

The Law Commission

(LAW COM. No. 55)

CRIMINAL LAW

REPORT ON FORGERY AND COUNTERFEIT CURRENCY

*Laid before Parliament by the Lord High Chancellor
pursuant to section 3 (2) of the Law Commissions Act 1965*

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THE LAW COMMISSION

Item XVIII of the Second Programme

FORGERY AND COUNTERFEIT CURRENCY

*To the Right Honourable the Lord Hailsham of Saint Marylebone,
Lord High Chancellor of Great Britain*

I. INTRODUCTION

1. Under Item XVIII of its *Second Programme of Law Reform*¹ the Law Commission is responsible for the examination of the law of forgery as part of the review of the criminal law with a view to its eventual codification, and in March 1970 we issued a Working Paper² in which we considered the existing law and made provisional proposals for its reform. We have had constructive and helpful criticism of our proposals from many individuals and organisations, which has been of great assistance in the preparation of this Report³. Our recommendations are summarised in paragraph 119 and there is attached at Appendix A a draft Bill which would implement them.

2. The present law is to be found principally in the Forgery Act 1913, although the forging of any writing, and the altering of any writing, with intent to defraud, is still an offence at common law⁴. In addition the 1913 Act left unrepealed a number of sections of the earlier consolidation by the Forgery Act 1861, which cover the making of false entries in certain books and registers, making out false dividend warrants payable at the Bank of England and issuing false copies of court records or certificates. Since the passing of the 1913 Act many forgery and forgery-type offences have been created in specialised contexts. By far the most commonly committed of such offences are those which relate to the forging or falsification of documents required in connection with the use of motor vehicles.

3. The following statistics⁵ are helpful in showing the incidence of forgery and forgery-type offences and the place of such offences in the overall field of criminal law:—

¹ Law Com. No. 14 (1968.)

² Working Paper No. 26.

³ See Appendix B for a list of those who commented on the Working Paper.

⁴ In practice the common law offence is never charged, see paragraph 6.

⁵ Taken from *Criminal Statistics, England and Wales 1971*, (1972) Cmnd. 5020 and *Offences Relating to Motor Vehicles* (1971) Home Office Return of 8 August 1972.

TABLE A
OFFENCES OF FORGERY COMPARED WITH OTHER OFFENCES
(1971 STATISTICS)

NUMBER OF PERSONS FOUND GUILTY (ALL COURTS)

All offences	1,687,980
Traffic offences dealt with summarily	987,538
Theft, burglary and robbery—	240,069
Malicious damage	23,760
Forgery offences* (in the main under the Forgery Act 1913 and excluding those under Table B)	3,484
Offences under the Coinage Offences Act 1936	25

* These can be broken down as follows:—

tried by magistrates	2,779
tried on indictment	705

TABLE B
OFFENCES OF FORGERY AND AKIN TO FORGERY:
NUMBER OF PERSONS FOUND GUILTY UNDER THE ROAD TRAFFIC ACTS
(1971 STATISTICS)

<i>Description of Offence</i>	<i>Tried by Magistrates</i>	<i>Tried on Indictment</i>
Forging motor vehicle licence	12,163	85
Forging driving licence	2,222	92
Forging insurance certificate	1,555	55
Forging vehicle registration book	173	5
Totals	16,113	237

TABLE C
DISPOSAL OF OFFENDERS—FORGERY OFFENCES
(1971 STATISTICS)
AND
OFFENCES AKIN TO FORGERY UNDER ROAD TRAFFIC ACTS
(1971 STATISTICS)

		<i>Absolute and Conditional Discharge, Probation, etc.</i>	<i>Fine</i>	<i>Custodial Sentences (including Suspended Sentences)</i>
Assizes and Quarter Sessions	Forgery Act 1913	132	82	490
	Road Traffic Acts	18	68	146
Magistrates' Courts	Forgery Act 1913	1,022	1,104	495 +152 committed for sentence
	Road Traffic Acts	463	14,886	347
Totals		1,635	16,140	1,628

Note: In each category there were in addition convicted persons recorded in the statistics as "otherwise disposed of". These figures have not been included as they do not assist in indicating the general pattern of disposal of offenders.

TABLE D
LENGTH OF SENTENCES OF IMPRISONMENT
OFFENDERS UNDER FORGERY ACT 1913 DEALT WITH
AT ASSIZES AND QUARTER SESSIONS
(1971 STATISTICS)

<i>Suspended Sentences</i>	<i>Up to 1 year</i>	<i>1 to 3 years</i>	<i>Over 3 years</i>
144	132	145	36*

* None of the sentences exceeds 10 years, nor has a 10-year figure been exceeded in the preceding seven years.

Note: The figures in this Table do not include 30 offenders committed to Borstal, nor three upon whom were imposed extended sentences under section 37 of the Criminal Justice Act 1967 as persistent offenders.

II. THE PRESENT LAW

Forgery

4. Section 1(1) of the Forgery Act 1913 defines forgery as the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in the Act the counterfeiting of a seal or die, and makes it punishable when done with intent to defraud or deceive as the case may be. Section 1(2) provides that a document is false if any material alteration has been made to it, or if the whole or any material part of it purports to be made by a person who did not make it or authorise its making, or to be made by or on behalf of a fictitious person. The definition, which is further elaborated, is not intended to be an exhaustive definition⁶, and in general it can be said that a false document is a document which purports to be that which it is not⁷, or in the words of J. W. C. Turner⁸, a document which tells a lie about itself.

5. Forgery with intent to defraud or deceive, as the case may be, is made punishable by succeeding sections. Thus—

Section 2 renders criminal the forgery of wills and other testamentary documents, deeds, bonds and banknotes if done *with intent to defraud*, and provides a maximum sentence of life imprisonment. This section also makes the forgery of valuable securities, documents of title to land or goods, powers of attorney, entries in share registers, insurance policies, charter-parties, certificates of Inland Revenue Commissioners, etc., if done *with intent to defraud*, an offence attracting a maximum penalty of 14 years' imprisonment. The categories of documents covered by this section may be described for the most part as being of a "private" character.

Section 3 creates three grades of offences in relation to specified categories of documents of a "public" character, if forged *with intent to defraud or deceive*. These grades are:—

- (i) forgery of documents bearing seals of State or the Royal Manual; punishable by life imprisonment,
- (ii) forgery of registers of births, marriages, deaths, burials and cremations or copies thereof, or certified copies of Public Records, or of wrappers or labels provided by the Revenue or Customs; punishable with imprisonment not exceeding 14 years,
- (iii) forgery of any one of a fairly lengthy list of "public" documents, registers or certificates; punishable with imprisonment not exceeding 7 years.

Section 4 contains a residual provision. It covers the forgery of all documents not specifically dealt with in any other part of the Act, and here again the two kinds of intent are reproduced; *intent to defraud or deceive* if the document is "public"; *intent to defraud* if it is

⁶ Criminal Justice Act 1925, s. 35.

⁷ *R. v. Ritson* (1869) L.R. 1 C.C.R. 200 and see further paragraph 41.

⁸ *Russell on Crime*, 12th ed. pp. 1232-1234.

“private”. But the same maximum punishment, namely 2 years’ imprisonment is provided whether the document forged is “public” or “private”. Nowhere in the Act are these terms defined⁹.

Section 5 deals with forgery of certain seals and dies with intent to defraud or deceive, the punishment varying from life imprisonment to 7 years.

6. The Act does not do away with forgery at common law, although in practice forgery no longer depends upon the common law¹⁰ save that it may be necessary to consider it to determine what is a document or when a document is false, for these terms are not exhaustively defined in the Act. The distinction between the intent required by different sections based upon the two phrases “intent to defraud” and “intent to deceive” is a narrow¹¹ one and one which can give rise to difficulty in practice¹².

7. The main criticism of the present Act is that it creates a number of offences of forgery differentiated by the nature of the document forged, and carrying different maximum penalties. It is probably this approach which has led to the very many offences of forgery created after 1913 by particular statutes to fit the context of the subject-matter with which they deal. This development, despite the repeal policy of the 1913 Act, appears to have been due to the overlooking of the residual offences created by section 4, or perhaps because the Act contains no definition of public and private documents. We share the general view which underlies both the *Eighth Report of the Criminal Law Revision Committee*¹³, and our *Report on Offences of Damage to Property*¹⁴, that criminal conduct possessing the same basic features does not need to be dealt with by a large number of separate offences, each with its own penalty and each covering a particular set of circumstances. The provision of widely defined offences with adequate maximum penalties assists in the simplification of the criminal law, and it is on this basis that we have approached the subject.

Connected offences

8. Apart from the offence of forgery itself, the 1913 Act creates other offences related to the use or possession of forgeries and the possession of things for forging.

Section 6 deals with the offence of uttering forged documents, seals and dies. This as a offence distinct from forgery, but it attracts the same penalty as if the person uttering had himself forged the thing uttered.

Section 7 creates the offence of demanding, obtaining etc. money, security for money or other property under, upon, or by virtue of any forged instrument. The word “instrument”, although undefined, may

⁹ As to what is a “public” document—for the purposes of the law of evidence—see *Sturla v. Freccia* (1880) 5 App. Cas. 623, 643, and *Lilley v. Pettit* [1946] K.B. 401. These cases do not furnish much assistance in the context of forgery.

¹⁰ Per Lord Goddard C.J. in *R. v. Hopkins & Collins* (1957) 41 Cr. App. Rep. 231 (C.C.A.) at 235.

¹¹ *Welham v. D.P.P.* [1961] A.C. 103; see paragraph 30 below.

¹² *R. v. Moon* [1967] 1 W. L. R. 1536 and Smith and Hogan, *Criminal Law*, 2nd ed., p. 451, and see paragraphs 28–30.

¹³ (1966) Cmnd. 2977, which led to the Theft Act 1968.

¹⁴ Law Com. No. 29 (1970), H.C. 91, which led to the Criminal Damage Act 1971.

be a more restricted word than "document", but has been held to include a telegram and a request for payment of money¹⁵. The section also deals with the fraudulent use of probate and letters of administration obtained by use of a false testamentary document or a false oath. The penalties under this section are imprisonment for not more than 14 years.

Sections 8-10 deal with possession of limited categories of forged documents, seals and dies, and of paper or instruments for limited categories of forgery, or of special paper before it has been stamped and issued.

III. GENERAL APPROACH

9. It is important in dealing with specific areas of the criminal law to keep in sight the goal of codification at which we are aiming. Item XVIII of our *Second Programme* appointed examining agencies for some branches of the law. The Law Commission is the examining agency for a number of specific offences which includes forgery. Assisted by a Working Party, the Law Commission is also the examining agency for the whole of the General Principles of the Criminal Law; the inchoate offences of conspiracy and attempt are included in this survey. Prior to the approval of our *Second Programme* the Criminal Law Revision Committee produced their Eighth Report, implementation of which resulted in the Theft Act 1968. In view of the difficulties which have arisen from the wording of section 16¹⁶ of this Act the Committee has now been asked by the Home Office to consider whether any changes in it are desirable¹⁷.

10. Since the publication of our Working Paper progress has been made in these other areas of the criminal law and this progress has an impact on our work on forgery. The preliminary consideration of the law of conspiracy has led the Working Party assisting us to the provisional conclusion that criminal conspiracy should be limited to conspiracy to commit a crime. Under the law as it is conspiracy to defraud is an offence even though the act which it is agreed shall be committed might not itself be a criminal offence; it follows from this that it will be necessary to consider what offence or offences of deception or fraud should be created to fill the gap which would be left by the disappearance of the offence of conspiracy to do an act which, though not criminal, would now be caught by the offence of conspiracy to defraud. It is possible that some part of this gap may be filled if the Criminal Law Revision Committee recommend an extension of the deception offences contained in section 16 of the Theft Act, but it is unlikely that any such extension would be sufficiently wide to cover all the ground at present embraced by the present offence of conspiracy to defraud. The intention required by the present offence of using a false instrument with intent to defraud¹⁸ is probably the same as that in conspiracy to

¹⁵ *R. v. Riley* [1896] 1 Q.B. 309; *R. v. Cade* [1914] 2 K.B. 209.

¹⁶ This section deals with deception offences. The Committee's draft clause was substantially altered in Parliament.

¹⁷ *Hansard*, Vol. 842, Cols. 186-7.

¹⁸ *Welham v. D.P.P.* [1961] A.C. 103.

defraud, and ideally, it would be more convenient to consider a general deception or fraud offence at the same time as the using offence in forgery and the deception offences under the Theft Act.

11. There is another aspect of the broader background of codification against which we are considering the law of forgery. The Working Party referred to above has also reached a provisional conclusion that the test of criminality in attempts should be whether the act is a substantial step towards the commission of an offence. Such a change would mean that the first act capable of constituting an attempt would arise at an earlier stage in the preparation of an offence than the present test of proximity requires and would lead to considerable overlapping between forgery and attempts by means of forged documents to commit the present offences of obtaining property or a pecuniary advantage by deception¹⁹. The making of a forgery might amount to a substantial step in the deception offence and, together, of course, with the proof of the necessary intent, might amount to an attempt.

12. On the other hand it is difficult to make progress if work on one subject is held up or deferred pending consideration of a related subject. So many aspects of the criminal law have a bearing one on another that the time comes when it is necessary to bring some finality to a subject and to make firm proposals in regard to it in the light of the present law, knowing that eventually some adjustments may be necessary in order to produce the best possible arrangement of the criminal code. We, therefore, realise that some of our proposals in regard to forgery may require adjustment when the final structure of the code is settled, but we feel that the best way of making progress is now to complete our study of forgery.

13. Our Working Paper on forgery proceeded on the basis that the main aim was to simplify the existing law and it did not question the basic concept of forgery or examine the necessity for the retention of such an offence. This approach seemed generally acceptable to those who offered comments on the Working Paper, but the self-imposed limitation has been criticised by some members of the Society of Public Teachers of Law, who thought insufficient consideration had been given to the question whether an offence of forgery should be retained in its present form. They would abolish the distinction between a document telling a lie about its authenticity and a document expressing an untrue statement. If this were done, they contend that any social danger inherent in the making of such document could be adequately met by penalising only the use of the document to obtain some pecuniary or other advantage. The law of attempt would deal with the unsuccessful use of the document. To achieve this result, they appreciate that a new offence would have to be created to cover the case where the false document is used to affect another in his duty without seeking a pecuniary advantage for the user of the document or another²⁰. They further concede that there is a class of things, which includes bank notes and coinage and perhaps some kinds of official documents, for which there would have to be special provision because of their character and of the dangers inherent in their circulation, but they consider that this class could be dealt with by a prohibition on the possession of such things without lawful excuse.

¹⁹ Theft Act 1968, ss. 15 and 16.

²⁰ See the type of case discussed in paragraphs 31 and 33.

14. The premise upon which their argument is based is that there is no social need to penalise generally the making of documents which give a false impression of their authenticity. There is a number of reasons for not accepting the soundness of this premise. In the many and varied activities of modern society it is necessary to rely to a large extent on the authenticity of documents as authority for the truth of the statements which they contain²¹. Indeed, in the vast majority of forgery cases the purpose of the forger is to lull the person to whom the document is presented into a false position in which he will be unlikely, because of the apparent authenticity of the document, to make further enquiry into the correctness of the facts related. The same is not true of false statements contained in a document which carries no spurious authenticity. A letter by an applicant for an appointment setting out falsely his qualifications is in quite a different category from a letter of recommendation purporting to come from a previous employer.

15. It is important to remember that the mere making of a false document does not at present amount to an attempt to use it. It is true that in many cases where it is the maker of the false document who intends to use it dishonestly there is little purpose in penalising the mere making of the document. The offence is unlikely to come to light until the maker passes the document for the dishonest purpose for which he made it. We are aware that there are many cheque frauds which take the form both of a Theft Act offence and of a forgery offence, for example, where a cheque is made in another's name or in a fictitious name or a genuine cheque is altered. Frequently such offences are charged both as forgery and as obtaining property by deception. This duplication, however, causes no practical difficulty. We accept that there are arguments for taking the view that it is unnecessary to rely upon an offence of forgery to cover cases in which by deceit an advantage is obtained²² where the deceit is practised by means of a forged cheque; nevertheless we consider that there are sufficient situations in which persons may have forged cheques but not yet have reached the stage of making active use of them to require the retention of forgery as an independent offence. For example, a firm's accountant may have a series of forged cheques in a drawer, waiting for a suitable opportunity to use them. He will not have reached the stage of attempting to obtain an advantage and yet his conduct should be penalised. Nor are cheques the only documents to which this argument applies.

16. The necessity for retaining an offence of forgery is even more strikingly illustrated by the case of the person who is found to have made a number of false documents such as passports, credit cards, railway season tickets or Cup Final tickets, as well as many items which it has already been found necessary to cover by specific legislation such as road fund and driving licences. It may not be possible to establish any conspiracy, and it will not be possible to bring home a charge of attempting to commit a Theft Act offence. Even where the documents have been used and can be proved

²¹ Bein, *Criminal Law Protection of the Veracity of Documents*, (1970) 5 Israel L.R. 559 and 562.

²² The maximum penalty under s. 15 of the Theft Act 1968 is 10 years imprisonment, the same penalty as we propose for both making and using a false instrument. See paragraph 54 below.

to have come from such a person there may be no convenient offence other than forgery with which he could be charged, for it may not be possible to prove that the forger has aided and abetted the use of the forged thing. Our critics recognise this difficulty and to meet it they propose a possession offence to cover certain false documents even though these have not been used to defraud or deceive, and they refer to banknotes and other documents of importance. The main difficulty in this solution is that it is virtually impossible to set a rational limit upon the type of documents to be covered by this offence. The examples given above do not possess any common characteristics, and still less do they bear any similarity to banknotes. It follows that the practical effect of adopting this solution would be to substitute a possession offence of wide scope for the making offence in forgery. This, in our view, would be going too far²³.

Conclusion

17. Thus, despite the arguments advanced against the need for an offence of forgery, we think that it would be undesirable to adopt the far-reaching suggestions made to us. Taking into account the general tenor of the comments we received on the Working Paper, we think that the most useful course at the present time is to recommend a rationalisation and simplification of the law of forgery which will lead to the elimination of the many specific offences not only in the Forgery Act but also in the many statutes which create such offences. Some support for this course may be found in the fact that forgery has not been dispensed with in any common law codes or draft codes; many civilian jurisdictions have specific forgery offences²⁴.

Currency

18. In the Working Paper²⁵ we raised the question whether coinage offences should be dealt with in a new Forgery Act, and the weight of opinion was in favour of this course if it could be done without undue complication. It has also emerged quite clearly from our consultations that the forgery of banknotes gives rise to problems not met with in relation to forgery generally. The ease and rapidity with which forged banknotes pass as tokens of value make it very difficult to trace any false note to its source, and the fact that they are tokens of value means that once false notes are in circulation there is serious potential prejudice to a large number of innocent persons. These reasons in our view, justify special treatment for the forgery of banknotes. The many common features between the forging of banknotes and the counterfeiting of coins have led us to conclude that banknotes and coins should be dealt with as part of this Report separately from the general offence of forgery²⁶.

²³ Later in this Report we do propose a possession offence of strictly limited scope. See paragraph 71 below.

²⁴ Scots law would appear to be exceptional in that the crime of practical cheating in this context is committed only when there has been uttering of a forged document. Forgery alone is no offence, except under certain statutes, *e.g.*, Bank Notes Forgery Acts 1801 and 1805. See Gordon, *Criminal Law*, p. 561.

²⁵ See paragraphs 63–65 of Working Paper No. 26.

²⁶ This we do in Part XIII.

