of 1968 s. 59; 21 of 1970 s. 35; 48 of 1972 s. 4; 25 of 1978 s. 6; 59 of 1980 s. 2; 68 of 1981 s. 56; 59 of 1984 s. 7; 52 of 1992 s. 11)

3. Any offence against section 21 or 22 of the Crimes Ordinance (Cap 200).

4. Misprision of treason.

5. Any offence against Part I or Part II of the Crimes Ordinance (Cap 200). (Amended 25 of 1998 s. 2)

6. Blasphemy and offences against religion.

7. Composing, printing or publishing blasphemous, seditious or defamatory libels.

8. Genocide and any conspiracy or incitement to commit genocide. (Added 52 of 1969 s. 4)

(Part III added 2 of 1953 s. 4)

(Second Schedule replaced 24 of 1949 Schedule)

Schedule:	3	OFFENCES TO WHICH DEFENDANT MAY PLEAD GUILTY BY LETTER	L.N. 63 of 2008	21/03/2008
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[section 18E(1)]

1. Summary Offences

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

(Replaced 58 of 1967 s. 5)

2. Rabies

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

(Replaced L.N. 8 of 1995)

3. Road Traffic

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

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

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

- (4) Any offence against the Road Traffic (Parking) Regulations (Cap 374 sub. leg.).
 - (5) Any offence against the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg.), other than a contravention of regulation 29.
 - (6) An offence against the Road Traffic (Traffic Control) Regulations (Cap 374 sub. leg.), other than a contravention of regulation 53 or 54.
 - (7) Any offence against the Road Traffic (Public Service Vehicles) Regulations (Cap 374 sub. leg.).
 - (8) Any offence against the Road Traffic (Safety Equipment) Regulations (Cap 374 sub. leg.).
 - (9) Any offence against the Road Traffic (Village Vehicles) Regulations (Cap 374 sub. leg.). (Added L.N. 18 of 1987)
- (Replaced L.N. 229 of 1984)
4. Public Health and Urban Services
 - Any offence against section 9 (Prevention of obstruction) of the Public Markets Regulation (Cap 132 sub. leg.).
(Amended 10 of 1986 s. 32; 78 of 1999 s. 7)
 5. Tramway
 - (1) Any offence against rule 5 of the Tramway Working Rules (Cap 107 sub. leg.)*.
 - (2) Any contravention of the Road Traffic (Road Crossing) Regulations (Cap 220 sub. leg.)+ that is an offence under regulation 13 of the said Regulations by virtue of rule 6 of the Tramway Working Rules (Cap 107 sub. leg.)*.
(Added L.N. 58 of 1965)
 6. (Repealed L.N. 198 of 1999)
 7. Government Tunnels
 - Any offence against the Road Tunnels (Government) Regulations (Cap 368 sub. leg.).
(Replaced L.N. 151 of 1989)
 8. (Repealed 23 of 2002 s. 89)
 9. Immigration
 - An offence against section 17C(3) of the Immigration Ordinance (Cap 115).
(Added L.N. 317 of 1980)
 10. Registration of Persons
 - An offence against regulation 11(2A) of the Registration of Persons Regulations (Cap 177 sub. leg.).
(Added L.N. 317 of 1980)
 11. Housing (Traffic)
 - An offence against by-law 8(1)(a), 8(1)(b), 25(1)(a) or 25(1)(b) of the Housing (Traffic) By-laws (Cap 283 sub. leg.).
(Added L.N. 80 of 1993)
 12. Smoking (Public Health)
 - An offence against section 3(2) or 4(1) of the Smoking (Public Health) Ordinance (Cap 371).
(Added L.N. 229 of 1995)
 13. Eastern Harbour Crossing
 - Any offence against the Eastern Harbour Crossing Road Tunnel By-laws (Cap 215 sub. leg.).
(Added L.N. 356 of 1997)
 14. Tate's Cairn Tunnel
 - Any offence against the Tate's Cairn Tunnel By-laws (Cap 393 sub. leg.).
(Added L.N. 356 of 1997)
 15. Western Harbour Crossing

Any offence against the Western Harbour Crossing Bylaw (Cap 436 sub. leg. D).

(Added L.N. 356 of 1997)

16. Tsing Ma Control Area

(1) Any offence against the Tsing Ma Control Area (General) Regulation (Cap 498 sub. leg. B).

(2) Any offence against the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap 498 sub. leg.

A).

(Added L.N. 356 of 1997)

17. Tai Lam Tunnel and Yuen Long Approach Road

Any offence against the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap 474 sub. leg. C).

(Added 29 of 1999 s. 2)

18. Tsing Sha Control Area

(1) Any offence against the Tsing Sha Control Area (General) Regulation (Cap 594 sub. leg. A).

(2) Any offence against the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap 594 sub. leg.

B).

