



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART V

#### JURISDICTION, IMPRISONMENT, FINES, ETC.

##### *Jurisdiction*

#### **37 Certain either way offences relating to motor vehicles to be summary offences.**

(1) In section 12 of the <sup>M1</sup>Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.)—

- (a) in subsection (2), for the words “on conviction on indictment be liable to imprisonment for a term not exceeding three years.” there shall be substituted the words “be liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.”; and
- (b) at the end of subsection (4) there shall be added the words “and if he is found guilty of it, he shall be liable as he would have been liable under subsection (2) above on summary conviction.”.

(2<sup>F1</sup>)

#### **Textual Amendments**

**F1** Ss. 37(2), 63, 68 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, 2

#### **Marginal Citations**

**M1** 1968 c. 60.

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### 38 Criminal damage etc. as summary offences.

- (1) In subsection (1) of section 22 of the <sup>M2</sup>Magistrates' Courts Act 1980 (under which, where an offence of or related to criminal damage is charged and it appears to a magistrates' court clear that the value involved does not exceed the relevant sum, the court is required to proceed as if the offence charged were triable only summarily) in the second paragraph (which states the relevant sum) for "£400" there shall be substituted "£2,000".
- (2) Subsection (1) above does not apply to an offence charged in respect of an act done before this section comes into force.
- (3) The following subsection shall be inserted after subsection (10) of that section—
- “(11) Where—
- (a) the accused is charged on the same occasion with two or more scheduled offences and it appears to the court that they constitute or form part of a series of two or more offences of the same or a similar character; or
- (b) the offence charged consists in incitement to commit two or more scheduled offences,
- this section shall have effect as if any reference in it to the value involved were a reference to the aggregate of the values involved.”
- (4) Subsection (3) above does not apply where any of the offences are charged in respect of acts done before this section comes into force.

#### Marginal Citations

M2 1980 c. 43.

### 39 Common assault and battery to be summary offences.

Common assault and battery shall be summary offences and a person guilty of either of them shall be liable to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.

### 40 Power to join in indictment count for common assault etc.

- (1) A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge—
- (a) is founded on the same facts or evidence as a count charging an indictable offence; or
- (b) is part of a series of offences of the same or similar character as an indictable offence which is also charged,
- but only if (in either case) the facts or <sup>M2</sup>evidence relating to the offence were disclosed [<sup>F2</sup>to a magistrates' court inquiring into the offence as examining justices][<sup>F3</sup>or are disclosed by material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998 (procedure where person sent for trial under section 51), has been served on the person charged].

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- (2) Where a count charging an offence to which this section applies is included in an indictment, the offence shall be tried in the same manner as if it were an indictable offence; but the Crown Court may only deal with the offender in respect of it in a manner in which a magistrates' court could have dealt with him.
- (3) The offences to which this section applies are—
- (a) common assault;
  - [<sup>F4</sup>(aa) an offence under section 90(1) of the Criminal Justice Act 1991 (assaulting a prisoner custody officer);
  - (ab) an offence under section 13(1) of the Criminal Justice and Public Order Act 1994 (assaulting a secure training centre custody officer)]
  - (b) an offence under section 12(1) of the <sup>M3</sup>Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.);
  - (c) an offence under [<sup>F5</sup>section 103(1)(b) of the Road Traffic Act 1988] (driving a motor vehicle while disqualified);
  - (d) an offence mentioned in the first column of Schedule 2 to the <sup>M4</sup>Magistrates' Courts Act 1980 (criminal damage etc.) which would otherwise be triable only summarily by virtue of section 22(2) of that Act; and
  - (e) any summary offence specified under subsection (4) below.
- (4) The Secretary of State may by order made by statutory instrument specify for the purposes of this section any summary offence which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F2** Words in s. 40(1) substituted (4.7.1996 with effect as mentioned in Sch. 1 Pt. II para. 39 of the substituting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 34**, Pt. III para. 39 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F3** Words in s. 40(1) inserted (4.1.1999 for specified purposes and otherwise 15.1.2001) by 1998 c. 37, s. 119, **Sch. 8 para. 66**; S.I. 1998/2327, **art. 4(2)(c)**; S.I. 2000/3283, **art. 2(c)**
- F4** S. 40(3)(aa)(ab) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 35**; S.I. 1995/127, art. Sch. 1, Appendix A
- F5** Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 108:1), s. 4, **Sch. 3 para. 39**

#### Modifications etc. (not altering text)

- C1** S. 40 modified (1.12.1998) by 1998 c. 37, s. 52(6), **Sch. 3 para. 6(8)**; S.I. 1998/2327, **art. 4(2)**

#### Marginal Citations

- M3** 1968 c. 60.  
**M4** 1980 c. 43.