IV. THE SUBJECT MATTER OF FORGERY

Present law

19. Apart from section 5 which penalises the forgery of certain seals and dies, the 1913 Act deals with the forgery of documents, either specified as in sections 2-3, or generally as in section 4, but it contains no definition of document. Among the writers of text-books there are two main schools of thought on the ambit of the word. The one school, while accepting the proposition that a document is a writing, contends that if the thing alleged to be forged is intended to have utility apart from the fact that its contents convey information or record a promise, it is not a document. To this school belong Professor Cross and Mr. Jones²⁷, Professors Smith and Hogan²⁸ and Professor Glanville Williams²⁹, and the view is based on a common rationalisation of the difficult decisions of *R. v. Closs*³⁰ and *R. v. Smith*³¹. Smith and Hogan and Glanville Williams also suggest as an alternative test that the writing must be an instrument, that is to say, a document made for the purpose of creating or modifying or terminating a right. The editor of Kenny³², on the other hand, suggests that a document is a writing in any form on any material which communicates to some person or persons a human statement whether of fact or fiction. He maintains that *Closs* was wrongly decided, not because the picture with the false signature was a document, but because the signature was a writing intended to convey the information that the apparent signatory had painted the picture, just as if there were a certificate to that effect signed by him pasted on the back.

Possible solutions

20. In our Working Paper³³ we put forward three possible solutions to the problem of the definition of things capable of being forged, namely—

- (i) the extension of forgery to all tangible things,
- (ii) the limitation of things capable of being forged to those things in a comprehensive list compiled by reference to the social danger inherent in the existence of such things when forged,
- (iii) the restriction of things capable of being forged to documents widely defined with the addition of certain recordings of information which though not documents serve a similar purpose.

21. A large majority of those who commented on our Paper favoured the extension of forgery to all tangible things, but both the General Council of the Bar and The Law Society were against it. Further consideration in the light of all the comments has convinced us that so to extend the law of forgery would not be the right solution. In the first place forgery has, apart from the forgery of seals and dies, always been confined to writings, and we do not think that there is any social need for its extension to all

²⁷ Cross and Jones, *Introduction to Criminal Law*, 6th ed., pp. 250 *et seq.*

²⁸ Smith and Hogan, *Criminal Law*, 2nd ed., pp. 440-443.

²⁹ (1948) 11 M.L.R. 150-162.

³⁰ (1858) Dears and B. 460 (a picture with a false signature held not to be a document). *Contra R. v. Douce* [1972] Crim. L.R. 105.

³¹ (1858) Dears and B. 566 (False baking-power labels held not to be documents).

³² *Outline of the Criminal Law*, 19th ed. edited by J. W. C. Turner, pp. 383 *et seq.*

³³ Paragraph 38.

tangible things. As we have said in Part III, the main justification for retaining forgery as an offence is the reliance in modern society upon the authenticity of a wide range of documents, both public and private, as authority for the truth of the statements they contain. A clear distinction can be drawn between the fabrication of a thing which without any writing might mislead others as to its origin, nature or quality, and the falsification of a document which gives apparent authenticity to the facts stated in it. There are many cases where even a private document tends to be accepted, if it appears *prima facie* to be authentic, for example a season ticket, whereas, with such things as antique furniture or works of art their acceptance as genuine is usually dependent upon a more exhaustive examination. There can, too, be many legitimate reasons for making reproduction furniture or reproductions of works of art, but few justifications for making false writings or documents, and this would seem to be a further reason for limiting forgery to the making of false writings or documents.

22. The essence of forgery, in our view, is the making of a false document intending that it be used to induce a person to accept and act upon the message contained in it, as if it were contained in a genuine document. In the straightforward case a document usually contains messages of two distinct kinds—first a message about the document itself (such as the message that the document is a cheque or a will) and secondly a message to be found in the words of the document that is to be accepted and acted upon (such as the message that a banker is to pay a specified sum or that property is to be distributed in a particular way). In our view it is only documents which convey not only the first type of message but also the second type that need to be protected by the law of forgery. Forgery should not be concerned, for example, with the false making of the autograph of a celebrity on a plain piece of paper, but it should be concerned with the false making of a signature as an endorsement on the back of a promissory note. The autograph conveys only the message that the signature was written by the person who bears that name; the endorsement conveys not only that the signatory made the endorsement, but also that he has authorised delivery of the note and has made himself liable to the holder in due course.

Instruments

23. We found it impossible to put into simple legislative form this distinction between the two types of message conveyed by a document and to define a document for the purposes of forgery as one which conveyed both types of message, but we think that the underlying distinguishing feature of the type of document to which forgery should apply is to be found in the idea of an instrument. At common law forgery has been defined as the fraudulent making of a written instrument³⁴ which purports to be what it is not³⁵, although the 1913 Act is primarily concerned with “documents” and section 7 of the 1913 Act makes it an offence to demand or obtain property

³⁴ *Halsbury's Laws of England*, 3rd ed. Vol. 10, p. 836.

³⁵ 1 Hawkins, *Pleas of the Crown*, chap. 21 s. 2 “the notion of forgery doth not so much consist in the counterfeiting of a man's hand and seal . . . but in endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another which he is in no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done or by force of such falsity to give it an operation which in truth and justice it ought not to have.”

under any forged *instrument*. In these contexts the word "instrument" is used to indicate a document upon which a person will reasonably act when it is tendered or presented to him. A number of the dictionary definitions of the word "instrument" indicate that it is a formal document which creates or confirms rights or records facts although in the cases decided under section 7 documents of an informal nature have been held to be instruments, as for example, a letter purporting to be signed by an employee asking an employer to send money to be expended in connection with work required to be done on the employer's property³⁶, and a telegram to a bookmaker placing a bet³⁷. We think that, provided it is made clear that there is no requirement of formality, the subject matter of forgery is best defined as an instrument in writing to include words, letters, figures and any other symbols. This will serve to exclude such things as a painting purporting to bear the signature of the artist³⁸, the false autograph and any writing on manufactured articles indicating the name of the manufacturer³⁹ or the country of origin. It will not, however, exclude letters, even of a private or social nature, nor such documents as ancient wills or title deeds which are now of only historical interest. Documents of historical interest only, which although at the time they were made were in the nature of instruments, need not, in our view, be protected by the law of forgery. To ensure that such documents do not fall within instruments which can be the subject matter of forgery, we think that there should be a general proviso excluding any thing which is of interest only historically or as a collectors' item. Accordingly, whether or not a document purporting to be an ancient title deed was an instrument would depend upon whether it was only of historical interest, or whether it also would, if genuine, still have an operative effect as a deed⁴⁰; in the latter case only would it be an instrument.

Recordings

24. A number of those we consulted drew our attention to the increasing use of sophisticated methods of recording information and instructions, and urged that we should make provision for including the products of such machines among those things capable of being forged. In particular the Bank of England referred to magnetic impulses on computer tape which when used in the appropriate way automatically cause dividend warrants to be printed, and the Post Office referred to standing order authorities and automatic debit transfer instructions whether on paper or magnetic tape. The problem with which we are concerned here is not related to the making by means of a machine of a false document, such as a dividend warrant; this is forgery without any extension of definition. The problem is related to the production of false recordings of information or instructions, whether on tape or other material, which are stored for further use. Such tape is a recording of a message just as much as a written record and it contains a statement, the authenticity of which is vouched for by its existence on the tape.

³⁶ *R. v. Cade* [1914] 2 K.B. 209.

³⁷ *R. v. Riley* [1896] 1 Q.B. 309, a decision on s. 38 of the Forgery Act 1861.

³⁸ Thus settling the question decided in one way in *R. v. Closs* (1858) Dears & B. 460, in the other way in *R. v. Douce* [1972] Crim. L.R. 105.

³⁹ As in *R. v. Smith* (1858) Dears & B. 566.

⁴⁰ Even if it was an instrument because it had an operative effect its forgery would only be an offence if it was made with the intention that another should act upon it to his prejudice. See paragraph 36.

25. Undoubtedly such recorded messages should be covered by the law of forgery; the problem is to devise the simplest way of achieving this. We propose that the meaning of the word "instrument" should be extended beyond instrument in writing to include any disc, tape, sound-track or other device, on or in which instructions or data are recorded or stored by mechanical, chemical, electronic or other means. Just as in the case of instruments in writing we wish to exclude documents which are of interest only historically or as collectors' items, so we wish to apply that limitation to instruments such as discs, tapes and sound-tracks. This would exclude from the operation of the law of forgery a recording purporting to contain a recorded speech by Mr. Gladstone, which would otherwise be included as a device on which data was stored.

Seals and dies

26. If the subject matter of forgery is restricted to instruments so defined, the making of the false seals and dies now penalised by section 5 of the 1913 Act will not be covered. A seal, being a device for making a mark, does not itself convey a message or information; it is only the impression of a seal upon a paper which does this, and the impressing of a false seal upon a paper will in the normal way amount to the making of a false document. Forgery, as we have already pointed out, is only an act preparatory to the perpetration of an offence of dishonesty and to penalise the making of a false seal or die is to go one stage further away from the ultimate offence. We feel that the inclusion of the several offences in sub-sections (1) to (3) of section 5 of the 1913 Act can be traced to the early history of forgery, which originally was restricted to the forging of public seals, and that it is not based upon any particular social danger connected with the existence of such seals. Provided that it is an offence to make a false instrument bearing any impression of any of the listed seals, as it will be under the offence we recommend, we see no purpose in retaining an offence of making a false seal. Sub-section (4) of section 5 deals with the forgery of dies provided, made or used by the Inland Revenue and the Commissioners of Customs and of dies required or authorised by law for the hallmarking of gold and silver⁴¹. We accept that different considerations apply to dies in these categories and that some provision is necessary to prevent the possibility of their use at a stage before they are actually used. We propose instead to penalise the making or possession of any forged stamp or die as defined by section 27 of the Stamp Duties Management Act 1891⁴² and of any forged die required or authorised for the hallmarking of gold and silver as a separate offence⁴³. This, we feel, will be an adequate way of meeting the situation without duplication of offences and widening the scope of forgery beyond instruments as we have defined them.

⁴¹ The Hallmarking Bill, now before Parliament, deals with these dies in Clause 5 (1) (d). If it becomes law it will be unnecessary to include these dies in a Forgery Act.

⁴² *i.e.* any implement used under the direction of the Commissioners of Inland Revenue for expressing any duty or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that an instrument is duly stamped or is not chargeable with duty, or for denoting any fee.

⁴³ See paragraph 64.

Conclusion

27. We recommend⁴⁴ that forgery should be limited to the forgery of an instrument, defined as—

- (i) an instrument in writing, whether of a formal character or not, “writing” to include words, letters, figures and any other symbols, and
- (ii) any disc, tape, sound-track or other device on or in which instructions or data are recorded or stored by mechanical, chemical, electronic or other means;

but that it should not extend to anything which is of interest only historically or as a collectors' item.

V. THE MENTAL ELEMENT

Present law

28. Under the present law it is provided that the making of a false document is forgery if it is made in order that it may be used as genuine, and with intent to defraud or deceive as the case may be. Although the first requirement is not cast explicitly in terms of intent it is clear that the maker of the false document must intend that it be used as if it were genuine, or at least that it be available to another for use as if it were genuine. The second requirement calls for more detailed consideration.

29. The present law draws a distinction between the message that a document carries about itself and any other message that it may carry, but only so far as this is necessary to determine whether a document is a false document. A false document, it is said, must not only tell a lie, it must tell a lie about itself⁴⁵ but this distinction between the two types of message is not carried forward into the mental element requirement. The making of false copies of Shelley's letters with intent that they be sold as genuine letters and therefore with intent to defraud the purchaser into parting with money for them would certainly be forgery at present under section 4(1) of the 1913 Act, although the document tells no lie except about itself. By confining forgery to the forging of instruments as defined in paragraph 25 we have sought to change the law in this respect, for such letters would be only of historical interest or of interest as collectors' items.

30. The present law requires that for forgery there must be an intent to defraud in relation to documents of a private character and an intent to defraud or deceive in relation to documents of a public character. It is easy to state that the two expressions connote different states of mind, but it is far less easy to determine precisely where the distinction lies. That there is a distinction is clear from such cases as *Welham v. D.P.P.*⁴⁶ and *R. v. Moon*⁴⁷. An intent to deceive is little more than an intent to use a false document as genuine, whereas an intent to defraud is an intent to induce another to act

⁴⁴ App. A, clause 6 (1).

⁴⁵ Kenny, *Outlines of Criminal Law*, 19th ed., p. 375.

⁴⁶ [1961] A.C. 103.

⁴⁷ [1967] 1 W.L.R. 1536.

(to his advantage) in a way he would not otherwise have done⁴⁸. The distinction is well illustrated by the cases of *R. v. Hodgson*⁴⁹ and *R. v. Geach*⁵⁰. In *R. v. Hodgson* the defendant altered a diploma of the Royal College of Surgeons to make it appear that it had been granted to him. It was not shown that he made the alteration for any purpose other than to induce others to think better of him because he was a surgeon, and it was held that he had no intent to defraud. If, however, the document had been a public document he would under the present law, have been guilty of forgery as he did intend to deceive. In *R. v. Geach* the defendant falsely made a signature signifying an acceptance of a bill of exchange and, when charged with uttering a forgery, argued that he had no intent to defraud as he had always intended to meet the bill himself and had in fact paid the banker who had honoured it. It was held that the defendant did have an intent to defraud because he intended to put the banker in a worse position than he would have been in had he not been deceived by the false signature, as he had been induced to advance money on a bill without the usual security of an acceptor.

31. The essential facts in *Welham v. D.P.P.*⁵¹ were that the accused uttered a forged hire-purchase proposal form and a forged hire-purchase agreement. The evidence established that he knew that these were forged documents but that he had no intention of defrauding the finance company to whom they were delivered. It was accepted that the accused believed that the finance company was prepared to advance money to a motor dealer provided the transaction was under the cover of a hire-purchase agreement, the subterfuge being necessary to avoid certain statutory restrictions on borrowing, and the limits imposed by the finance company's memorandum and articles of association. The accused admitted that he intended to deceive the relevant authority who might inspect the records to see that the credit restrictions were being observed and whose duty it was to prevent their contravention. This intent was held to be an "intent to defraud" within the meaning of those words in the relevant sections of the Forgery Act 1913. It, therefore, is now clear, following the decision in *Welham*, that in forgery an intent to defraud may exist without an intent to inflict economic prejudice or to make a financial gain, and an analysis of the earlier cases shows that *Welham* did no more than restate the existing law in terms which permit of no doubt. It is true that the headnote and Lord Radcliffe's speech limit an intent to defraud to those cases where there is an intent to deceive "a person responsible for a public duty into doing something that he would not have done but for the deceit or not doing something that but for it he would have done", and that on the facts of the case that was as far as it was necessary to go. However, Lord Denning frames a wider proposition in these terms—

"Put shortly 'with intent to defraud' means 'with intent to practise a fraud' on someone or other. It need not be anyone in particular. Someone in general will suffice. If anyone may be prejudiced in any way by the fraud, that is enough."

⁴⁸ *Re London & Globe Finance Corporation Ltd.* [1903] 1 Ch. 728, 732. "To defraud is to deprive by deceit; it is by deceit to induce a man to act to his injury . . . to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

⁴⁹ (1856) Dears & B. 3.

⁵⁰ (1840) 9 C. & P. 499.

⁵¹ [1961] A.C. 103.

Cases such as *R. v. Toshack*⁵², *R. v. Sharman*⁵³, *R. v. Moah*⁵⁴, *R. v. Bassey*⁵⁵ and *R. v. Potter*⁵⁶ were all decided without decisive reference to the intent to cause any economic loss, but none of these cases, nor any decided English case puts any precise limitation upon the nature of the disadvantage which must be intended.

Re-statement of the present law

32. It is obviously not satisfactory in a codification of the law of forgery merely to retain the phrase "with intent to defraud." leaving its meaning to be ascertained from the many cases on the earlier statutes. This is particularly so when the cases, while not putting any precise limitation upon the nature of the disadvantage which must be intended, have not limited the disadvantage to economic loss, a limitation which the ordinary person might think follows from such a word as defraud. The essential feature of the mental element in forgery is an intention to induce another to accept the forged instrument as genuine and, by reason of that, to do or refrain from doing some act. Indeed in the Australian and Canadian Codes⁵⁷ the required intention is defined in this way. Such a definition, however, creates a very wide offence which would penalise such practical jokes as the making of a forged invitation to a social function made with no more wicked intent than of raising a laugh at another's expense by inducing him to act upon the invitation. We do not think that such conduct should be within a serious offence such as forgery. Accordingly we have sought for a formula to limit the width of the offence.

33. We explored many possibilities in a search for a way of defining the intent required and at one stage we thought that the right result could be obtained simply by providing that there should be an intent to induce another to act upon the forged instrument to his or another's prejudice. "Prejudice", however, is not a word which in the field of criminal law has acquired a precise meaning, and we feared that the use of this word undefined might lead to a series of decisions on the meaning to be given to it, thus defeating one of our objects in re-stating and clarifying the law. We turned, therefore, to a consideration of the main fields in which forgery most commonly occurs, with a view to determining what needed to be covered by the offence. Forgery most commonly occurs in connection with obtaining money or other property at the expense of another, and we decided to put in the forefront of our definition the intention to induce another to suffer a loss of money or other property, whether permanently or only temporarily—loss being defined, as it is in the Theft Act 1968, to include not getting what one might get, as well as parting with what one has. Such a definition would not cover an intention to induce another to give an opportunity to earn

⁵² (1849) 4 Cox C.C. 38 (forging a letter testifying to a period of meritorious service to support an application to Trinity House for a certificate of fitness to act as ship's master).

⁵³ (1854) 6 Cox C.C. 312 (forging a testimonial to support an application for appointment as a schoolmaster at a parochial school).

⁵⁴ (1858) 7 Cox C.C. 503 (forging a testimonial to support an application for appointment as a police constable).

⁵⁵ (1931) 22 Cr. App. Rep. 160 (forging papers to obtain admission to an Inn of Court).

⁵⁶ [1958] 2 All E.R. 51 (forging a certificate of competence to drive a vehicle).

⁵⁷ Australian Commonwealth Crimes Act (1914-1966), s. 63 and Canadian Criminal Codes (1954-1966), s. 309 (1) (b).

remuneration, for the remuneration is paid in return for the work done. Nevertheless the forging of any instrument, such as a testimonial or certificate evidencing a qualification, in order to obtain employment should be covered. Indeed, this is the present law and our consultations do not suggest that it should be changed. But even a definition of an intention to cause a loss cast in these terms would be insufficient to cover the variety of circumstances in which the making of a false instrument is at present an offence and, in our view, should continue to be penalised. The making of a forged security pass to obtain access to a building, the forging of a certificate of competency to drive a vehicle in order to obtain a driving licence, or the forging of documents in the circumstances of a case such as *Welham* would not be within the intention to cause a loss to another. In each of these cases the forgery is intended to be used to induce another to perform a duty which he has in a way in which he would not have performed it had he not accepted the instrument as genuine, and should also be covered. Again, this is, in effect, the present law and our consultations do not suggest that it should be changed.