(Added L.N. 63 of 2008)

(Third Schedule added 55 of 1961 s. 4)

Note:

* **Repealed-See L.N. 220 of 1986**

+ **Repealed-See L.N. 292 of 1983**

Schedule:	4		L.N. 21 of 2005	04/03/2005
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[sections 8A & 135]

Public Officer	Offences
Agriculture, Fisheries and Conservation Department (Amended L.N. 331 of 1999)	
(i) Forestry Officer	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7)
(ii) Field Officer	
(iii) Field Assistant	
(iv) Forest Guard	
(v) Agricultural Officer	
(vi) Fisheries Officer	
(vii) Fisheries Supervisor	
(viii) Veterinary Officer	
(i) Forestry Officer	(b) (Repealed 78 of 1999 s. 7)
(ii) Field Officer	
(iii) Field Assistant	
(iv) Forest Guard	
(i) Fisheries Officer	(c) Any offence under the Country Parks and Special Areas Regulations (Cap 208 sub. leg. A).
(ii) Senior Fisheries Supervisor	
(iii) Fisheries Supervisor I	
(iv) Fisheries Supervisor II	
Fire Services Department	(d) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228).
(i) Divisional Officer	
(ii) Assistant Divisional Officer	
(iii) Senior Station Officer	
(iv) Station Officer	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7)
(i) Senior Overseer	
(ii) Overseer	
Food and Environmental Hygiene Department	
(i) Senior Overseer	(b) (Repealed 78 of 1999 s. 7)
(ii) Overseer	
	(a) Any offence under Part III of the Public Health and Municipal Services Ordinance (Cap 132).

(iii) Senior Foreman (iv) Foreman (v) Health Inspector (vi) Principal Hawker Control Officer (vii) Chief Hawker Control Officer (viii) Senior Hawker Control Officer (ix) Hawker Control Officer (x) Assistant Hawker Control Officer	
(i) Director of Food and Environmental Hygiene (ii) Deputy Director of Food and Environmental Hygiene (iii) Assistant Director (iv) Senior Overseer (v) Overseer (vi) Senior Foreman (vii) Foreman (viii) Health Inspector (ix) Transport Supervisor (x) Principal Hawker Control Officer (xi) Chief Hawker Control Officer (xii) Senior Hawker Control Officer (xiii) Hawker Control Officer (xiv) Assistant Hawker Control Officer	(b) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK).
(i) Director of Food and Environmental Hygiene (ii) Deputy Director of Food and Environmental Hygiene (iii) Assistant Director (iv) Senior Overseer (v) Overseer (vi) Senior Foreman (vii) Foreman (viii) Health Inspector (ix) Principal Hawker Control Officer (x) Chief Hawker Control Officer (xi) Senior Hawker Control Officer (xii) Hawker Control Officer (xiii) Assistant Hawker Control Officer	(c) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228). (Added 78 of 1999 s. 7)
Highways Department (i) Senior Engineer (ii) Engineer (iii) Assistant Engineer (iv) Chief Technical Officer (v) Inspector of Works I (vi) Inspector of Works II (vii) Assistant Inspector of Works	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7) (b) (Repealed 78 of 1999 s. 7)
Housing Department (i) Housing Manager (ii) Assistant Housing Manager (iii) Housing Officer (Amended L.N. 109 of 1990)	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7) (b) (Repealed 78 of 1999 s. 7)
Labour Department (i) Factory Inspector (ii) Factory Inspector I (iii) Factory Inspector II	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7)

(iv) Labour Inspector I (v) Labour Inspector II	(b) (Repealed 78 of 1999 s. 7)
Lands Department (Amended L.N. 283 of 1993) (i) Senior Land Executive (ii) Land Executive (iii) Senior Survey Officer (Estate)	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7) (b) (Repealed 78 of 1999 s. 7)
Leisure and Cultural Services Department (i) Amenities Officer I (ii) Amenities Officer II (iii) Senior Amenities Assistant (iv) Amenities Assistant I (v) Amenities Assistant II (vi) Amenities Assistant III (vii) Assistant Recreation and Sport Officer II (viii) Chief Leisure Services Manager (ix) Senior Leisure Services Manager (x) Leisure Services Manager (xi) Assistant Leisure Services Manager I (xii) Assistant Leisure Services Manager II	(a) Any offence under Part III of the Public Health and Municipal Services Ordinance (Cap 132).
(i) Amenities Officer I (ii) Amenities Officer II (iii) Senior Amenities Assistant (iv) Amenities Assistant I (v) Amenities Assistant II (vi) Amenities Assistant III (vii) Chief Curator (viii) Curator (ix) Assistant Curator I (x) Assistant Curator II (xi) Chief Librarian (xii) Senior Librarian (xiii) Librarian (xiv) Assistant Librarian (xv) Chief Manager, Cultural Services (xvi) Senior Manager, Cultural Services (xvii) Manager, Cultural Services (xviii) Assistant Manager, Cultural Services (xix) Assistant Recreation and Sport Officer II (xx) Chief Leisure Services Manager (xxi) Senior Leisure Services Manager (xxii) Leisure Services Manager (xxiii) Assistant Leisure Services Manager I (xxiv) Assistant Leisure Services Manager II	(b) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK).
(i) Amenities Officer I (ii) Amenities Officer II (iii) Senior Amenities Assistant (iv) Amenities Assistant I (v) Amenities Assistant II (vi) Amenities Assistant III (vii) Assistant Recreation and Sport Officer II (viii) Chief Leisure Services Manager (ix) Senior Leisure Services Manager (x) Leisure Services Manager	(c) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228). (Replaced L.N. 21 of 2005)