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#### **41 Power of Crown Court to deal with summary offence where person committed for either way offence.**

- (1) Where a magistrates' court commits a person to the Crown Court for trial on indictment for an offence triable either way or a number of such offences, it may also commit him for trial for any summary offence with which he is charged and which—
- (a) is punishable with imprisonment or involves obligatory or discretionary disqualification from driving; and
  - (b) arises out of circumstances which appear to the court to be the same as or connected with those giving rise to the offence, or one of the offences, triable either way,

whether or not evidence relating to that summary offence appears on the depositions or written statements in the case; and the trial of the information charging the summary offence shall then be treated as if the magistrates' court had adjourned it under section 10 of the <sup>M5</sup>Magistrates' Courts Act 1980 and had not fixed the time and place for its resumption.

- (2) Where a magistrates' court commits a person to the Crown Court for trial on indictment for a number of offences triable either way and exercises the power conferred by subsection (1) above in respect of a summary offence, the magistrates' court shall give the Crown Court and the person who is committed for trial a notice stating which of the offences triable either way appears to the court to arise out of circumstances which are the same as or connected with those giving rise to the summary offence.
- (3) A magistrates' court's decision to exercise the power conferred by subsection (1) above shall not be subject to appeal or liable to be questioned in any court.
- (4) The committal of a person under this section in respect of an offence to which section 40 above applies shall not preclude the exercise in relation to the offence of the power conferred by that section; but where he is tried on indictment for such an offence, the functions of the Crown Court under this section in relation to the offence shall cease.
- (5) If he is convicted on the indictment, the Crown Court shall consider whether the conditions specified in subsection (1) above were satisfied.
- (6) If it considers that they were satisfied, it shall state to him the substance of the summary offence and ask him whether he pleads guilty or not guilty.
- (7) If he pleads guilty, the Crown Court shall convict him, but may deal with him in respect of that offence only in a manner in which a magistrates' court could have dealt with him.
- (8) If he does not plead guilty, the powers of the Crown Court shall cease in respect of the offence except as provided by subsection (9) below.
- (9) If the prosecution inform the Court that they would not desire to submit evidence on the charge relating to the summary offence, the Court shall dismiss it.
- (10) The Crown Court shall inform the clerk of the magistrates' court of the outcome of any proceedings under this section.
- (11) Where the Court of Appeal allows an appeal against conviction of an offence triable either way which arose out of circumstances which were the same as or connected

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with those giving rise to a summary offence of which the appellant was convicted under this section—

- (a) it shall set aside his conviction of the summary offence and give the clerk of the magistrates' court notice that it has done so; and
- (b) it may direct that no further proceedings in relation to the offence are to be undertaken;

and the proceedings before the Crown Court in relation to the offence shall thereafter be disregarded for all purposes.

- (12) A notice under subsection (11) above shall include particulars of any direction given under paragraph (b) of that subsection in relation to the offence.
- (13) The references to the clerk of the magistrates' court in this section are to be construed in accordance with section 141 of the <sup>M6</sup>Magistrates' Courts Act 1980.

**Modifications etc. (not altering text)**

**C2** S. 41(7) amended (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), **s. 18(9)** ( with ss. 58(4), 101(1), Sch. 12 para. 6); [S.I. 1992/333](#), **art. 2(2)**, **Sch.2**.

**Marginal Citations**

**M5** 1980 c. 43.  
**M6** 1980 c. 43.

**42 Amendments relating to committal for sentence.**

- (1) Section 56 of the <sup>M7</sup>Criminal Justice Act 1967 shall be amended as follows.
- (2) In subsection (1), for the words "offence triable either way" there shall be substituted the words "indictable offence".
- (3) In subsection (2), for the words from "and sections 8(6)" to the end there shall be substituted the words " , section 8(6) of the <sup>M8</sup>Powers of Criminal Courts Act 1973 (probationer convicted of subsequent offence) and section 24(2) of that Act and paragraph 2(2)(a) of Schedule 9 to the <sup>M9</sup>Criminal Law Act 1977 (committal to be dealt with in respect of a wholly or partly suspended sentence)".

**Marginal Citations**

**M7** 1967 c. 80.  
**M8** 1973 c. 62.  
**M9** 1977 c. 45.

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