34. There is some authority⁵⁸ that it is forgery under the present law to make a false document to obtain payment of what is due, unless the maker of the document also believed that he was entitled to make the false document. It may be that such a fact situation as arose in *R. v. Parker*⁵⁸ would not fall within the part of our definition of prejudice which relates to a person suffering a loss; the debtor in paying what is due by him does not suffer a loss. However, it could be said that he has performed his duty to repay in a way in which he would not have performed it had he not accepted the instrument as genuine; but in our view it should not be forgery to make a false instrument to induce another to do what he is obliged to do or refrain from doing what he is not entitled to do. Cases where the forged instrument contained menaces would be caught in appropriate cases by section 21 of the Theft Act 1968 as blackmail if the instrument were used. That we think is the stage at which such an offence should be prosecuted, the determining factor being whether the person believed that the use of the menaces was a proper means of reinforcing the demand.

35. We have considered whether this definition of the mental element should be further refined by the addition of the word "dishonestly". This word is used in sections 15-16 of the Theft Act 1968 in penalising a person who by any deception obtains property belonging to another or a pecuniary advantage. Although the Act does not define the word, the effect of section 2 is to exclude from the operation of those sections a person who uses deception to obtain property, or a pecuniary advantage, to which he believes he is entitled. In forgery, however, as we propose that it should be defined, we are dealing with the more specific concept of intention to prejudice by the use of a false instrument as if it were genuine, and we do not think that the addition of a further qualification of "dishonestly" is either necessary or helpful. If a person makes a false instrument intending that it be used as genuine to prejudice another by inducing him to act contrary to his duty it is irrelevant that that person may genuinely believe that he is entitled to what he is

⁵⁸ *R. v. Parker* (1910) 74 J.P. 208, in which a naval rating was convicted for having forged a letter from the Admiralty urging a fellow rating who owed him money to pay the debt; and *R. v. Smith* (1919) 14 Cr. App. Rep. 101.

trying to obtain. However firmly he may believe, for example, that he is entitled to a driving licence, he intends to induce another to act contrary to his duty if he intends to induce him to issue such a licence against a false certificate of competence to drive a vehicle, as it is the issuing officer's duty to issue a licence only against the presentation of a valid certificate of competence.

36. It will be appreciated that an essential feature of the mental element, as we propose that it should be defined, is an intent that the false instrument be used to induce another to accept it as genuine, and by reason of that to do or refrain from doing some act. This postulates the use of an instrument to deceive a person, and does not appropriately meet the case where the intention is to use a false instrument to cause a machine to operate⁵⁹. The increasing use of more sophisticated machines has led us to include within "instruments" capable of being forged the discs, tapes and other devices mentioned in paragraph 25, which may cause machines into which they are fed to respond to the information or instructions upon them, and, of course, there are machines which are designed to respond to an instrument in writing. It is necessary, therefore, to make provision to cover in such cases the intention to cause a machine to respond to a false instrument as if it were a genuine instrument. There also has to be provision for treating the act or omission intended to flow from the machine responding to the instrument as an act or omission to a person's prejudice⁶⁰.

Conclusion

37. *We recommend*⁶¹ that the mental element of the offence of forgery should be an intention that the false instrument shall be used with the intention of inducing someone to accept it as genuine and, by reason of that, to do or refrain from doing some act to the prejudice of himself or of any other person. An act intended to be induced should be to a person's prejudice only if it is one which, if it occurs—

- (a) will result in loss by that person in money or other property,
- (b) will take the form of giving an opportunity to earn remuneration or greater remuneration, or
- (c) will be attributable to his having accepted the false instrument as genuine in connection with the performance by him of a duty.

It should not, however, be to a person's prejudice for him to be induced to do some act which he has an enforceable duty to do, or to refrain from doing some act which he is not entitled to do. It will be necessary to make special provisions for such a case, and also to provide that the requisite intention is present when there is an intention to cause a machine to respond to an instrument as if it were genuine.

⁵⁹ *Davies v. Flackett* [1972] Crim. L.R. 708, though not a case of causing a machine to operate on a false instrument, raised the question of whether a machine can be "deceived".

⁶⁰ App. A clause 6 (4).

⁶¹ App. A clauses 1 and 6 (3) and (4).

VI. THE ACT OF FORGERY

Present law

38. Under the present law the act of forgery in relation to documents is defined as the making of a false document⁶², and may be effected by any alteration, whether by addition, insertion, obliteration, erasure or removal⁶³. The wording is perhaps unnecessarily elaborate but it must be clear in any new legislation that making a false instrument covers altering a genuine instrument, including alteration by addition or subtraction, so that it becomes false.

Making copies

39. It is also necessary to provide for the making of a copy of a false instrument. In *R. v. Harris*⁶⁴ the court, in the context of section 6 of the present Act which deals with the using of a false document, left open the question whether the mere making of a photostat copy of a forged document is itself using a forged document, though it held that making the copy and sending it out as a copy of a genuine document with the requisite intention was within the prohibition of the section. With the increasing use of photocopying machines there is increasing reliance being placed on copies of original documents, which assume more the character of duplicate originals than of copies of the original. For this reason we propose that the making of a copy of an instrument which the maker knows or believes to be a false instrument should, if it is made with the intention of inducing another to accept the copy as a copy of a genuine instrument and by reason of that to do or refrain from doing some act to his or another's prejudice, be an offence of the same nature as making a forgery.

Conclusion

40. *We recommend*⁶⁵ that the act of forging should be the making of a false instrument, including the altering of an instrument so as to make it false (whether or not it is false apart from that alteration) and that the making of a copy of a false instrument, with the requisite intention, should also be an offence.

VII. THE FALSITY OF THE INSTRUMENT

Present law

41. The present Act contains no exhaustive definition of a false document⁶⁶, and it is to the common law that one must look to ascertain the meaning of the word in the context of forgery. By the middle of the nineteenth century it was established that for the purposes of the law of forgery the fact that

⁶² Forgery Act 1913, s. 1 (1).

⁶³ Forgery Act 1913, s. 1 (2) (a).

⁶⁴ [1966] 1 Q.B. 184.

⁶⁵ App. A clauses 1, 2 and 6 (2) (b).

⁶⁶ Criminal Justice Act 1925, s. 35 (1).

determined whether a document was false was not that it contained lies, but that it told a lie about itself⁶⁷. It was in *R. v. Windsor*⁶⁸ that Blackburn, J. said—

“Forgery is the false making of an instrument purporting to be that which it is not, it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced into writing”.

This test was recently applied in the Court of Appeal in *R. v. Dodge and Harris*⁶⁹, which makes it clear that any *dicta* to the contrary in *R. v. Hopkins and Collins*⁷⁰ do not correctly state the law. Section 1 (2) of the Forgery Act 1913 puts into statutory form a series of decisions as to what at common law could amount to a false document, but is not intended to be an exhaustive definition. It provides that a document is false if the whole or any material part of it purports to be made by any person who did not make it or authorise its making; or if the time or place of making, where either is material, or in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated in it.

42. As we have said in Part III, the primary reason for retaining a law of forgery is to penalise the making of documents which, because of the spurious air of authenticity given to them, are likely to lead to their acceptance as true statements of the facts related in them. We do not think that there is any need for the extension of forgery to cover falsehoods that are reduced to writing, and we do not propose any change in the law in this regard.

43. The essential feature of a false instrument in relation to forgery is that it is an instrument which “tells a lie about itself” in the sense that it purports to be made by a person who did not make it (or altered by a person who did not alter it) or otherwise purports to be made or altered in circumstances in which it was not made or altered. Falsity needs to be defined in these terms to cover not only, for example, the obvious case of forging a testator’s signature to a will, but also the case where the date of a genuine will is altered to make it appear that the will was executed later than it in fact was, and therefore after what in truth was the testator’s last will.

Materiality

44. The present Forgery Act requires that before a document can be said to be forged it must be false in a *material* particular⁷¹. In our Working Paper⁷² we propose that the requirement of materiality need not be retained in a definition of forgery, and the great majority of those we consulted favoured our proposal. The Bar Council favoured retaining the requirement and cited the instance of a predated cheque, which although it told a lie about itself, was not false in a material particular. In our view the true issue is whether the false instrument is made with the necessary intent. If the cheque was pre-dated with no intent to prejudice there will be no

⁶⁷ *Russell on Crime*, 12th ed. p. 1227.

⁶⁸ (1865) 10 Cox C. C. 118 at 123.

⁶⁹ [1972] 1 Q.B. 416.

⁷⁰ (1957) 41 Cr. App. Rep. 231.

⁷¹ Forgery Act 1913, s. 1 (2).

⁷² Working Paper No. 26, paragraph 17.

offence, but if it is pre-dated in order to gain an advantage or avoid a disadvantage, such as a penalty for late payment, then it is right that it should be an offence. We are satisfied that the requirement of materiality is not needed as a safeguard for defendants and that it is a complicating factor with no useful function. We recommend that it should not be retained.

Conclusion

45. *We recommend*⁷³ that in order to constitute a forgery, the falsity of an instrument should be such that the instrument purports to be made or altered by or on the authority of a person who did not make or alter it, or that the instrument otherwise purports to be made or altered in circumstances in which it was not made or altered. Further we recommend that there should be no requirement that the respect in which the instrument is false is material.

VIII. USING A FORGERY

Should using a forgery be an offence?

46. Two sections of the present Forgery Act create offences involving the use of forged documents. Section 6 penalises a person who utters⁷⁴ a forged document, knowing it to be forged, with intent to defraud or deceive. Section 7 (a) penalises a person who with intent to defraud demands, receives or obtains (or attempts to receive or obtain)⁷⁵ under or by virtue of any forged instrument, any money or property. Offences under both sections 6-7 (a) would, where a pecuniary advantage is obtained or sought, frequently be covered by the offences created by the Theft Act 1968⁷⁶, or attempts to commit such offences. There would, however, still be the case of the dishonest use of a forgery to obtain some non-pecuniary advantage which would not be covered under the Theft Act, such as the grant of a licence by the use of forged papers; and we think that, as we are recommending the retention of a basic forgery offence to cover the forging of such an instrument, it is convenient to deal in the same legislation with the use of a false instrument, and right to penalise the use of that which it is an offence to make. It may be that, if in the future a sufficiently wide fraud offence were to be created extending beyond the scope of the present Theft Act, there would be no need to retain a separate offence of using a false instrument⁷⁷.

⁷³ App. A, clause 6 (2) (a).

⁷⁴ Defined as "uses, offers, publishes, delivers, disposes of, tenders in payment or exchange, exchanges, tenders in evidence or puts off".

⁷⁵ The section refers to "demands, receives or obtains, or causes or procures to be delivered paid or transferred to any person, or endeavours to receive or obtain or to cause or procure to be delivered, paid or transferred to any person any money, security for money or other property real or personal".

⁷⁶ Ss. 15 and 16.

⁷⁷ This may result from our consideration of the law of conspiracy, and the need to fill any gaps left by the limitation of conspiracy to conspiracy to commit an offence, or it may result from the re-examination of section 16 of the Theft Act being undertaken by the Criminal Law Revision Committee.

47. Under the present law there seems to be a considerable overlap between section 6 and section 7 (a). It was held in *R. v. Hurford: R. v. Williams*⁷⁸ that in some respects section 7 does extend somewhat further than section 6. It was decided in that case that by reason of the words "by virtue of" in the section, section 7 (a) was apt to cover the use of a forged instrument to start a train of events intended to culminate in the obtaining of property although there was no intention that the person actually parting with the property should be deceived into doing so by the instrument. Under our proposals the charge in such a case would either be based on inducing the finance company in *Hurford's* case to allow the purchaser to have the vehicle⁷⁹, or upon inducing an employee of the company to accept the forged document as genuine in the performance of his duty to his employer⁸⁰. Section 7 (a) is wider than section 6, too, in that the mere passive receiving of property is made an offence if it is under or by virtue of a forged instrument. In cases where the person receiving the property is in league with the forger or the user of the false instrument he will be a party to that offence, and in cases where he is not (which will certainly be rare) he will, if he has the requisite knowledge, be guilty of theft⁸¹. For these reasons we think that the offences created by the present section 7 (a) will be superfluous in a new Forgery Act and that they can be repealed. Section 7 (b) relates to demanding, receiving or obtaining under, upon or by virtue of any probate or letters of administration knowing such to have been obtained on a forged will or testamentary writing or by any false oath, affirmation or affidavit. This seems to be an offence that is remote from forgery, and one which would now be within the provisions of section 1 of the Theft Act 1968⁸². We see no reason to retain section 7 (b).

48. It will have been noticed that section 6 speaks of a forged document, while section 7 refers to a forged instrument. In line with our recommendation to relate forgery to instruments, the using offence should be related to instruments. We recommend further that the reference should be to a false instrument and not to a forged instrument. This will obviate the necessity, which there is under the present law, of establishing that the offending instrument was made with the requisite intention, and will mean that a person who, with the necessary intent, uses a false instrument will be liable, although the instrument may have been made innocently.

49. Section 6 penalises a person who "utters" a false document and defines⁸³ uttering as covering a person who—

"uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence or puts off the forged document".

⁷⁸ [1963] 2 Q.B. 398, a case where the forged document was used to induce a finance company to accept that a hire-purchase agreement had been executed and so to instruct a dealer to deliver a vehicle.

⁷⁹ App. A, clause 6 (3) (a).

⁸⁰ App. A, clause 6 (3) (c).

⁸¹ *R. v. Gilks* [1972] 1 W.L.R. 1341, a case in which a person kept money paid to him in error, knowing that he was not entitled to it.

⁸² *R. v. Gilks* [1972] 1 W.L.R. 1341.

⁸³ In s. 6 (2).

*R. v. Morris*⁸⁴ gives some support to the view that in section 6(2) the paramount word is “uses” and we think that it will do duty for all the other expressions. Although “utter” is a word of some antiquity⁸⁵ when used in relation to forgery it does not today usually appear in statutes without definition or elaboration, and the weight of opinion of those we consulted favoured the change we now propose. The question of the use of a false instrument for the purpose of taking a copy we have discussed in paragraph 37, and we have recommended a separate offence of making a copy of a false instrument. The use of such a copy with the requisite mental element should be an offence of the same nature as the use of the false instrument itself and can be included in the same offence-creating provisions⁸⁶.

The mental element in using

50. There are three aspects of using a false instrument in respect of which it is necessary to consider a mental element, namely the act of using, the fact that the instrument is false, and the intent with which it is used. In relation to the act of using we think that the appropriate mental element is intention and that nothing less should suffice. Secondly in relation to the state of mind as to the falsity of the instrument it is clear that knowledge of this will impart responsibility: the question is whether anything less than knowledge will suffice. In their *Report on Theft and Related Offences* the Criminal Law Revision Committee⁸⁷ recommended that in the offence of handling stolen property it should be sufficient for guilt that the defendant knew or believed the goods to be stolen. They said that it was a serious defect in the law that actual knowledge that the property was stolen had to be proved. In the offence of using a forged instrument there is not exactly the same need to extend knowledge to belief if only because the contention of lack of knowledge is not so likely to be advanced; nevertheless there will undoubtedly be cases where the evidence may well establish a belief in the falsity of the instrument used, and yet will not establish knowledge. Accordingly we recommend that knowledge or belief should be sufficient. In regard to the intent involved in the using of the instrument we think that this should be the same intent as that which we have recommended for the main offence of making the instrument, namely the intent to induce another to accept it as genuine and, by reason of that, to do or refrain from doing some act to his prejudice or to the prejudice of any other person.

Conclusion

51. *We recommend* that it should be an offence to use a false instrument, knowing or believing it to be false with the same intention as is required for the offence of forgery itself, and to use a copy of a false instrument, knowing or believing it to be a copy of a false instrument, with the same intention.

⁸⁴ [1966] 1 Q.B. 184, 195.

⁸⁵ There is a reference in the Shorter Oxford Dictionary to its use in 1602.

⁸⁶ App. A, clause 3.

⁸⁷ *Eighth Report*, (1966) Cmnd. 2977, paragraph 134.

IX. PENALTIES AND A POSSIBLE AGGRAVATED OFFENCE

Present Law

52. Life imprisonment is the maximum sentence for a number of forgery offences under the present Act⁸⁸, including the forgery of certain private documents such as a will, a deed, a bond and an assignment. Another series of offences⁸⁹ carry a penalty of 14 years' imprisonment, including the forgery of such disparate documents as a policy of insurance, a bill of exchange, a register of births, marriages or deaths and a wrapper or label provided by the Commissioners of Inland Revenue. A further series of offences⁹⁰ carry a penalty of 7 years and include the forgery of any official court document, and a variety of documents issued by officials. There is then a general section⁹¹ which provides a penalty of 2 years' imprisonment for the forgery of any document including any public document not previously covered. On trial on indictment fines are not limited, but for an indictable offence tried summarily by magistrates the maximum fine is £400. The penalty under section 6 for using a forged document is equated to the penalty for forging the document.

A new approach

53. This wide range of maximum sentences based on the arbitrary classification of offences does not seem to us to be satisfactory. We prefer the policy adopted in the Theft Act 1968 and in the Criminal Damage Act 1971 of one maximum penalty for a wide range of offences with common characteristics, with a higher penalty for any special offence which seems to require it.

54. In our Working Paper⁹² we suggested a maximum sentence of 10 years on trial on indictment, as being the same as that laid down for theft⁹³ and obtaining property by deception⁹⁴. Some of our commentators thought this inadequate and suggested a maximum of 14 years, in some cases for specific offences such as forgery of a will. Having regard to the statistics to which we have referred⁹⁵, we think that a maximum sentence of 10 years is not too low, and it is in line with the general penalties in the Theft Act. In expressing our view as to the appropriate penalty for forgery and using a false document we must stress that our opinion is based only on the facts set out in the preceding paragraphs. Our views are formed in the context of the punishments provided for offences of a similar nature, and in the light of the sentences awarded in recent years for forgery and similar offences.

55. We considered, and rejected, a number of possible aggravated offences, based, for example, upon the nature of the document forged, and the far-reaching consequences that could follow from the use, say, of certain falsified

⁸⁸ Ss. 2 (1), 3 (1), 5 (1).

⁸⁹ Ss. 2 (2), 3 (2), 5 (2), 5 (4).

⁹⁰ Ss. 3 (3), 5 (3).

⁹¹ S. 4.

⁹² Paragraph 39.

⁹³ Theft Act 1968, s. 7.

⁹⁴ *ibid.* s. 15.

⁹⁵ See paragraph 3, Tables C and D. The sentencing pattern over the years 1965 to 1971 is similar. In no case was any sentence of over 10 years imposed.

official documents. We were, however, unable to find any justification for singling out any particular offences which would call for sentences in excess of 10 years. It did not seem to us to be a valid argument to provide for a higher maximum sentence on the ground that courts are reluctant to impose the maximum and would therefore be unlikely to impose an adequate sentence in a case which called for imprisonment for 10 years.

Conclusion

56. *We recommend* that the maximum penalty for forgery and the using offence when tried on indictment should be imprisonment for 10 years and a fine limited only by its reasonableness; and that there should be no aggravated offence. As to summary trial we think that the normal maxima of 6 months' imprisonment and a fine of £400 are appropriate⁹⁶.

X. JURISDICTION

57. At present most offences of forgery are triable only on indictment. Some, however, are triable summarily with the consent of the defendant⁹⁷ by virtue of section 19 of the Magistrates' Courts Act 1952 as read with Schedule I. The overall effect of these provisions is that very many of the commoner forgery offences can be tried summarily with the consent of the defendant, and we think that with the provision of only one forgery offence and one using offence this should be of general application. There is presently a practice that, where the prosecution is undertaken by the Director of Public Prosecutions, he too must consent to a summary trial⁹⁸, and having regard to the wide range of offences covered by our proposals we think that the consent of the prosecution to summary trial should be required in all cases.