(xi) Assistant Leisure Services Manager I	
(xii) Assistant Leisure Services Manager II	
Marine Department	
(i) Marine Officer	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7)
(ii) Assistant Marine Officer	(b) (Repealed 78 of 1999 s. 7)
(iii) Marine Inspector I	(c) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228).
(iv) Marine Inspector II	
Transport Department	
(i) Transport Controller I	(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg. BK). (Replaced 78 of 1999 s. 7)
(ii) Transport Controller II	(b) (Repealed 78 of 1999 s. 7)
(iii) Transport Assistant I	
(iv) Transport Assistant II	
(Fourth Schedule replaced L.N. 407 of 1987. Amended L.N. 131 of 1996; L.N. 339 of 1996; 21 of 1999 s. 32; 78 of 1999 s. 7)	

Schedule:	5	REFERENCES TO A JUDGE	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

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

[section 113A(2)]

PART I

PRACTICE AND PROCEDURE

1. Subject to paragraph 2, where the Chief Executive has referred a whole case to a judge under section 113A(1)(a) the case shall be treated for all purposes as an appeal to the judge under section 113(1) or (2), as the case may be, by the person in respect of whom the case is referred. (Amended 25 of 1998 s. 2)
2. The provisions of Part VII of the Ordinance shall, subject to the modifications set out in Part II of this Schedule, apply to any reference of a case ("the reference") by the Chief Executive treated as an appeal under paragraph 1. (Amended 25 of 1998 s. 2)
3. The Registrar, on receipt of the reference, shall-
 - (a) enter the reference as an appeal ("the appeal") under section 113(1) or (2), as the case may be;
 - (b) subject to paragraph 4, require the magistrate ("original magistrate") before whom the person referred to in section 113A(1) appeared or, if the original magistrate is dead or is no longer present in Hong Kong, some other magistrate, so far as may be practicable to prepare and transmit to him within 15 days of his request a signed statement of the findings ("statement of findings") of the original magistrate on the facts and other grounds of the original magistrate's decision;
 - (c) give notice to the parties to the appeal and, if he is not a party, to the Secretary for Justice as to the date, time and place fixed for the hearing of the appeal; and (Amended L.N. 362 of 1997)
 - (d) as soon as practicable thereafter, provide the parties to the appeal and, if he is not a party, the Secretary for Justice with copies of the statement of findings together with any minute taken under section 34(1) in respect of any proceedings comprising the subject of the appeal. (Amended L.N. 362 of 1997)
4. Any signed statement of a magistrate prepared under section 114(b) at any time before the date of receipt of the reference by the Registrar comprising the subject of the appeal shall be treated as a statement of findings for the purposes of paragraph 3(b).

PART II

MODIFICATIONS TO PART VII OF THE ORDINANCE

Section	Modification
105	Omit.
106	Omit.
107	Omit.
108	Omit.
109	Omit.
110	Omit.
111	Omit.
112	Omit.
113(3)	Omit.
114	Omit.
114A	Omit.
115(1)	Omit.
116	Omit.
117	Omit.
118(1)	For "105 or 113" substitute "113(1) or (2)".
118(1)(b)	For "appellant" where it first occurs substitute "person ("the appellant") in respect of whom the case is referred to a judge under section 113A(1)(a)".
118(2)	Omit and substitute- "(2) Either party to an appeal under section 113(1) or (2), not being an appeal reserved for hearing or directed to be argued before the Court of Appeal, may be heard in person or by any counsel."
119(1)	For "105 or 113" substitute "113(1) or (2)".
119(1)(a) and (b)	Omit.
119(1)(g)	For "an appellant" substitute "a person ("the appellant") in respect of whom the case is referred to a judge under section 113A(1)(a)".
120(1)	For "105 or 113" substitute "113(1) or (2)".
120(1)(a)	For "appellant" where it first occurs substitute "person ("the appellant") in respect of whom the case is referred to a judge under section 113A(1)(a)".
121	Omit.
122(1)	For "an appellant" substitute "a person ("the appellant") in respect of whom the case is referred to a judge under section 113A(1)(a)".
122(2)	For "an appellant" substitute "a person ("the appellant") in respect of whom the case is referred to a judge under section 113A(1)(a)".
122(3)	For "an appellant" substitute "a person in respect of whom the case is referred to a judge under section 113A(1)(a)".
122(4)	(a) For "an appellant" substitute "a person in respect of whom the case is referred to a judge under section 113A(1)(a)". (b) Omit "or under section 119(a)".
122(6)	Omit.
123	For "105 or 113" substitute "113(1) or (2)".
Proviso to 124	For "defendant" substitute "person in respect of whom the case is referred to a judge under section 113A(1)(a)".

(Added 12 of 1992 s. 5)