58. We considered the alternative of proposing that some offences should be triable summarily or on indictment, with different penalties (hybrid offences) and also the possibility of proposing some purely summary offences. On the whole, we prefer to use the enabling provisions of section 19 and Schedule I of the Magistrates' Courts Act 1952 rather than to propose creating "hybrid" offences. In the first place, the former procedure provides flexibility, and is required particularly when there is a wide range of situations for which one maximum penalty is provided, and it gives a right to the defendant to elect trial on indictment when the prosecution has instituted summary proceedings. We think this desirable. The fear has been expressed that to give the accused the right to insist on trial on indictment may tend to overload the higher courts; but the statistics in Table A⁹⁹ above, so far as they relate to the

⁹⁶ Magistrates' Courts Act 1952, s. 19.

⁹⁷ *i.e.* the forgery of certain documents within s. 2 (2) (a) relating to money or goods not exceeding £100 in value, and offences under s. 7 with the same financial limit (paragraph 10); the forgery of a passport contrary to s. 36 of the Criminal Justice Act 1925 (paragraph 12); offences in relation to National Insurance stamps (paragraph 18); the forgery of any document evidencing the payment of money or delivery of goods contrary to s. 2 (2) (a) of the 1913 Act, offences under s. 4 and uttering a document the forgery of which is triable summarily with the consent of the defendant (s. 27 of the Criminal Justice Act 1967).

⁹⁸ Magistrates' Courts Act 1952, s. 19 (7).

⁹⁹ In paragraph 3.

forgery offences to which section 19 of the 1952 Act applies, do not bear out this fear. Secondly, the general powers of magistrates to impose a fine of up to £400 or to imprison for not more than six months do not seem excessive for any offence that we have proposed. Thirdly, the provisions of sections 28–29 of the 1952 Act enabling magistrates to commit for sentence would be available in those cases where the gravity of the offence or character and antecedents of the offender are such that the appropriate penalty would be in excess of their jurisdiction¹⁰⁰.

59. The Criminal Justice Act 1972¹⁰¹ now deals in general terms with compensation orders in respect of any personal injury, loss or damage resulting from an offence and makes unnecessary any specific reference to this in a new Forgery Act.

Conclusion

60. *We recommend* that offences of forgery and using a false document should be triable on indictment or summarily with the consent of the defendant and of the prosecution.

XI. POSSESSION OFFENCES

Present law

61. Sections 8 and 9 of the 1913 Act prohibit the unlawful possession of certain forged documents, notably bank notes¹⁰², stamps as defined in the Stamp Duties Management Act 1891¹⁰³, wrappers or labels provided by or under the authority of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise¹⁰⁴, and paper¹⁰⁵ bearing devices resembling the devices peculiar to and used on any bank note or document evidencing the title of any person to any share or interest in any stock, annuity, fund or debt of any state or of any body corporate or society. Section 8 (2) (a) prohibits the possession of any metal wares bearing the impression of false hallmarks for marking silver or gold. Sections 8–10 prohibit the unlawful possession of certain materials which can be used for making false documents, notably forged dies as defined by the Stamp Duties Management Act 1891¹⁰⁶, special paper resembling the paper¹⁰⁷ for making bank notes, Treasury Bills and Greater London or London borough bills (including the genuine paper¹⁰⁸), the instruments¹⁰⁹ for making such paper and any plate¹¹⁰ bearing devices

¹⁰⁰ The “circumstances of the offence” (*i.e.* gravity) is not a factor in committal for sentence under s. 29.

¹⁰¹ See s. 1.

¹⁰² S. 8 (1).

¹⁰³ S. 8 (2) (b).

¹⁰⁴ S. 8 (2) (c).

¹⁰⁵ S. 9 (d).

¹⁰⁶ S. 8 (2) (b) *i.e.* any implement “used under the direction of the Commissioners of Inland Revenue for expressing any duty, or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that an instrument is duly stamped or is not chargeable with duty or for denoting any fee”. See s. 27 of the Stamp Duties Management Act 1891.

¹⁰⁷ S. 9 (a).

¹⁰⁸ S. 10 (a).

¹⁰⁹ S. 9 (b).

¹¹⁰ S. 9 (d).

similar to those peculiar to bank notes or the documents evidencing title as set out above. Section 8 (2) (a) prohibits the possession of a false die for hallmarking gold or silver. Although the range of prohibited articles is somewhat arbitrarily defined, the underlying common basis seems to be that as the mere existence of certain forged documents presents a grave danger, the possession both of the documents and the immediate materials for making them should be prohibited. The mental element in the possession offences so created is merely that there should be knowledge that the thing is of the nature prohibited, and possession with that knowledge is an offence unless the possessor can establish a lawful excuse.

What should be the range of prohibited articles ?

62. In the first place we think there should be a distinction drawn between false instruments (the subject of our proposed making offence) which it should be an offence to possess, and the tools and materials for producing false instruments. Counterfeiting tools and materials for producing false bank notes and coins are clearly in a class by themselves and these we deal with under Part XIII. With these excluded there is a very narrow range of articles for the making of false instruments which needs to be covered. These we consider in paragraph 64.

(a) False instruments

63. We think that there are two separate, but not mutually exclusive, criteria to be applied in selecting the instruments, possession of which should be an offence. The first is the ease with which they may pass from hand to hand, and the second is the ease with which they may be accepted as genuine because of the circumstances in which they are commonly used. Bank notes by either criterion fall within the class of documents the possession of which, if forged, should be an offence, but these are dealt with in Part XIII of this Report. Applying the criteria, we consider possession of only the following instruments, if false, should be an offence:—

- (i) any instrument evidencing the title of any person to any share or interest in any stock, annuity, fund or debt of any state or body corporate or society,
- (ii) postal orders and money orders, and
- (iii) postage stamps¹¹¹.

We have not included Inland Revenue or Customs wrappers or labels as we understand from the departments concerned that these are now of no significance.

(b) Tools and materials

64. Forgery itself being in the nature of a preparatory offence, we do not think that in the absence of very special circumstances it is necessary to go so far as to penalise specifically acts that are preparatory to the commission of forgery. We have decided against penalising the making of false seals on the basis that this constitutes only a first step to the making of a false

¹¹¹ There are strict liability offences under s. 63 of the Post Office Act 1953 in relation to the possession of fictitious stamps and dies for making them. These will remain. They also cover National Insurance and National Savings stamps.

instrument which will bear the seal. How far such conduct might be covered by the principle relied on in *R. v. Gurmit Singh*¹¹² and be indictable as an act of preparation is unclear; but whatever the position we do not wish to bring such conduct within a new Forgery Act. However, as we have indicated above, different considerations apply in the case of tools and materials for counterfeiting currency, with which we deal specifically in Part XIII. This aspect apart there are two instances that have been urged upon us which require possession of a die for making certain impressions to be penalised. Because of the ease of defrauding the Revenue by the use of impressed stamps on instruments of various kinds to denote that duty on them has been paid and because of the difficulty of detecting such offences, the Inland Revenue authorities have asked that the offence of making or possessing a false die as defined by the Stamp Duties Management Act 1891¹¹³ should be retained. We agree that this should remain an offence. Secondly, the Department of Trade and Industry have asked us to retain an offence¹¹⁴ of making or possessing a forged die required or authorised by law to be used for the marking of gold or silver plate, or of gold or silver wares. The law relating to hallmarking is under review by the Department and they are anxious that there should be no weakening of the criminal provisions in this field before the completion of that review¹¹⁵. For these reasons we propose the retention of the offence of making or possessing such false dies.

Possession and the mental element

65. In the present Act the words "custody or possession" are used to define what is penalised and these are defined in section 15 as covering personal custody or possession and knowingly and wilfully having a thing in the actual custody or possession of another or in any building, lodging, apartment, field or other place, whether occupied by himself or not. We think that the same effect can be more simply achieved, as it was in section 3 of the Criminal Damage Act 1971, by prohibiting custody or control. These words have the advantage, too, that they avoid the technicalities connected with the concept of possession¹¹⁶.

66. Before having possession of a prohibited false document or a counterfeit of a die can be an offence under the present law it must be established that there is knowledge of its falsity. As in the case of the state of mind of the user of a false instrument, this may impose too strict a test of liability. We suggest that something less than knowledge will suffice and the most appropriate form in which the requirement can be expressed is that there must be knowledge or belief that the instrument or die is false.

67. In sections 8 and 9 of the 1913 Act there is no requirement that the possession need be accompanied by an intent before the possessor is guilty of an offence. It is sufficient that the possession is without lawful authority or

¹¹² [1966] 2 Q.B. 53. Procuring a rubber stamp bearing the words "Magistrate First Class Jullundur" with intent to use it to forge a document with intent to defraud was held to be indictable as an act of preparation.

¹¹³ Now penalised by ss. 5 (4) (a) and 8 (2) (b) of the Forgery Act 1913.

¹¹⁴ Ss. 5 (4) (b) and 8 (2) (a) of the Forgery Act 1913.

¹¹⁵ If the Hallmarking Bill were to become law there would be no necessity to retain these provisions in a Forgery Act. See Clause 5 of that Bill.

¹¹⁶ Law Com. No. 29, paragraph 59.

excuse, and the burden of proving a lawful authority or excuse is put upon the accused. As the law now stands this means that there is a persuasive burden upon the accused to show on a balance of probabilities that he has lawful authority or excuse for his possession¹¹⁷.

68. Having regard to the nature of the instruments referred to in paragraph 63 it is easy to envisage circumstances where possession of such instruments might be of great social danger, particularly where there is an intention that the instruments should be used to induce another to act to his prejudice in the belief that they are genuine. On the other hand the possession of a false postage stamp or even of a false share certificate if unaccompanied by such an intention will normally have less serious implications. For this reason we feel that there should be two offences in relation to possession of the listed instruments, the one requiring an intention that the instruments be used as genuine to induce another to act to his prejudice, and the other requiring only possession without lawful authority or excuse. The first offence should carry the same penalty as the forgery and the using offence, whereas the second offence should carry a maximum penalty of two years' imprisonment. We think that the provision of two offences with differing mental elements will provide adequate protection against possession by persons who have such false instruments for the purpose of a fraudulent scheme, and yet not penalise too heavily those who come into possession of such false instruments and yet with knowledge of their falsity continue to hold them instead of delivering them up to the authorities¹¹⁸.

69. In regard to the more serious offence it has always been necessary to establish that the possession was with knowledge that the instruments were false. If there is sufficient evidence to establish this, there will normally be little difficulty in drawing the inference in the appropriate case that there was an intention that the instruments should be used as genuine. In such cases there will probably be possession of a quantity of false instruments or there may be evidence to show clandestine dealing, which may warrant the inference of intent. Our recommendation will, therefore, not result in any significant weakening of the law. And where the inference of intention cannot be drawn, it is not right that the possessor should be liable to the same high maximum penalty. The position in regard to the counterfeit dies referred to in paragraph 64 is different. The very existence in unauthorised hands of such dies constitutes a serious danger and it is unlikely that false dies will come innocently into a person's hands. For these reasons we think that it is reasonable to provide that the making or possession of such dies should be an offence though there is not established an intention that the dies be used. It should be sufficient that the making or possession is without lawful authority or excuse, and the maximum penalty should be imprisonment for ten years.

70. As we have said in paragraph 67 the present law casts a persuasive burden upon an accused to establish a lawful authority or excuse for his possession once it has been shown that he knew the instrument to be false. The recent Report of the Criminal Law Revision Committee¹¹⁹ proposes that

¹¹⁷ *R. v. Carr-Briant* [1943] K.B. 607; *R. v. Dunbar* [1958] 1 Q.B. 1.

¹¹⁸ See *R. v. Wuyts* [1969] 2 Q.B. 474 (C.A.).

¹¹⁹ *Eleventh Report*, (1972) Cmnd. 4911, paragraphs 137-140.

the general rule applicable to the burden of proof on an accused at common law should be made the general rule in statutory offences as well, and that the burden should be merely evidential. This means that the burden is discharged if there is sufficient evidence to raise an issue on the matter, whereupon the prosecution must satisfy the jury of the guilt of the accused in the ordinary way beyond reasonable doubt¹²⁰. In our view the situation now under consideration is a suitable one for the application of the rule proposed by the Criminal Law Revision Committee. The possession of the specified false instruments or dies, coupled with proof that the accused knows or believes these to be false at least calls for an explanation. If there is some evidence of authority or excuse for the accused's possession then it is right that the prosecution should have to prove the unlawfulness of the possession, and we do not think that this will seriously hamper the prosecution.

Conclusion

71. *We recommend*¹²¹ that—

- (1) there should be two offences of having custody or control of the false instruments referred to in paragraph 63. Each offence should require knowledge or belief that the instrument is false, but the more serious offence (carrying a maximum penalty of ten years' imprisonment) should require an intention that the false instrument be used as genuine, while the less serious offence (carrying a maximum penalty of two years' imprisonment) should consist of having custody or control without lawful authority or excuse;
- (2) It should be an offence to make, or to have custody or control without lawful authority or excuse, of a counterfeit of either of the dies referred to in paragraph 64, punishable with up to ten years' imprisonment.

Search and seizure

72. Section 16 of the present Act gives a wide power to grant a search warrant. A justice of the peace may issue a search warrant on information on oath that there is reasonable cause to believe that any person has in his custody or possession without lawful authority or excuse any forged document, seal or die or any machinery, implement, utensil or material used or intended to be used for the forgery of any document.

73. The purpose of the powers of search and seizure is two-fold; it facilitates the collection of evidence where an offence has been committed, and it allows the authorities to step in at an early stage to prevent the commission of any other offence. The Theft Act 1968 and the Criminal Damage Act 1971 have provisions¹²² which allow the grant of a search warrant upon it being made to appear by information on oath that any person has in his custody or possession, or on his premises, respectively, any stolen goods or anything which there is reasonable cause to believe has been used or is intended for use to commit an offence of damage to property. In our view false instruments, copies of false instruments, counterfeits of the dies referred to in paragraph 64

¹²⁰ *R. v. Gill* (1963) 47 Cr. App. Rep. 166, 171-2.

¹²¹ App. A, clause 4.

¹²² S. 26, and s. 6 respectively.

and things or materials for making false instruments should be subject to similar provisions in relation to the issue of search warrants. There may well be circumstances where it will be necessary to search without delay for false documents or implements or materials in order to secure evidence and to prevent in, for example, the case of false share certificates, and the like, their distribution.

74. Accordingly *we recommend*¹²³ that a search warrant should be obtainable where it is shown on oath that there is reasonable cause to believe that a person has in his custody—or under his control or on his premises—

- (a) any false instrument, or a copy of a false instrument, which he or another has used or intends to use, in contravention of section 3, or
- (b) a counterfeit of a die referred to in section 4, or
- (c) any thing which he or another has used or intends to use, for making a false instrument, or a copy of a false instrument, in contravention of section 1, or section 2 as the case may be.

Disposal of things seized

75. There is now a general provision, in section 23 of the Criminal Justice Act 1972, under which a person convicted of an offence punishable on indictment with not less than 2 years' imprisonment can be deprived of his rights in any property which was in his possession or under his control at the time of his apprehension and which has been used or was intended to be used by him for the purpose of committing or facilitating the commission of any offence. This provision renders it unnecessary to make any special or detailed provision for the generality of cases likely to arise under Part I of the draft Bill. The Criminal Justice Act 1972 does not, however, deal with the position where there has been no trial, or where there has been an acquittal, or where property was seized before an accused's apprehension. Many forged instruments, and some implements for making them are of such a nature that they should not be available to be used by an unscrupulous person into whose hands they may fall. For example a forged passport or driving licence, or a stamp or plate for making either of them, which have come into the possession of the police should not in the event of an acquittal of a person charged with forging them be available to be used. The present law recognises this and there is provision in section 16(2) (b) for the defacing or destruction of documents, seals or dies, on an order of a justice of the peace when these have been lawfully seized under a search warrant but where no trial follows. Under the Police (Property) Act 1897 there is provision for the disposal of property in the possession of the police on application by the police or the owner of the property to a court of summary jurisdiction, but there is no power under that Act to order forfeiture. *We recommend*¹²⁴ that there should be provision for an application by the police to such a magistrates' court for an order for confiscation of any object in their possession which falls within the terms of paragraph (a), (b), or (c) of clause 7 (1) of the draft Bill, with a discretion in the court to grant or refuse

¹²³ App. A, clause 7 (1).

¹²⁴ App. A, clause 7 (2).

an order. This will cover not only property seized under a warrant, but property which the police have taken into their custody, when arresting an accused, or which was handed to them in the course of their investigation and conduct of a case.

XII. REPEAL POLICY

76. In our *Report on Offences of Damage to Property*¹²⁵ we adopted the approach that so far as possible there should not be duplication in statutes regulating particular activities of the offences provided by a statute of general application. This policy was not a new one; it was, for example, adopted in the Perjury Act 1911 as well as in the Forgery Act 1913. While it was not successful on those occasions in preventing offences akin to perjury and forgery being included in later statutes, we hope that the prospect of codification presents a more favourable climate for success. The policy of the Theft Act 1968 clearly is to ensure that offences of theft and obtaining pecuniary advantage by deception are for the future to be found in that Act and not elsewhere, whether in the common law or statutes, and the same principle is true of the Criminal Damage Act 1971. The same policy is equally applicable in the case of forgery and our aim is to eliminate as many as possible of the existing forgery-type offences as can properly be covered by a new Forgery Act, as well as to replace the common law. A problem does arise, however, from the existence of offences similar to forgery, but with a mental element defined in a somewhat different way, such as the offence under section 302(a) of the Customs and Excise Act 1952. It has to be decided in each case whether there is any ground for retaining the separate offence, and among the factors to be taken into account is, for example, the fact that powers to detain are given to Customs officers in connection with such offences.

77. To give effect to the policy we propose it has been necessary to search the statute book for offences of forgery and the like, and where there has been any doubt as to whether any of the offences could be dispensed with, to consult with the Government departments concerned with the subject-matter to which they relate. Our recommendations in regard to repeals are contained in a Schedule to the Draft Bill¹²⁶.

XIII. BANK NOTES AND COINS

General

78. We have already discussed briefly¹²⁷ our reasons for covering in a new Forgery Act offences of counterfeiting bank notes and coins, and the advantages of dealing with these offences in a separate part of the Report. We note that the Coinage Offences Act 1936 applies to Scotland as well as England and Wales, but that the counterfeiting of bank notes in Scotland is, as we understand it, dealt with by statutes of 1801, 1805 and 1820¹²⁸. The

¹²⁵ Law Com. No. 29, paragraph 91.

¹²⁶ App. A, Sch. 2.

¹²⁷ See paragraph 18.

¹²⁸ These Acts have been repealed in their application to England and Wales and Northern Ireland. See Forgery Act 1830 and Criminal Statutes Repeal Act 1861.

Forgery Act 1913 and the Coinage Offences Act 1936 apply to Northern Ireland. The law of Scotland is outside our terms of reference, but we cannot but mention the possible advantages of there being a single (or uniform) set of provisions dealing with counterfeiting and allied offences throughout the United Kingdom¹²⁹. We have had some preliminary consultations with the Scottish Departments concerned and with the Scottish Law Commission¹³⁰ (who do not have this subject on their programme) with a view to avoiding proposals that would create unnecessary difficulty in relation to Scots Law. We have also had consultations with the authorities in Northern Ireland who are anxious that both parts of the draft Bill should apply to Northern Ireland. We recommend that the Government Departments concerned should examine the position and consider whether the counterfeiting provisions we propose are appropriate for enactment for all parts of the United Kingdom. The Bill as drafted applies to England and Wales only.

79. The counterfeiting of current coins is dealt with by the Coinage Offences Act 1936. Although by process of statutory extensions of definition¹³¹ the 1936 Act has been to some extent brought into line with modern conditions, we believe that its provisions are in need of review and simplification.

80. The main offences under the Coinage Offences Act 1936 are under:—

Section 1: this renders criminal the false making or counterfeiting of any coin¹³² resembling any current coin, with a penalty of imprisonment not exceeding 7 years, and a maximum in the case of coins resembling gold or silver coins¹³³, of life imprisonment.

Section 2: this renders criminal the alteration of the appearance of any current coin, or coin resembling a current coin, by gilding, silvering or washing or filing or otherwise, with a maximum penalty of life imprisonment.

Section 5: this makes it an offence to utter any false or counterfeit coin resembling any current coin knowing it to be false, with a penalty not exceeding one year's imprisonment, or where it resembles any gold or silver coin, 2 years' imprisonment; and an offence punishable with a maximum of 5 years to possess, with intent to utter, 3 or more false or counterfeit coins resembling any current gold or silver coin, or with up to one year in the case of 3 or more false or counterfeit coins resembling any current copper coin; but in the case of a second conviction the penalty is a maximum of life imprisonment and a minimum of 3 years.

¹²⁹ Otherwise it might be possible, for instance, to enact the offence we propose in paragraph 109 of reproducing a currency note without the prior consent of the issuing authority by making reproductions in Scotland for use in England and Wales.

¹³⁰ The Scottish Law Commission carried out consultations on our behalf with the note-issuing Scottish banks.

¹³¹ e.g. the re-definition of the expression "silver coin" used in the 1936 Act, so as to include cupro-nickel coins and such coins as may be specified by proclamation; see Coinage Act 1971, s. 12.

¹³² A coin apparently intended to resemble or pass for any current coin shall be deemed to resemble that current coin—s. 17 (c).

¹³³ Now to be construed as cupro-nickel coins or other coins of denominations of not less than five new pence specified by proclamation made under s. 3 of the Coinage Act 1971.

Section 9: this creates certain offences in relation to making, mending buying, selling or possessing coining implements without lawful excuse, providing penalties of maximum terms of imprisonment varying from life imprisonment to 7 years.

In addition to these offences sections 3 and 4 penalise the impairing of gold or silver coins and the unlawful possession of filings or clippings, and the defacing, and uttering of defaced, coins, section 6 deals with the buying or selling of counterfeit coin, section 7 with the importing and exporting of counterfeit coin, section 8 with the making, possessing and selling of things resembling coins and section 10 with conveying coining implements, coin or bullion out of the Mint.

81. The following Table shows that over recent years coinage offences, including uttering, have not been numerous although they have tended to increase.

<i>Year</i>	<i>Total found guilty</i>	<i>Dealt with in Magistrates' Courts</i>	<i>Imprisonment imposed at Assizes and Quarter Sessions did not exceed</i>
1965 . . .	9	5	1 year
1966 . . .	9	6	3 years
1967 . . .	8	6	1 year
1968 . . .	11	6	3 years
1969 . . .	19	13	2 years
1970 . . .	14	8	4 years
1971 . . .	25	5	4 years

The disappearance of coins made of gold and silver having intrinsic value apart from the value they represent has altered many of the standards by which coinage offences are to be judged; for example, the clipping of coins no longer presents a problem. There seems to be no reason to treat counterfeit coins differently from forged banknotes, the character of which has also changed since 1913 when the Forgery Act was passed. They were then clearly classified as documents of a private character¹³⁴. They are now of a public or official character and, although Bank of England notes are in the form of promissory notes, they are really tokens of value in the same way as are coins.

What notes and coins to be covered ?

82. A bank note is widely defined by section 18(1) of the 1913 Act to include any note or bill of exchange¹³⁵ of the Bank of England or Bank of Ireland or of any other person or company carrying on the business of banking in any part of the world. For the purposes of the Counterfeit

¹³⁴ See ss. 2 (1) and 18 (1).

¹³⁵ The Law Commission's latest Statute Law (Repeals) Bill proposes to remove "bank post bills" and "blank bank post bills" from the category of bank notes: Law Com. 49, (1972) Cmnd. 5108.

Currency (Convention) Act 1935 currency notes issued by or on behalf of the Government of any country outside the United Kingdom are deemed to be bank notes, "currency notes" meaning any notes (however called) which are legal tender in the country in which they are issued. The characteristic of legal tender is an ambiguous one to use in the definition of a currency note because it may be used to convey the idea that certain notes or coins are legal tender only for payment up to certain specified limits. The true characteristic of a currency note is that it is lawfully issued and is used as money, and this is a sufficient definition of currency notes issued outside the United Kingdom¹³⁶. Within the United Kingdom there is the additional problem of notes which were used as money at one time, but have now been demonetised, although they are still accepted by banks which will give current notes in exchange for them. The problem is not one of any size, but the Bank of England, in particular, is anxious that the counterfeiting of such notes should be an offence. In this respect we think that currency notes of the Channel Islands, the Isle of Man and the Republic of Ireland should be treated in the same way as currency notes of the United Kingdom owing to the ease with which money passes between these jurisdictions.

83. The Coinage Offences Act applies to current coins, defined¹³⁷ as coin having been coined in any of Her Majesty's Mints, or coin lawfully current in any part of Her Majesty's dominions or elsewhere. In general we do not consider it necessary to cover coins which are no longer current whether they be British or foreign coins. There are, however, some coins¹³⁸ which, largely because they warrant that they are made of a precious metal of a certain fineness, are still in fact used as a means of domestic or international exchange in some circumstances and the counterfeiting of these should be covered.

84. *We recommend*¹³⁹ that counterfeiting should cover—

(a) Currency notes, defined to include—

(i) United Kingdom currency notes (and those of the Republic of Ireland) which have been lawfully issued and are or have been customarily issued as money and remain payable on demand, and

(ii) Currency notes of any other country which have been lawfully issued and are customarily used as money,

(b) Coins which are either customarily used as money in any country, or which are specified as being within the provisions.

Counterfeiting

85. The essence of any counterfeiting offence must be the making of a counterfeit of a note or coin which may pass as genuine. What may pass as genuine depends upon the thing of which a counterfeit is made, its degree of resemblance to the genuine article, and the circumstances in which it may be

¹³⁶ This will meet the Government's obligation under Article 2 of the International Convention for the Suppression of Counterfeiting Currency which refers to paper money of which "the circulation is legally authorised" in the country in which it is issued.

¹³⁷ S. 17.

¹³⁸ *e.g.* gold coins of certain countries and the silver Maria Theresa thaler of Austria, see App. A, Sched. 1.

¹³⁹ App. A, clause 16 (1).

dealt with. A poor imitation of a one-pound note may pass as genuine if tendered in a poor light to a busy street-trader, but would not do so if handed to a bank teller across a counter, and a poor imitation of a penny may pass as genuine more easily than a reasonably good imitation of a ten-pound note. It is, therefore, difficult to attempt any comprehensive definition of what may pass as genuine for so much depends upon the circumstances mentioned. We suggest that the offences, apart from the required mental element which we discuss later, should be defined as making a counterfeit of a note or coin which sufficiently resembles a genuine note or coin to be reasonably capable of passing for it. There are many ways of making a counterfeit of a note or coin, some of which involve the use of a part or parts of notes and some of which involve altering the shape or appearance of a coin, and the Bank of England and the Treasury are anxious that there should be no doubt that such operations are covered. In regard to coins we think that it should be provided that references to making a counterfeit include altering the size, shape, colour or design of any coin. In regard to notes we think that the problem can be met by providing that the definition of a counterfeit of a currency note includes a thing consisting of only one side of a currency note and a thing consisting of parts of two or more currency notes.

86. In the present law there is provision both in regard to notes¹⁴⁰ and in regard to coins¹⁴¹ that the offence of forging or counterfeiting can be complete notwithstanding that the note or coin is not complete or in a fit state to be uttered. Both the Bank of England and the Treasury are anxious that the counterfeiting offence should extend to the person who has not yet completed the making of his false notes and coins. Having regard to the definition we recommend of a counterfeit as a note or coin which sufficiently resembles a genuine note or coin to be reasonably capable of passing for it, we do not think that a provision following the lines of the present law would be possible. A half-completed note will not be reasonably capable of passing as a genuine note, and a provision that the offence is committed if something that is not reasonably capable of passing is made provides no clear indication of the nature of the offence. In our view the law of attempt will adequately cover the situation where a person is detected before he has completed the counterfeit he is seeking to make.

87. *We recommend*¹⁴² that it should be an offence to make a counterfeit of a currency note or of a protected coin, and that in the case of coins making should include altering the size, shape, colour or design of any coin. A counterfeit of a note or coin should be defined as one which sufficiently resembles a genuine note or coin to be reasonably capable of passing for it, and that a thing consisting of one side only of a currency note is a counterfeit of that note, and that a thing consisting of parts of two or more currency notes is capable of being a counterfeit of a currency note.

The mental element

88. Section 1 of the Forgery Act provides that forgery of a bank note is the making of a false note in order that it may be used as genuine and this is punishable under section 2 when done with intent to defraud. Section 1

¹⁴⁰ Forgery Act 1913, s. 1 (3) (b).

¹⁴¹ Coinage Offences Act 1936, s. 1 (2).

¹⁴² App. A, clauses 9, 16 (3) (a) and (b).

of the Coinage Offences Act contains no specific reference to any mental element in the definition of the offence which is said to be "falsely making" or "counterfeiting", and it would seem that the offence is committed without proof of more than the conscious act of the maker that he is making a coin resembling a current coin. Similarly section 2 requires no more than an intent to make something resembling a current coin or to make one coin resemble another by gilding or silvering. For serious offences of this nature we favour the requirement of an element of dishonesty for their commission, and we think that it should be necessary for a conviction to show that the counterfeit note or coin was made in order that it might be used as genuine. This will not require the prosecution to establish that the maker intended himself to use the note or coin as genuine, but that he intended that it would be so used. This is the present law with regard to bank notes and has not led to difficulty in securing convictions in appropriate cases. In almost all cases the circumstances surrounding the making will show that the notes or coins were made in order that they might be used as genuine, but it is possible to envisage circumstances where this will not be so, for example where a person draws a copy of a bank note to show his skill and immediately destroys it. With coins it is more difficult to envisage probable circumstances where the making of a copy of a current coin would be lawful and, in our view, the law should be the same in regard to the counterfeiting of coins as it is now in regard to bank notes. The intent necessary for the counterfeiting of both notes and coins should be an intent that the notes or coins should be passed or tendered as genuine; it is unnecessary to go further and provide that there should be any further intent to defraud or to prejudice another. An intent that the false note or coin be passed or tendered as genuine does not necessarily mean an intent that it be used as currency¹⁴³, though this will usually follow. The exceptional case is that of a person who counterfeits a sovereign. He is unlikely to intend that it be passed as currency, for the intrinsic value of a genuine sovereign is greater than its value as currency, but making a counterfeit of a sovereign to sell as genuine should be within the counterfeiting offence.

89. *We recommend*¹⁴⁴ that the mental element required for the counterfeiting offence should be an intention that the counterfeit be passed or tendered as genuine, whether or not as currency.

Using counterfeit currency

90. Under section 6 of the Forgery Act it is an offence to utter a forged bank note, knowing it to be forged, with intent to defraud or deceive. "Utter" is widely defined and means in effect any use or delivery of a forged note. Section 5 of the Coinage Offences Act 1936 penalises the tendering, uttering or putting off of any counterfeit coin knowing it to be counterfeit. This section requires no intent to defraud or deceive although it follows now from *Selby's case*¹⁴⁵ that at least the coin must be uttered as

¹⁴³ We do not read the majority speeches in *Selby v. D.P.P.* [1972] A.C. 515, (a case which dealt with possessing false coins with intent to utter) as confining uttering to uttering as currency. That case decided that there must at least be an intent to utter a false coin as genuine before there was a contravention of s. 5 (3) of the Coinage Offences Act 1936.

¹⁴⁴ App. A. clauses 9 and 16 (3) (c).

¹⁴⁵ *Selby v. D.P.P.* [1972] A.C. 515.

genuine. There is an aggravated offence of uttering any gold or silver coin, either having another such coin in one's possession, or uttering another such coin within 10 days of the first uttering.

91. We have discussed the word "uttering" in connection with the general offence of using a false instrument¹⁴⁶ and suggested that the word "using" is appropriate in that context. Somewhat different considerations apply, however, in regard to dealing with counterfeit notes and coins. On the one hand, it is important to penalise any delivery of counterfeit money which will lead to it being put into circulation, as well as the passing or tendering of the money as genuine. On the other hand we do not seek to cover by a using offence a person who may display a number of counterfeit notes to impress another with his apparent affluence. We propose, therefore, that it should be an offence, subject to the necessary mental element being established, to pass or tender a counterfeit of a note or coin or to deliver it to another.

92. As with the using of a false instrument, it must be a necessary element that the person passing or delivering the counterfeit knew or believed that it was a counterfeit. Where the offence involves the accused himself passing or tendering the note or coin he must intend to pass or tender it as genuine; where it involves merely delivery he must intend that it be passed or tendered as genuine by the person to whom he delivers it or another.

93. *We recommend*¹⁴⁷ that it should be an offence to pass or tender as genuine a counterfeit of a currency note or protected coin or to deliver such a counterfeit to another intending that it be passed or tendered as genuine, knowing or believing in such case that it is a counterfeit.

Penalties and jurisdiction

94. The penalty for counterfeiting bank notes¹⁴⁸ and gold and silver coins¹⁴⁹, and for gilding or silvering coins, and altering coins to make them resemble gold or silver coins¹⁵⁰ is now life imprisonment, and for counterfeiting copper coins is imprisonment for seven years¹⁵¹. For uttering a forged bank note the maximum penalty is life imprisonment¹⁵², whereas uttering a counterfeit coin attracts only one year's imprisonment¹⁵³, unless the coin is one resembling a gold or silver coin and the accused has another such coin in his possession at the time, or utters another such coin within 10 days, when the offence attracts a penalty of imprisonment for two years¹⁵⁴. For a second conviction for uttering counterfeit coin the penalty is life imprisonment¹⁵⁵. Over the last seven years no sentence of imprisonment for a coinage offence has exceeded four years, and for forgery (which at present includes forgery of bank notes) no sentence has exceeded 10 years' imprisonment. In accordance with the policy we have adopted in Part IX we think

¹⁴⁶ See paragraph 47.

¹⁴⁷ App. A, clause 10.

¹⁴⁸ Forgery Act 1913, s. 2 (1) (a).

¹⁴⁹ Coinage Offences Act 1936, s. 1 (1) (a).

¹⁵⁰ Coinage Offences Act 1936, s. 2.

¹⁵¹ Coinage Offences Act 1936, s. 1 (1) (b).

¹⁵² Forgery Act 1913, s. 6.

¹⁵³ Coinage Offences 1936, s. 5 (1).

¹⁵⁴ Coinage Offences Act 1936, s. 5 (2).

¹⁵⁵ Coinage Offences Act 1936, s. 5 (5).

that the right course is to provide a maximum penalty of ten years' imprisonment on indictment, and to make the offence triable under section 19 of the Magistrates' Courts Act 1952. We think, however, that the consent of the prosecution also should be required to summary proceedings. This would leave the choice of forum in the hands of the prosecution, in the same way as it is where the bringing of proceedings is in the hands of the Director of Public Prosecutions, for there may be information which cannot be disclosed at an early stage which warrants the case being tried on indictment.

95. *We recommend* that the maximum penalty for counterfeiting and for passing or tendering a counterfeit note or coin as genuine when tried on indictment should be imprisonment for ten years and a fine. The offence should also be triable summarily with the consent of both the accused and the prosecution under section 19 of the Magistrates' Courts Act 1952.

Possession of counterfeit currency

96. The ease and rapidity with which counterfeit currency can pass and the serious potential prejudice to a large number of innocent persons which such currency constitutes are in our view good reasons for penalising the possession of counterfeit notes or coins. There is an obligation under the international *Convention for the Suppression of Counterfeit Currency*¹⁵⁶ to penalise the introduction into a country, or the receiving or obtaining of counterfeit currency and the simplest way of achieving this is to penalise a person who has custody or control of counterfeit notes or coins¹⁵⁷.

97. The present law deals separately and differently with possessing false bank notes and possessing counterfeit coins. Section 8 of the Forgery Act 1913 makes it an offence, punishable with imprisonment for up to fourteen years, to purchase, receive or have custody or possession of a forged bank note without lawful authority or excuse, knowing it to be forged. The Coinage Offences Act 1936, section 5(3) and (4), makes it an offence to have possession of three or more counterfeit coins knowing them to be counterfeit and with intent to utter them, punishable, in the case of gold or silver coins, with up to five years' imprisonment (or life imprisonment in the case of a second offence) and with up to a year's imprisonment in the case of copper coins. We see no reason to differentiate in regard to the requirements of these offences. We think that the external element of the offence should be having custody or control of a counterfeit of a currency note or a protected coin, and that there should have to be knowledge or belief that the note or coin was a counterfeit.

98. We have given very full consideration to whether there should be a requirement of an intent to pass or tender the note or coin as genuine or to deliver it intending that it shall be passed or tendered as genuine, or whether it should be sufficient that there was no lawful authority or excuse for the custody or control. The law relating to coinage, which requires an intention to utter the coins, has not so far as we are aware given rise to any difficulty in its administration, and in principle we prefer this requirement in the case

¹⁵⁶ Cmnd. 932 (ratified by the United Kingdom in 1959), Article 3 (3).

¹⁵⁷ We do not use the word possession for reasons discussed in paragraph 65.

of serious offences, to the penalising of possession unless the accused can discharge the evidential burden of proving lawful authority or excuse particularly because the scope of lawful authority or excuse is, on the authorities, very limited¹⁵⁸. To require an intention to pass or tender a counterfeit note or coin as an ingredient of a possession offence may at first sight seem inconsistent with our recommendation in regard to the possession of the false instruments specified in draft clause 4 of Appendix A. These instruments, however, do not circulate with quite the same facility as money and are unlikely to come innocently into a person's possession in the same way as counterfeit currency. On the other hand the danger inherent in the possession of counterfeit currency can be greater than in the possession of forged instruments. We have sought to meet the currency situation by proposing two possession¹⁵⁹ offences. The one should require an intention to pass or tender the counterfeit note or coin as genuine, or to deliver it to another, intending it to be thereafter passed as genuine, and should carry a maximum penalty of ten years' imprisonment. The other should be an offence of possessing counterfeit currency without lawful authority or excuse knowing or believing that what is held is counterfeit, with a maximum penalty of two years' imprisonment.

99. The creation of two offences will provide on the one hand for an offence with an adequate penalty for the case where circumstances establish that the accused had knowledge and the requisite intention; on the other hand a person who does not have this intention will not be put in jeopardy of conviction for a serious offence even where he cannot give any acceptable explanation of how he comes to have one or two notes or coins.

100. *We recommend*¹⁶⁰ that there should be two offences in relation to having custody or control of counterfeit notes or coins. The first, carrying a maximum penalty of ten years' imprisonment, should require both knowledge or belief that the currency was counterfeit and an intention that it should be passed as genuine; the second, carrying a maximum penalty of two years, should require knowledge or belief that the currency was counterfeit, but no further intention, there being an evidential burden upon the accused to raise a lawful excuse or lawful authority for his possession.

Making and possession of counterfeiting implements

101. Under the present law it is an offence to make or possess without lawful excuse certain specified materials and things related to the making of counterfeits of bank notes or coins¹⁶¹. These provisions refer in some detail to the materials and implements which they cover, and in general they are limited to things and implements which indicate in themselves that they would be used for making counterfeits¹⁶²

¹⁵⁸ *R. v. Wuyts* [1969] 2 Q.B. 474 (C.A.); *Dickens v. Gill* [1896] 2 Q.B. 310.

¹⁵⁹ We use "possession" as a convenient word to cover having custody or control. See paragraph 65.

¹⁶⁰ App. A, Clauses 12 and 15 (a) and (b).

¹⁶¹ Forgery Act 1913, ss. 9 and 10 Coinage Offences Act 1936, s. 9.

¹⁶² e.g. possessing any plate bearing marks the print of which resembles the marks or devices on a bank note (Forgery Act 1913, s. 9 (d)) or any die or mould which will make the figure, stamp or resemblance of either side of a current coin (Coinage Offences Act 1936, s. 9 (1)).

102. It has, however, been drawn to our attention by the Bank of England that many things, such as sophisticated photographic or other equipment, can be and are used for the production of counterfeits of currency notes, although they have innocent uses as well. The Bank are anxious that the making or possession of any such equipment and material for use in connection with counterfeiting should be penalised if it is in fact being held with the intention that it be used for counterfeiting. We appreciate the fears of the Bank, and we think that the making or possession of any thing to be used for counterfeiting either notes or coins should be penalised provided that there is sufficient safeguard for innocent possession. That safeguard can be provided by penalising making or possession only when it is accompanied by an intention that the equipment or material be used to make counterfeits to be passed as genuine. Since this intention will have to be established by the prosecution and since the class of things which can be used for counterfeiting is very wide, ranging from special paper, inks, and pens to sophisticated photographic equipment we have found it impossible and, indeed, undesirable to attempt to put any limitation upon the things to be made the subject matter of such an offence.

103. The comparable offences under the present law carry, as regards things for making false bank notes, a maximum penalty of seven years' imprisonment and, as regards things for counterfeiting coins, life imprisonment. The making or possession of counterfeiting implements or materials with intent that they be used for making counterfeits to be passed as genuine is potentially as serious as counterfeiting itself and we recommend that it should carry the same maximum sentence on indictment of 10 years' imprisonment.

104. The provision of a making and possession offence covering a wide range of things, but requiring a very specific intention as to the use to which they are to be put will still leave certain gaps in the law which should be filled. For example, a plate specially designed to print, for advertising material for a magazine, the replica of a currency note is potentially a dangerous thing, yet possession of such a plate would not be an offence under the recommendation we have made above. We think, therefore, that there should be a further offence of making or having custody or control of, without lawful authority or excuse, any thing which, to the knowledge of the defendant, is specially designed or adapted for making a counterfeit of a currency note. Such an offence should carry a maximum penalty of imprisonment for two years.

105. The Treasury and the Mint are concerned at the weakening of the present law that would result in regard to making or possession of implements for making counterfeit coins if the offence recommended in paragraph 102 above were to be the only provision. It is not uncommon, they point out, for dies to be made which will be capable of impressing on metal the figure, stamp or apparent resemblance of one face of a current coin without there being any intention of using it to make counterfeits. It is dangerous for such dies to be in existence, because even if they are intended to make impression only on cardboard or such-like material, they may well be used by an unscrupulous person for counterfeiting. We think, therefore, that there should be a less serious offence comparable to the offence of possessing a counterfeit note or coin without lawful authority or excuse to meet this situation. It

should be an offence to make or have without lawful authority or excuse custody or control of any implement which, to his knowledge, is capable of imparting the resemblance of any part of either side of any protected coin, or the reverse thereof. The maximum penalty for such an offence should be imprisonment for two years.

Conclusion

106. *We recommend*¹⁶³ that there should be three offences in this field—

- (a) making or having custody or control of any thing intending to use it, or to permit another to use it, to make a counterfeit of a currency note or of a protected coin to be passed or tendered as genuine, carrying a maximum penalty of 10 years' imprisonment, and
- (b) making, or having custody or control, without lawful authority or excuse of any thing which, to his knowledge, is or has been specially designed or adapted for making a counterfeit of a currency note, carrying a maximum penalty of two years' imprisonment, and
- (c) making, or having custody or control without lawful authority or excuse of, any implement which, to his knowledge, is capable of imparting the resemblance of any part of either side of any protected coin, or the reverse thereof, carrying a maximum penalty of two years' imprisonment.

Non-fraudulent offences

107. The Bank of England have drawn our attention to the dangers of allowing the reproduction of British currency notes even where there is no intention that they be tendered or passed as genuine. Such reproductions may appear in advertisements in newspapers or magazines, or take the form of advertising vouchers or of properties for use in television or theatrical productions. The dangers are two-fold. In the first place people may be tempted to use the vouchers or stage properties or even reproductions cut from magazines as genuine notes, and in the second place the existence of accurate plates for the making of the reproductions may tempt persons to print copies for their own dishonest use. There is also a danger in the reproductions of notes or parts of notes on a scale larger than an actual note that this may provide useful assistance to a counterfeiter in the preparation of plates or reproductions to the correct scale.

108. At present the making of reproductions is covered by section 38 of the Criminal Justice Act 1925¹⁶⁴. The Bank's experience of the English provision is that it is of very limited use and would probably not cover reproductions appearing in magazines, or sham notes which resembled genuine notes only in some respects. They regard the provision as giving inadequate protection to the public and in support of their view referred us to a number

¹⁶³ App. A, clause 13.

¹⁶⁴ The section penalises any person who makes or causes to be made or uses for any purpose or utters any document purporting to be, or in any way resembling or so nearly resembling as to be calculated to deceive, any currency or bank note, or any part thereof. The penalty is a fine of £20. There is an equivalent offence in Scotland under s. 380 (15) of the Burgh Police (Scotland) Act 1894. The section penalises anyone who prints, makes, circulates or uses, for any purpose whatever, any sham bank note, or a paper or document resembling in size, figure and colour any bank note of any banking company.

of instances where a "note" bearing some of the devices of a genuine note but having only a slight overall resemblance to a genuine note had been passed with success as genuine.

109. We think that the most satisfactory way of meeting the dangers raised by the Bank is to penalise the reproduction on any substance of any currency note issued in the United Kingdom, or of any part of such a note, on whatever scale the reproduction is made, without the prior consent in writing of the authority which issues that note. Such a provision would avoid the difficulty inherent in the present section 38 of establishing that the sham note purported to be a genuine note or was likely to deceive. The offence must be limited to the making because it would be unfair to penalise possession of advertising material carrying a reproduction distributed widely to the public, who would have every reason to retain and use, for example, the vouchers offering a discount for purchases made within a period specified on them.

110. There is a related problem in regard to what may be called "imitation" coins, which raise issues of a different nature. Under the present law it is an offence punishable with imprisonment for up to one year to make, sell or possess for sale, without lawful authority or excuse, certain medals, casts or coins which resemble current coins in certain respects¹⁶⁵. It appears from our consultations that the authorities regard these provisions as somewhat outdated. Further, the provisions are in some respects made superfluous by the possession offence we have recommended in paragraph 95, and the provision that a thing is a counterfeit of a protected coin if it sufficiently resembles the coin to be reasonably capable of passing for it¹⁶⁶. This will penalise the possession of imitation coins which are sold as such, providing an offence applicable to the circumstances of such a case as *Selby v. D.P.P.*¹⁶⁷.

111. The main danger lies, we think, in the making and distribution of tokens of various sorts which, while not replicas of any current coin, yet from the appearance almost invite persons to use them as coins. This is a particular danger, it is felt, where the distribution is on a large scale and the tokens are likely to come into the possession of a wide range of people. It would, we think, be unsatisfactory to make an attempt to write all these qualifications into the legislation if only because the penal section would become so complex and difficult to follow and apply.

112. We think that the right result will be achieved if it is made an offence to make, sell or distribute in connection with any scheme intended to promote

¹⁶⁵ Coinage Offences Act 1936, s. 8 which reads "Every person who, without lawful authority or excuse (the proof whereof shall lie on the person accused) makes, sells, offers for sale or has in his possession for sale, any medal, cast, coin, or other like thing made wholly or partially of metal or any mixture of metals, and either—

- (a) resembling in size, figure and colour any current gold or silver coin; or
- (b) having thereon a device resembling a device on any such current coin; or
- (c) being so formed that it can, by gilding, silvering, colouring, washing or other process be so dealt with as to resemble any such current coin;

shall be guilty of a misdemeanour and on conviction thereof liable to imprisonment for a term not exceeding one year".

¹⁶⁶ App. A, clause 14 (3) (a).

¹⁶⁷ [1972] A.C. 515.

the sale of any product any thing which resembles a current United Kingdom coin in shape, size and the substance of which it is made, unless the previous consent in writing of the Treasury has been obtained.

113. Neither of these non-fraudulent offences need carry a penalty of imprisonment, but as circumstances may arise when they may warrant substantial punishment we think that they should be triable on indictment, when the fine imposable would be limited only by what would be reasonable. The offences should also be triable summarily with the consent of the accused, in which case the maximum fine that could be imposed would be £400¹⁶⁸.

114. *We recommend*¹⁶⁹ that it should be an offence (punishable by a fine)—

- (a) without the consent of the relevant authority to reproduce, on whatever scale, any current British currency note or part of such note, and
- (b) without the consent of the Treasury to make, sell or distribute in connection with any sales promotion scheme anything which resembles any current British coin in shape, size and the substance of which it is made.

Search and seizure

115. The present law¹⁷⁰ gives a wide power to grant a warrant to search for forged notes or counterfeit coins or materials or implements for making them. There is an additional provision in regard to coinage offences¹⁷¹ which allows anyone who “finds in any place whatsoever, or in the possession of any person without lawful authority or excuse” any counterfeit coin or tool adapted and intended for counterfeiting coins, to seize such things and carry them before a justice. This is a power which does not at present exist in relation to bank notes and it is a power which seems to be unnecessarily wide. We do not favour its retention, believing that the ordinary powers of arrest¹⁷² and the search warrant procedure are adequate for all purposes.

116. We have discussed in paragraph 73 the need for powers of search and seizure and their extent in relation to forged instruments and things for making. The need for such powers in relation to counterfeits and counterfeiting implements and materials is certainly no less and in some respects the powers need to be wider, having regard to the potential danger in the existence of counterfeit currency, and the use to which reproductions of currency notes can be put.

117. *We recommend*¹⁷³ that a search warrant should be obtainable where it is shown on oath that there is reasonable cause to believe that a person has in his custody or under his control—

¹⁶⁸ Magistrates' Courts Act 1952, s. 19 (b) as amended by the Criminal Justice Act 1967, s. 43 (1).

¹⁶⁹ App. A, clauses 14 and 15 (c).

¹⁷⁰ S. 16 of the Forgery Act in relation to bank notes and s. 11 (3) of the Coinage Offences Act 1936 in relation to coins.

¹⁷¹ Coinage Offences Act 1936, s. 11 (2).

¹⁷² The main offences under the draft Bill are arrestable offences: Criminal Law Act 1967, s. 2.

¹⁷³ App. A, clause 17 (1).

- (a) any thing which is a counterfeit of a currency note or a protected coin or is a reproduction made in contravention of clause 14(a) of the Bill, or
- (b) any thing which has been used or is intended to be used for making any counterfeit or such a reproduction.

Disposal of things seized

118. As recommended in paragraph 75 in relation to forged instruments and things for making them, we recommend¹⁷⁴ that there should be a power given to a magistrates' court to order forfeiture of things falling within (a) and (b) of paragraph 117 on application by an officer of the police.

XIV. COMPREHENSIVE SUMMARY OF RECOMMENDATIONS

119. (1) There should be a new Act to replace the common law of forgery, the Forgery Act 1913 and the Coinage Offences Act 1936, dealing in separate parts with—

- (i) the forgery of instruments (excluding currency notes) and related matters;
- (ii) the counterfeiting of currency (including currency notes) and related matters (paragraphs 17 and 18).

(2) To replace the numerous offences in the Forgery Act 1913 there should be *three* main offences—

- (i) an offence of making a false instrument (paragraph 37 and draft clause 1);
- (ii) an offence of making a copy of a false instrument (paragraph 38 and draft clause 2);
- (iii) an offence of using a false instrument or a copy of a false instrument (paragraph 49 and draft clause 3).

(3) An instrument should include—

- (i) an instrument in writing, whether formal or informal;
- (ii) any disc, tape, sound track or other device on which instructions or data are recorded or stored;

but should not extend to things of interest only historically or as collectors' items (paragraph 27 and draft clause 6(1)).

(4) An instrument should be characterised as false if it purports to be made in the terms in which it stands by a person who did not make it, or if it otherwise purports to be made in circumstances in which it was not made (paragraph 45 and draft clause 6(2)).

(5) The mental element in these three main offences should be an intention to induce another to accept the instrument as genuine and to act upon it to his (or another's) prejudice (paragraph 37 and draft clauses 1, 2 and 3).

(6) "Prejudice" should be defined so that any act (or omission) if it occurred, would be to a person's prejudice if, and only if, it were—

¹⁷⁴ App. A, clause 17 (2).

- (i) to result in loss to that person in money or other property, or
- (ii) to take the form of giving another an opportunity to earn remuneration or greater remuneration, or
- (iii) to be attributable to his having accepted the false instrument as genuine in connection with the performance by him of a duty.

Any act which there is an enforceable duty to do, should be disregarded for determining whether prejudice is present (paragraph 37 and draft clause 6(3)).

(7) There should be an offence of having, without lawful authority or excuse, custody or control of a limited class of false instruments, and an offence of making or having custody or control of a counterfeit die for hallmarking or a die used under the direction of the Commissioners of Inland Revenue (paragraph 71 and draft clause 4).

(8) The maximum penalties should be—

- (i) for the main offences of making a false instrument or a copy, and of using them, and of having custody or control of certain instruments with the requisite intent (or of certain counterfeit dies without lawful authority or excuse) imprisonment for ten years,
- (ii) for having custody or control of certain instruments without lawful authority or excuse, imprisonment for two years (paragraphs 56 and 71 and draft clause 5).

(9) All offences should be indictable and triable in the Crown Court, but also triable summarily with the consent of the accused and of the prosecution (paragraph 60 and draft clauses 5 and 8(1)).

(10) The offences in a new Act should replace the common law of forgery, and so far as possible all other offences of forgery in which the mental element is of the same nature as that we recommend for the new offences (paragraph 76 and draft clauses 8(3) and 19(3)).

(11) To replace the present offences under the Forgery Act 1913, the Counterfeit Currency (Convention) Act 1935, and the Coinage Offences Act 1936 there should be *two* main offences—

- (i) an offence of counterfeiting a currency note or a protected coin (paragraph 87 and draft clause 9), and
- (ii) an offence of passing a counterfeit of a currency note or protected coin (not confined to passing as money) (paragraph 93 and draft clauses 10 and 14(3)(c)).

(12) A currency note should be defined to include—

- (i) United Kingdom notes (together with notes of the Republic of Ireland) lawfully issued and customarily used as money which remain payable on demand, and
- (ii) notes lawfully issued elsewhere that are presently customarily used as money (paragraph 84 and draft clause 16(1)).

(13) A protected coin should be defined to include only those coins which are either currently in use as money in any country or those specified in the Act or by an Order under it (paragraph 84 and draft clause 16(1)).

(14) A counterfeit of a note or coin should be defined as that which is reasonably capable of passing for the note or coin (paragraph 87 and draft clause 16(3)(a)).

(15) The mental element should be an intention that the counterfeit be passed as genuine (paragraph 89 and draft clauses 9 and 10).

(16) The maximum penalty for both the counterfeiting offence and the passing offence should be 10 years' imprisonment. The offence should be indictable, or, with the consent of both the accused and the prosecution, triable summarily (paragraph 95 and draft clause 15(a)).

(17) There should be *two* offences of having custody or control of a counterfeit of a note or coin, each requiring knowledge or belief that the note or coin is counterfeit, but—

- (i) one requiring an intention that it be passed as genuine and carrying a maximum penalty of ten years' imprisonment (paragraph 100 and draft clauses 12(a) and 15(a)), and
- (ii) the other being based on there being no lawful authority or excuse and carrying a maximum penalty of 2 years' imprisonment (paragraph 100 and draft clauses 12(b) and 15(b)).

(18) There should be *three* offences of making or having custody or control of things for the making of counterfeits—

- (i) one extending over all things but requiring an intention to use it or permit it to be used for counterfeiting,
- (ii) one limited to things specially designed or adapted for counterfeiting currency notes and being based on there being no lawful authority or excuse, and
- (iii) one limited to implements capable of imparting a resemblance of any part of either side of a protected coin, or the reverse thereof.

The first of these should carry a maximum penalty of 10 years' imprisonment, the other two a maximum of 2 years' imprisonment (paragraph 106 and draft clauses 13 and 15(a) and (b)).

(19) There should be a non-fraudulent offence in relation to—

- (i) reproducing any current British currency note without permission of the relevant authority, and
- (ii) making or distributing in connection with any scheme of sales promotion anything resembling a current British coin in shape, size and the substance of which it is made,

with a penalty of a fine (unlimited on indictment, £400 if tried summarily with the consent of the accused) (paragraph 114 and draft clauses 14 and 15(c)).

(20) So far as possible the offences in the Bill should replace all other offences of forgery in other legislation (paragraphs 76-77 and draft clause 19(3)).

(Signed) SAMUEL COOKE, *Chairman*.
CLAUD BICKNELL.
AUBREY L. DIAMOND.
DEREK HODGSON.
NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary*.

4 May 1973.

APPENDIX A

Draft Forgery and Counterfeit Currency Bill

ARRANGEMENT OF CLAUSES

PART I

Forgery and kindred offences

Clause

1. Forgery: the offence of making a false instrument.
2. The offence of copying a false instrument.
3. The offence of using a false instrument or copy thereof.
4. Offences involving the custody or control of certain false instruments, or the making, custody or control of certain counterfeit dies.
5. Penalties for offences under Part I.
6. Interpretation of Part I.
7. Search for, and seizure and disposal of, forgeries etc., and forging implements.
8. Other provisions supplementary to Part I.

PART II

Counterfeiting and kindred offences

9. The offence of counterfeiting notes and coins.
10. The offence of passing etc. counterfeit notes and coins.
11. The offence of exporting counterfeit notes and coins.
12. Offences involving the custody or control of counterfeit notes and coins.
13. Offences involving the making, or the custody or control, of counterfeiting implements and materials.
14. Other offences.
15. Penalties for offences under Part II.
16. Interpretation of Part II.
17. Search for, and seizure and disposal of, counterfeits etc., and counterfeiting etc. implements.
18. Other provisions supplementary to Part II.

EXPLANATORY NOTES

1. Throughout the text of the Draft Bill certain words appear in bold type. The purpose of this is to indicate to the reader that those words are defined, or their meanings extended in the interpretation clauses. (Clause 6 for Part I and clause 16 for Part II.)

PART III

General

19. Short title, commencement, repeals and extent.

SCHEDULES :

Schedule 1—Certain protected coins.

Schedule 2—Repeals.

EXPLANATORY NOTES

Forgery and Counterfeit Currency Bill

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TO

MAKE fresh provision for England and Wales with respect to forgery, the counterfeiting of notes and coins, and kindred offences; and for purposes connected therewith.

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

PART I

FORGERY AND KINDRED OFFENCES

Forgery: the offence of making a false instrument.

1. It is the offence of forgery for any person to **make a false instrument**, intending that he or another (whether a particular person or not) will use it with the intention of inducing somebody (again, whether a particular person or not) to accept it as genuine, and, by reason of that, to do or refrain from doing some act to his own or any other's **prejudice**.

EXPLANATORY NOTES

Extent

1. The Bill as drafted relates only to England and Wales. We refer in paragraph 78 of the Report to our consultations in regard to the possibility of the provisions or some of them applying to other parts of the United Kingdom as well.
2. Our consultations with the Northern Ireland authorities and with the Home Office indicate that it would be desirable for the whole Bill to apply to Northern Ireland. If it is decided that it shall so apply, appropriate provisions will have to be added to cover its operation in Northern Ireland.
3. Our consultations with the Scottish authorities related only to Part II of the Bill (counterfeiting and kindred offences). It may be that these provisions will be considered appropriate for enactment for Scotland as well. In this event there will have to be appropriate provisions covering the operation of Part II in Scotland.

Clause 1

1. This clause creates the main offence of forgery, and does away with the multiplicity of forgery offences that are differentiated by the nature of the document forged. (Paragraph 17.) It is punishable with a maximum penalty of imprisonment for ten years. (Clause 5.)
2. An instrument is defined in clause 6(1). It means—
 - (a) any instrument in writing, whether of a formal or informal character.
and
 - (b) any disc, tape, sound track or other device on or in which instructions or data are recorded or stored.
3. An instrument is false if, to adopt the words used in the authorities "it tells a lie about itself". This phrase is put into precise language by clause 6(2). There is thus preserved the distinction between a document which merely tells a lie, and one which gives a false idea as to its source or the circumstances of its creation.
4. The making of a false instrument is an offence only if it is made with the requisite intention, namely intending that it be used by anyone, with the intention of inducing somebody to accept it as genuine, and, by reason of that, to act or refrain from acting to his or to any other person's prejudice. (Paragraph 33.) What act or omission would be to a person's prejudice is defined and limited by clause 6(3) to cover anything which, if it occurred, would result in a loss in money or other property, would take the form of giving an opportunity to earn remuneration, or would be the result of his having accepted the false instrument as genuine in connection with the performance by him of any duty.

Forgery and Counterfeit Currency Bill

The offence
of copying
a false
instrument.

2. It is an offence for any person to make a copy of any **instrument** which is, and which he knows or believes to be, **false**, intending that he or another (whether a particular person or not) will use it with the intention of inducing somebody (again, whether a particular person or not) to accept it as a copy of a genuine **instrument**, and, by reason of that, to do or refrain from doing some act to his own or any other's **prejudice**.

EXPLANATORY NOTES

Clause 2

1. This clause creates a separate offence of making a copy of a false instrument. The need for it was pointed by *dicta* in *R. v. Harris* [1966] 1 Q.B. 184 where it was left open whether the making of a photostat copy of a forged document amounted to using a forged document within section 6 of the Forgery Act 1913. (Paragraph 39.) It is punishable in the same way as the offence under clause 1.

2. It is sufficient that the person making the copy knew or believed that the instrument copied was false. For the rest, the mental element required is cast in substantially the same terms as in clause 1.

Forgery and Counterfeit Currency Bill

The offence
of using a
false
instrument
or copy
thereof.

3. It is an offence for any person to use an **instrument** which is, and which he knows or believes to be, **false**, or a copy of any such **instrument**, with the intention of inducing somebody (whether a particular person or not) to accept it as a genuine **instrument** or, as the case may be, a copy of a genuine **instrument**, and, by reason of that, to do or refrain from doing some act to his own or any other's **prejudice**.

EXPLANATORY NOTES

Clause 3

1. This clause creates the offence of using a false instrument, or a copy of it, knowing or believing it to be such. (Paragraph 51.)
2. The manner of use of the instrument is undefined. This is no change in fact from the present law which employs the word "utter" defined so as to include using. (Paragraph 49.)
3. The mental element is an intention to induce somebody to accept the instrument as genuine, or the copy as a copy of a genuine instrument, and, by reason of that, to do or refrain from doing some act to his or another's prejudice. (Paragraph 50.)

Forgery and Counterfeit Currency Bill

Offences involving the custody or control of certain false instruments, or the making, custody or control of certain counterfeit dies.

4.—(1) It is an offence for any person—

- (a) to have in his custody or under his control any **instrument** to which this subsection applies, being one which is, and which he knows or believes to be, **false**, and which he intends that he or another (whether a particular person or not) will use as mentioned in section 1 above, or
- (b) to have in his custody or under his control, without lawful authority or excuse, any **instrument** to which this subsection applies, and which is, and which he knows or believes to be, **false**.

This subsection applies to any **instrument** purporting to be—

- (i) an **instrument** entitling or evidencing the title of a person to a share or interest in any public stock, annuity, fund or debt of any state, whether part of Her Majesty's dominions or not, or in any stock, fund or debt of any corporate or unincorporated body established in the United Kingdom or elsewhere, or
- (ii) a money order, postal order or postage stamp sold by or on behalf of the Post Office.

(2) It is an offence for any person to make a counterfeit of any die to which this subsection applies, or, without lawful authority or excuse, to have in his custody or under his control any thing which is, and which he knows or believes to be, a counterfeit of any such die.

This subsection applies to—

- (a) any die used under the direction of the Commissioners of Inland Revenue for expressing or denoting any stamp duty or rate of stamp duty, or the fact that any such duty or rate, or any penalty, has been paid, or that any **instrument** is duly stamped, or is not chargeable with any stamp duty, or for denoting any fee, and
- (b) any die which is or has been required or authorised by law to be used for the marking or stamping of gold or silver plate or gold or silver wares.

EXPLANATORY NOTES

Clause 4

1. Subsection (1) creates two offences in relation to having custody or control of certain false instruments, each requiring knowledge or belief that the instrument is false. They are differentiated by the mental element. (Paragraph 68.)

(a) The more serious offence, carrying a maximum penalty of imprisonment for 10 years, requires that the false instrument will be used with the intention of inducing another to accept it as genuine, and, by reason of that, to do or refrain from doing some act to his or another's prejudice.

(b) The less serious offence, carrying a maximum penalty of imprisonment for 2 years, requires only that the custody or control is without lawful authority or excuse. The burden of proof upon the defendant is an evidential and not a persuasive burden; that is to say, the burden is discharged if there is sufficient evidence to raise the issue of lawful authority or excuse, whereupon the prosecution must satisfy the court of the guilt of the defendant in the ordinary way. (Paragraph 70.)

2. "Custody" means physical custody and "control" imports the notion of the power to direct what shall be done with the things in question. The words provide a simpler concept than "possession," which is a technical term of some difficulty.

3. The subsection is limited to the instrument specified in paragraphs (a) and (b) which are self-explanatory.

4. Subsection (2) penalises a person who makes or has custody or control of a counterfeit of either of the dies specified in paragraphs (a) and (b). (Paragraph 64.) The maximum penalty is imprisonment for 10 years. (Paragraph 69.)

5. The prosecution must establish that the defendant knew or believed that the thing was a counterfeit of either of the dies, but there is an evidential burden on the defendant in regard to any lawful authority or excuse he relies upon. (Paragraph 69.)

Forgery and Counterfeit Currency Bill

Penalties for
offences
under
Part I.

5. A person guilty of an offence under this Part of this Act shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years, or, in the case of an offence under section 4(1)(b) above, not exceeding two years.

EXPLANATORY NOTES

Clause 5

1. This clause provides the maximum penalties on trial on indictment for offences under this Part of the Bill—

(a) imprisonment for ten years for making a false instrument under clause 1, or a copy of a false instrument under clause 2, using a false instrument or a copy under clause 3 (Paragraph 55), having custody or control of a specified instrument in contravention of clause 4(1)(a), or making or having custody or control of a specified die in contravention of clause 4(2).

(b) imprisonment for two years for having custody or control of a specified instrument in contravention of clause 4(1)(b).

2. For offences tried summarily with the consent of the accused the magistrates' courts' power will be to impose—

(a) imprisonment for up to 6 months and/or

(b) a fine of up to £400.

Forgery and Counterfeit Currency Bill

6.—(1) In this Part of this Act, “instrument” means—

- (a) any instrument in writing, whether of a formal or informal character, with “writing” including for this purpose not only words and letters but also figures and other symbols, and
- (b) any disc, tape, sound track or other device on or in which instructions or data are recorded or stored by mechanical, electronic, chemical or other means :

Provided that a **currency note** within the meaning of Part II of this Act is not an instrument for the purposes of this Part of this Act, nor is any thing which is of interest only historically, or as a collectors’ item.

(2) For the purpose of this Part of this Act—

(a) an **instrument** is false—

- (i) if it purports to have been **made** in the terms in which it stands by or on the authority of a person who did not in fact make it, or authorise its making, in those terms, or
- (ii) if it purports to have been altered in any respect by or on the authority of a person who did not in fact alter it, or authorise its alteration, in that respect, or
- (iii) if it purports to have been **made** or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact **made** or altered, or
- (iv) if it purports to have been **made** or altered by a person who did not in fact exist, and

(b) a person is to be treated as making a **false instrument** if he alters one so as to make it **false** (whether or not it is **false** apart from that alteration).

(3) For the purposes of this Part of this Act, an act or omission intended to be induced is to a person’s prejudice if, and only if, it is one which, if it occurs—

(a) will result in a loss by that person in money or other property, whether a permanent loss or a temporary one only, and with—

(i) “property” meaning for this purpose real and personal property, including things in action and other intangible property, and

(ii) “loss” including for this purpose a loss by not getting what he might get as well as a loss by parting with what he has, or

(b) will take the form of giving to somebody an opportunity to earn from him remuneration, or greater remuneration, in some office, or

(c) will be the result of his having accepted a **false instrument** as genuine, or a copy of a **false instrument** as a copy of a genuine one, in connection with the performance by him of any duty :

EXPLANATORY NOTES

Clause 6

1. Subsection (1) defines the instruments with which the Bill is concerned. Since the making of a counterfeit of a currency note is dealt with in Part II of the Bill this is specifically excluded from the definition.

2. An instrument in writing, whether of a formal or informal character, embraces all those documents, the contents of which are to be acted upon. It excludes such things as paintings (whether signed or not) and it does not include inscriptions on, for example, manufactured goods indicating the name or the country of manufacture. On the other hand the instrument may be of the most informal kind, and will include a telegram purporting to place a bet or a letter requesting the provision of money. (Paragraph 23.)

3. In addition to instruments in writing, paragraph (b) adds to the category of instruments what may be called recordings of instructions or data made on discs, tapes, sound tracks or other devices. The paragraph is framed in wide terms to ensure that any means of recording or storing instructions or data on or in any device is covered. Straightforward examples of things within the paragraph are microfilm records of bank accounts and transactions, instructions for the payment or crediting of money put upon magnetic tape and discs containing information upon which a computer can operate to prepare a series of dividend warrants. (Paragraphs 24-25.)

4. The exclusion of things of interest only historically or as collectors' items prevents things such as ancient title deeds and historic letters or other documents being included. Forgeries of such documents would be made not to induce another to act upon their contents but to part with money for them in the belief that they were genuine. Such use would usually be a deception offence within section 15 of the Theft Act 1968, and the mere making of the documents is not penalised by the Bill. (Paragraph 23.)

5. Subsection (2) defines when an instrument is false. This depends not upon whether it makes a false statement, but basically upon whether it purports to be what it is not. This is spelt out by the sub-paragraphs, which together cover all situations. (Paragraph 43.)

6. Paragraph (b) of subsection (2) is self-explanatory.

7. Subsection (3) defines when an act or omission intended to be induced is, if it were to occur, to a person's prejudice. This replaces the requirement of the present law of an intention to defraud or deceive and gives effect to paragraphs 32-35 of the Report.

8. Paragraph (a) follows closely the provisions of the Theft Act 1968. It will cover the great majority of forgery cases, such as the making of false cheques, wills and travel or admission tickets. In each of these cases the result of the acceptance of the document as genuine will be that another either parts with property, or does not get property which he would have got.

9. Paragraph (b) covers the special case of forgery of, for example, a false testimonial in order to obtain employment. In such a case the person who obtains employment may do the work sufficiently well to earn the remuneration and there would be no loss to the employer within paragraph (a). Paragraph (b) provides that this case will nevertheless be covered.

10. Paragraph (c) covers, for example, the case where a doorkeeper is to be induced by a false instrument, such as a door pass, to admit an unauthorised person to premises. It also covers the type of case, of

Forgery and Counterfeit Currency Bill

Provided that there shall be disregarded for the said purposes any act which a person has an enforceable duty to do, and any omission to do an act which a person is not entitled to do.

(4) In this Part of this Act, references to inducing somebody to accept a **false instrument** as genuine, or a copy of a **false instrument** as a copy of a genuine one, include references to inducing a machine to respond to the **instrument** or copy as if it were a genuine **instrument** or, as the case may be, a copy of a genuine one; and where this sub-section applies, the act or omission intended to be induced by the machine's responding to the **instrument** or copy as aforesaid shall in all cases be treated as one to a person's prejudice.

EXPLANATORY NOTES

Clause 6 (continued)

which *Welham v. D.P.P.* [1961] A.C. 103 is an example, where the intention in the making or using of the false instrument is to induce someone responsible for a duty to behave in a way in which he would not have behaved in relation to that duty had he not accepted the instrument as genuine.

11. The final provision ensures that there shall be disregarded in connection with prejudice any act which a person has an enforceable duty to do or any omission to do an act which a person is not entitled to do.

12. Sub-section (4) is required to deal with those cases where the false instrument, whether it be an instrument in writing or a disc, tape, sound track or other device, is made or used to cause a machine to respond to it as if it were a genuine instrument. The use of a false card to cause a bank's cash dispensing machine to pay out money would not be within Clause 3 standing alone as there would be no intention of inducing somebody to accept it as genuine and to act upon it. (Paragraph 36.)

Forgery and Counterfeit Currency Bill

Search for, and seizure and disposal of, forgeries, etc., and forging implements.

7.—(1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control—

- (a) any **false instrument**, or copy of a **false instrument**, which he or another has used, or intends to use, in contravention of section 3 above, or
- (b) a **counterfeit** of any die to which section 4(2) above applies, or
- (c) any thing which he or another has used, or intends to use, for the **making** of any **false instrument**, or copy of a **false instrument**, in contravention of section 1 or, as the case may be, 2 above,

the justice may issue a warrant authorising a constable to search for and seize the object in question, and, for that purpose, to enter any premises specified in the warrant.

(2) An officer of the police may at any time after the seizure of any object suspected of falling within paragraph (a), (b) or (c) of subsection (1) above (and whether the seizure was effected by virtue of a warrant under that sub-section or otherwise) apply to a magistrates' court for an order under this subsection with respect to the object; and the court, if satisfied both that the object in fact falls within one or other of those paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the confiscation of the object and its subsequent destruction or disposal.

EXPLANATORY NOTES

Clause 7

1. Subsection (1) gives power to search under warrant for any false instrument (or a copy of a false instrument) which has been used or is intended to be used in contravention of clause 3, any counterfeit of a die to which clause 4(2) relates, or any thing which has been used or is intended to be used for making a false instrument or copy of a false instrument in contravention of clauses 1 or 2. (Paragraphs 73-74.)

2. Subsection (2) empowers a magistrates' court to make a confiscation order in respect of any false instrument, a thing used or intended to be used for making a false instrument, or a counterfeit of a specified die, where it is necessary to ensure it does not remain available for use. (Paragraph 75.)

Forgery and Counterfeit Currency Bill

Other provisions supplementary to Part I. 15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.

8.—(1) For paragraph 10 of Schedule 1 to the Magistrates' Courts Act 1952 (which enables certain indictable offences by adults under the Forgery Act 1913 to be dealt with summarily with the consent of the accused) there shall be substituted the following paragraph—

“ 10. Any offence under Part I of the Forgery and Counterfeit Currency Act 1973.”;

but offences under Part I of this Act shall be offences to which section 19(7)(a) of that Act applies (that is to say, offences triable summarily only with the consent of the prosecutor also).

7 & 8 Eliz. 2. c. 72.

(2) For sub-section (1) of section 125 of the Mental Health Act 1959 (forgery etc. of certain documents) there shall be substituted the following subsections—

“ (1) Any person who has in his custody or under his control any document to which this subsection applies, and which is, and which he knows or believes to be, false within the meaning of Part I of the Forgery and Counterfeit Currency Act 1973 shall be guilty of an offence.

This subsection applies to any document purporting to be—

- (a) an application under Part IV of this Act, or
- (b) a medical recommendation or report under this Act, or
- (c) any other document required or authorised to be made for any of the purposes of this Act.

(1A) Any person who makes, or has in his custody or under his control, any document so closely resembling a document falling within paragraph (a), (b) or (c) of subsection (1) above as to be calculated to deceive shall be guilty of an offence.”

(3) The common law offence of forgery is hereby abolished.

EXPLANATORY NOTES

Clause 8

1. Subsection (1) amends the Magistrates' Courts Act 1952 to allow offences under Part I of the Bill to be tried summarily with the consent of the accused and of the prosecution. (Paragraph 60.)
2. Subsection (2) amends section 125 of the Mental Health Act 1959 to take account of the provisions of the Bill.
3. Subsection (3) abolishes the common law offence of forgery. (Paragraph 76.)

Forgery and Counterfeit Currency Bill

PART II

COUNTERFEITING AND KINDRED OFFENCES

The offence
of counter-
feiting notes
and coins.

9. It is an offence for any person to **make a counterfeit** of a **currency note** or of a **protected coin**, intending that he or another (whether a particular person or not) will **pass or tender** it as genuine.

EXPLANATORY NOTES

Clause 9

1. This clause creates the main counterfeiting offence and brings together as one offence the counterfeiting of currency notes and coins. It is punishable with a maximum penalty of imprisonment for 10 years. (Clause 15(a)).

2. A currency note is defined in clause 16(1) and in brief means a note that has been lawfully issued and is customarily used as money. In relation to notes of the United Kingdom and Islands and of the Republic of Ireland it includes notes which remain payable by the banks, but are no longer used as currency. The coins covered by the clause are those customarily used as money with certain specific additions. (Paragraphs 82-84.)

3. A counterfeit is defined in clause 16(3) as that which sufficiently resembles a note or coin to be reasonably capable of passing for it. It will be for the trier of fact in each case to decide whether, having regard to the thing counterfeited and the degree of resemblance, the test is satisfied. Accordingly, a thing may be a counterfeit notwithstanding that only one surface or face of it resembles a genuine note or coin, or that it bears words only discernible on a close examination, indicating that it is a copy or specimen only. (Paragraphs 85-87.)

4. The making of a counterfeit is an offence only if there is an intention that it be passed or tendered as genuine. This does not mean that there must be an intention that the counterfeit be passed as money. Hence the making of a counterfeit of a sovereign for sale as a genuine sovereign will be an offence. (Paragraphs 88-89.)

Forgery and Counterfeit Currency Bill

The offence
of passing,
etc., counter-
feit notes and
coins.

10.—It is an offence for any person—

- (a) to **pass or tender** as genuine anything which is, and which he knows or believes to be, a **counterfeit** of a **currency note** or of a **protected coin**, or
- (b) to deliver to another anything which is, and which he knows or believes to be, such a **counterfeit**, intending that that other or some further person (whether a particular person or not) will **pass or tender** it as genuine.

EXPLANATORY NOTES

Clause 10

1. This clause penalises the use of a counterfeit, whether of a currency note or a protected coin. It is made an offence to pass or tender it as genuine, or to deliver it to another intending that it be passed as genuine. The latter provision ensures that a person involved in the distribution of counterfeits to another through whom they will be put into circulation is within the clause. The maximum penalty is imprisonment for 10 years. (Clause 15(a).) (Paragraph 93.)

2. Knowledge or belief that the thing is a counterfeit is required.

Forgery and Counterfeit Currency Bill

The offence of exporting counterfeit notes and coins.

11. It is an offence for any person to export from the United Kingdom without lawful authority or excuse any thing which is, and which he knows or believes to be, a **counterfeit** of a **currency note** or of a **protected coin**.

EXPLANATORY NOTES

Clause 11

1. This clause re-enacts in simpler terms section 7(1)(b) of the Coinage Offences Act 1936, with a maximum penalty of imprisonment for 10 years.
2. The re-enactment of this offence, which both the Treasury and Her Majesty's Customs and Excise wished to retain, allows the whole of the Coinage Offences Act to be repealed.

Forgery and Counterfeit Currency Bill

Offences
involving the
custody or
control of
counterfeit
notes and
coins.

12. It is an offence for any person—
- (a) to have in his custody or under his control any thing which is, and which he knows or believes to be, a **counterfeit** of a **currency note** or of a **protected coin**, intending either to **pass or tender** it as genuine or to deliver it to another with the intention that that other or some further person (whether a particular person or not) will **pass or tender** it as genuine, or
 - (b) to have in his custody or under his control, without lawful authority or excuse, any thing which is, and which he knows or believes to be, such a **counterfeit**.

EXPLANATORY NOTES

Clause 12

1. This clause creates two offences of having custody or control of a counterfeit of a note or coin. Each requires knowledge or belief that the thing is a counterfeit. (Paragraphs 98-100.)
2. The first offence requires an intention that the counterfeit be passed as genuine and carries a maximum penalty of imprisonment for 10 years. (Clause 15(a)).
3. The second offence does not require an intention that the counterfeit be passed as genuine, but it is committed except where the accused has lawful authority or excuse. The maximum penalty is imprisonment for 2 years. (Clause 15(b)).

Forgery and Counterfeit Currency Bill

Offences involving the making, or the custody or control, of counterfeiting implements and materials.

13.—It is an offence for any person—

- (a) to make, or to have in his custody or under his control, any thing which he intends to use, or to permit any other person to use, for the purpose of making a **counterfeit** of a **currency note** or of a **protected coin** with the intention that it be **passed or tendered** as genuine by any person whomsoever, or
- (b) to make, or to have in his custody or under his control in either case without lawful authority or excuse, any thing which, to his knowledge, is or has been specially designed or adapted for the making of a **counterfeit** of a **currency note**, or
- (c) to have in his custody or under his control, in either case without lawful authority or excuse, any implement which, to his knowledge, is capable of imparting to any thing a resemblance of either side of a **protected coin**, or of any part of such a resemblance, or of the reverse thereof.

EXPLANATORY NOTES

Clause 13

1. This clause penalises making or having custody or control of things for counterfeiting. Three offences are created.
2. The first offence relates to anything to be used for making a counterfeit of a note or coin. It requires an intention that the thing be used to make a counterfeit to be passed or tendered as genuine, and carries a maximum penalty of imprisonment for 10 years. (Clause 15(a)) (Paragraphs 102-103.)
3. The second offence relates to anything specially designed or adapted for making a counterfeit of a currency note. No intention is required for its commission, but the offence is subject to the accused having lawful authority or excuse. It carries a maximum penalty of imprisonment for 2 years. (Clause 15(b)) (Paragraph 104.)
4. The third offence relates to any implement which is capable of imparting the resemblance of any part of a protected coin, or the reverse thereof. Again no intention is required, and the offence is subject to a lawful authority or excuse defence. The maximum penalty is imprisonment for 2 years. (Paragraph 105.)

Forgery and Counterfeit Currency Bill

Other
offences.

14. It is an offence for any person—

- (a) without the previous consent in writing of the **relevant authority**, to reproduce on any substance whatsoever, and whether or not on the same scale, any **British currency note** or part of such a note, or
- (b) unless the Treasury have previously consented in writing to the sale or distribution thereof in connection with a scheme intended to promote the sale of any product, to make, sell or distribute in connection with any such scheme, or to have in his custody or under his control with a view to such sale or distribution, any thing which resembles a **British coin** in shape, size and the substance of which it is made.

EXPLANATORY NOTES

Clause 14

1. This clause creates two offences—one in relation to British currency notes and one in relation to British coins—aimed at restricting the reproduction of notes, and the making of things which might be used as coins, without authority. The penalty is limited to a fine.

2. Paragraph (a) relates to notes and replaces section 38 of the Criminal Justice Act 1925. The new offence does not require that the "note" should purport to be or so nearly resemble a genuine note as to be calculated to deceive, requirements which very largely nullified the usefulness of the old section. The offence in the Bill will cover reproduction of notes appearing, for example, in newspapers and magazines, as well as separate pieces of paper carrying reproductions of the devices on genuine notes. (Paragraph 109.)

3. Paragraph (b) relates to coins and replaces section 8 of the Coinage Offences Act 1936. Its provisions are not entirely coincident with those in section 8, because the prohibition is limited to making, distribution or having anything resembling a coin in connection with a sales promotion scheme. Possession of things which so nearly resemble a current coin as to be likely to pass for it will be caught by the second possession offence created by clause 10(b). (Paragraphs 110-112.)

4. British notes and British coins are defined in clause 16(2) as being limited to current notes and current coins.

Forgery and Counterfeit Currency Bill

Penalties for
offences
under
Part II.

15. A person guilty of an offence under any of the preceeding provisions of this part of this Act shall be liable on conviction on indictment as follows:—

- (a) except in the case of an offence under section 12(b), 13(b), 13(c) or 14, to imprisonment for a term not exceeding ten years,
- (b) in the case of an offence under the said section 12(b) or the said section 13(b) or 13(c), to imprisonment for a term not exceeding two years, and
- (c) in the case of an offence under section 14, to a fine.

EXPLANATORY NOTES

Clause 15

This clause prescribes the penalties for the offences created by this Part of the Bill—

- (a) ten years' imprisonment for counterfeiting, passing or tendering a counterfeit as genuine, delivering a counterfeit to another intending that it will be passed or tendered as genuine, exporting a counterfeit, possessing a counterfeit intending to pass or tender it as genuine or making or possessing things for making counterfeits to be passed or tendered as genuine,
- (b) two years' imprisonment for possessing a counterfeit, or for making or possessing certain special things capable of making counterfeits, in each case without lawful authority or excuse, and
- (c) a fine for reproducing a British currency note without authority, or making or distributing anything resembling a British coin in size, shape and the substance of which it is made without authority in contravention of clause 14.

Forgery and Counterfeit Currency Bill

Interpreta-
tion of
Part II.

16.—(1) In this Part of this Act:—

“currency note” means any note which—

(a) has been lawfully issued in England and Wales, Scotland, Northern Ireland, any of the Channel Islands, the Isle of Man or the Republic of Ireland, is or has been customarily used as money in the country where it was issued, and is payable on demand, or

(b) has been lawfully issued in some other country and is customarily used as money in that country; and

“protected coin” means any coin which either is customarily used as money in any country, or is mentioned in Schedule 1 to this Act, or is specified in an order made by the Treasury for the purposes of this Part of this Act.

(2) In section 14 of this Act:—

“British currency note” means any note which has been lawfully issued in England and Wales, Scotland or Northern Ireland, is or has been customarily used as money in the country where it was issued, and is payable on demand; and “British coin” means any coin which is legal tender in any part of the United Kingdom;

and in relation to a British currency note of any particular description, “the relevant authority” means the authority empowered by law to issue notes of that description.

(3) For the purposes of this Part of this Act—

(a) a thing is a counterfeit of a **currency note** or of a **protected coin** if it sufficiently resembles the note or coin (whether on one side only or on both) to be reasonably capable of passing for it (and for the avoidance of doubt, it is hereby declared that a thing consisting of one side only of a **currency note**, with or without the addition of other material, is a counterfeit of that note, and that a thing consisting of parts of two or more **currency notes** is capable of being a **counterfeit** of a currency note);

(b) references to the making of a **counterfeit** of a **protected coin** include references to altering the size, shape, colour or design of any coin; and

(c) references to the passing or tendering of a **counterfeit** of a **currency note** or of a **protected coin** are not to be construed as confined to the passing or tendering of it as legal tender.

EXPLANATORY NOTES

Clause 16

This is the interpretation clause.

Forgery and Counterfeit Currency Bill

Search for,
and seizure
and disposal
of, counter-
feits, etc., and
counter-
feiting, etc.,
implements.

17.—(1) If it appears to a justice of the peace, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control—

(a) any thing which is a **counterfeit** of a **currency note** or of a **protected coin**, or is a reproduction made in contravention of section 14(a) above, or

(b) any thing which he or another has used, or intends to use, for the making of any such **counterfeit**, or the making of any reproduction in contravention of the said section 14(a),

the justice may issue a warrant authorising a constable to search for and seize the thing in question, and, for that purpose, to enter any premises specified in the warrant.

(2) An officer of the police may at any time after the seizure of any object suspected of falling within paragraph (a) or (b) of subsection (1) above (and whether the seizure was effected by virtue of a warrant under that subsection or otherwise) apply to a magistrates' court for an order under this subsection with respect to the object; and the court, if satisfied both that the object in fact falls within one or other of those paragraphs and that it is conducive to the public interest to do so, may make such order as it thinks fit for the confiscation of the object and its subsequent destruction or disposal.

EXPLANATORY NOTES

Clause 17

1. Subsection (1) provides for the issue of search warrants for counterfeits and for anything that has been used or is intended to be used for making a counterfeit.
2. Subsection (2) provides a procedure for obtaining confiscation of certain things parallel to the procedure prescribed in clause 7.

Forgery and Counterfeit Currency Bill

Other provisions supplementary to Part II. 15 & 16 Geo. 6. & 1 Eliz. 2. c.55.

18.—(1) Schedule 1 to the Magistrates' Courts Act 1952 (which specifies certain indictable offences by adults which may be dealt with summarily with the consent of the accused) shall be amended by inserting the following paragraph after paragraph 10—

“ 10A. Any offence under Part II of the Forgery and Counterfeit Currency Act 1973.”;

but offences under any of sections 9–13 above shall be offences to which section 19(7)(a) of that Act applies (that is to say, offences triable summarily only with the consent of the prosecutor also).

(2) The power to make an order conferred on the Treasury by section 16(1) above shall—

(a) be exercisable by statutory instrument, and

(b) include power to vary or revoke any order previously made in the exercise of that power;

and any statutory instrument made by virtue of this sub-section shall be laid before Parliament.

EXPLANATORY NOTES

Clause 18

Subsection (1) amends the Magistrates' Courts Act 1952 to allow any offence under Part II to be tried summarily with the consent of the accused, subject in the case of offences under clauses 9-13, to the agreement of the prosecution.

Forgery and Counterfeit Currency Bill

PART III

GENERAL

Short title,
commence-
ment,
repeals and
extent.

19.—(1) This Act may be cited as the Forgery and Counterfeit Currency Act 1973.

(2) This Act shall come into force on 1st January, 1974.

(3) The enactments mentioned in the first and second columns of schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(4) This Act extends to England and Wales only.

EXPLANATORY NOTES

Clause 19

1. Subsection (2) provides a date of commencement for the Bill, which will be fixed by Parliament.
2. Subsection (3) gives effect to the repeal policy set out in paragraph 77.
3. Subsection (4) is subject to alteration. We refer to the Explanatory Note on the long title and to paragraph 78 in regard to the possible wider extent of Part II in particular.

Forgery and Counterfeit Currency Bill

SCHEDULES

SCHEDULE 1

1. Any gold coin which—

- (a) is of a denomination specified in an entry in the second column of the following table; and
- (b) is of a design determined before the passing of this Act by the authority of the country mentioned in the corresponding entry in the first column of that table who had power under the law of that country to determine that design; and
- (c) has been issued either before or after the passing of this Act by the authority having power under the law of that country to issue the coin.

Table

Argentine	5 pesos
Austria	100 crowns 4 ducats
France	20 francs
Italy	100 lire
Mexico	50 pesos 20 pesos 10 pesos
Netherlands	10 guilders 5 guilders
South Africa	krugerrand
Spain	25 pesetas
Switzerland	20 francs 10 francs
United Kingdom	5 pounds 2 pounds sovereign half-sovereign
United States of America	20 dollars 10 dollars 5 dollars 2½ dollars 1 dollar

2. The silver coin which is of the denomination of 1 thaler and is of the design commonly known as the “Maria Theresa thaler” and has been issued either before or after the passing of this Act by the authority having power under the law of Austria to issue that coin.

Forgery and Counterfeit Currency Bill

SCHEDULE 2

REPEALS

<i>Session and Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
32 Geo. 3. c. 56.	The Servants' Characters Act 1792.	In section 1, the word "either", the words "or in writing", and the words "forged or counterfeited". In section 4, the words "forged or counterfeit", and the words from "or shall" to "the same".
52 Geo. 3. c. 155.	The Places of Religious Worship Act 1812.	In section 10, the words "false or".
6 & 7 Vict. c. 86.	The London Hackney Carriages Act 1843.	In section 14, the words from "or who" to "forged recommendations". In section 20, all the words from the beginning to the second "and also", and the words from the third "and also" to "as aforesaid".
24 & 25 Vict. c. 98.	The Forgery Act 1861.	The whole Act, so far as unrepealed, except sections 34, 36, 37 and 55.
34 & 35 Vict. c. 96.	The Pedlars Act 1871.	In section 12, paragraphs (2), (4) and (5).
35 & 36 Vict. c. 93.	The Pawnbrokers Act 1872.	In section 44, all the words from the beginning to "hard labour".
45 & 46 Vict. c. 50.	The Municipal Corporations Act 1882.	Section 235.
48 & 49 Vict. c. 49.	The Submarine Telegraph Act 1885.	Section 8 (4).
57 & 58 Vict. c. 60.	The Merchant Shipping Act 1894.	Section 66. In section 104, paragraph (a), and, in paragraph (c), the words "forged, altered". In section 282, paragraph (b) and the immediately preceding "or". In section 564, paragraphs (a) and (b). Section 695 (4). Section 722 (1).
6 Edw. 7. c. 5.	The Seamen's and Soldiers' False Characters Act 1906.	In section 1 (1), the words from "forges" to "discharge, or". In section 2, the words from "any forged" to "employment, or".
3 & 4 Geo. 5. c. 27.	The Forgery Act 1913.	The whole Act.
10 & 11 Geo. 5. c. 75.	The Official Secrets Act 1920.	In section 1 (1) (c), the words "forges, alters, or", the words "or uses", and the word "such".

Forgery and Counterfeit Currency Bill

<i>Session and Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
15 & 16 Geo. 5. c. 86.	The Criminal Justice Act 1925.	In section 11 (3), the words from "against" to the second "or". Section 35. In section 36 (1), the words "The forgery of any passport or"; and section 36 (2). Section 38.
21 & 22 Geo. 5. c. 43.	The Improvement of Live Stock (Licensing of Bulls) Act 1931.	In section 8 (1) (i), the words "forges or"; and section 8 (2).
24 & 25 Geo. 5. c. 49.	The Whaling Industry (Regulation) Act 1934.	In section 9 (1) (a), the words "forges or", and the words from "or forges" to "Act"; and section 9 (2).
25 & 26 Geo. 5. c. 25.	The Counterfeit Currency (Convention) Act 1935.	In section 1 (1), the words "the Forgery Act, 1913, and", Sections 2 and 6 (2).
26 Geo. 5 & 1 Edw. 8. c. 16.	The Coinage Offences Act 1936.	The whole Act.
9 & 10 Geo. 6. c. 73.	The Hill Farming Act 1946.	In section 19 (2) (a), all the words from the beginning to the first "or".
11 & 12 Geo. 6. c. 64.	The National Service Act 1948.	In section 30 (b) (i), the words "forges or".
14 Geo. 6. c. 36.	The Diseases of Animals Act 1950.	Section 78 (2) (iv).
1 & 2 Eliz. 2. c. 20.	The Births and Deaths Registration Act 1953.	In section 37, the words "forges or", and the words "or forged".
1 & 2 Eliz. 2. c. 36.	The Post Office Act 1953.	In section 23 (1), the words "of the Forgery Act 1913", the words "and" and "other" in the expression "and of any other enactment", and the words "forgery or"; and section 23 (2).
2 & 3 Eliz. 2. c. 70.	The Mines and Quarries Act 1954.	In section 161 (1) (a), the words "forges or".
6 & 7 Eliz. 2. c. 43.	The Horse Breeding Act 1958.	Section 11.
6 & 7 Eliz. 2. c. 51.	The Public Records Act 1958.	In Schedule 3, the entry relating to the Forgery Act 1913.
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959	Section 125 (4). In Part I of Schedule 7, the entry relating to the Forgery Act 1913.
9 & 10 Eliz. 2. c. 34.	The Factories Act 1961.	In section 159, paragraph (a), in paragraph (c), the words "so forged, counterfeited, or", and, in paragraph (g), the words "forging, counterfeiting,".

Forgery and Counterfeit Currency Bill

<i>Session and Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
10 & 11 Eliz. 2. c. 8.	The Civil Aviation (Euro-control) Act 1962.	Section 6 (5).
10 & 11 Eliz. 2. c. 15.	The Criminal Justice Administration Act 1962.	In Schedule 3, paragraph 7.
1964 c. 26.	The Licensing Act 1964.	Section 36 (3). Section 159.
1967 c. 58.	The Criminal Law Act 1967.	In Schedule 2, paragraph 11.
1967 c. 76.	The Road Traffic Regulation Act 1967.	In section 86 (1), the words "forges or" in paragraph (a), and all the words from "In the application" onwards.
1967 c. 80.	The Criminal Justice Act 1967.	Section 27.
1971 c. 10.	The Vehicles (Excise) Act 1971.	In section 26 (1), the words "forges or".
1971 c. 24.	The Coinage Act 1971.	In section 12 (1), the words "the Coinage Offences Act 1936 and in", and the words from "and accordingly" onwards. In Schedule 2, the words "The Coinage Offences Act 1936".
1971 c. 40.	The Fire Precautions Act 1971.	In section 22 (1) (a), the words "forges a fire certificate or"; and section 22 (3).
1972 c. 20.	The Road Traffic Act 1972.	In section 169 (1) (a), the words "forges, or"; and, in section 169 (3), the words from "and in the" onwards.

APPENDIX B

Individuals and organisations who commented on the Working Paper

1. *Individuals*

Professor J. A. Andrews
Detective Inspector V. Claisse
Mr. P. R. Glazebrook
Professor G. H. Gordon
Professor E. J. Griew
Doctor T. B. Haddon
His Honour Judge King-Hamilton, Q.C.
Mr. D. G. Maddison
Mr. D. Royall
Professor J. C. Smith
His Honour Judge Sutcliffe, Q.C.

2. *Organisations and Departments*

Association of Chief Police Officers
Bank of England
Birmingham Assay Office
Board of Customs and Excise
British Antique Dealers Association
Department of Trade and Industry
Director of Public Prosecutions
General Council of the Bar
Home Office
Institute of Legal Executives
Justices' Clerks Society
London Criminal Courts Solicitors Association
London Goldsmiths Company
Metropolitan Police Solicitors' Office
Parliamentary Draftsman, Northern Ireland
Police College
Post Office
Prosecuting Solicitors Society
Royal Mint
Society of Clerks of the Peace
Society of Conservative Lawyers
Society of Public Teachers of Law
Solicitor to the Secretary of State for Scotland
The Law Society
Treasury.

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