



# 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**F1** Ss. 37(2), 63, 68 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, 2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 evidence relating to the offence were disclosed in an examination or deposition taken before a justice in the presence of the person charged.
- (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

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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>F2</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>F3</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** 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
- F3** Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 108:1), s. 4, **Sch. 3 para. 39**

#### Marginal Citations

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

## 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

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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 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.

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

**C1** 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.

*Power of Court of Appeal to order retrial*

**43 Power of Court of Appeal to order retrial.**

- (1) The <sup>M10</sup>Criminal Appeal Act 1968 shall be amended as follows.
- (2) In section 7(1), the words “and do so only by reason of evidence received or available to be received by them under section 23 of this Act” shall cease to have effect.
- (3) At the end of subsection (1) of section 8 there shall be added the words “but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.”
- (4) The following subsections shall be inserted after that subsection—
  - “(1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.
  - (1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—
    - (a) to grant leave to arraign; or

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- (b) to direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—
- (i) that the prosecution has acted with all due expedition; and
  - (ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 7 of this Act was made.”
- (5) Nothing in this section applies where notice of appeal or of application for leave to appeal was given before the commencement of this section.

**Marginal Citations**

**M10** 1968 c. 19.

*Imprisonment*

**44 Firearms offences.**

- (1) Part 1 of Schedule 6 to the <sup>M11</sup>Firearms Act 1968 (prosecution and punishment of offences) shall be amended as follows.
- (2) For the third and fourth columns of the entries relating to an offence under section 2(1) (possessing, etc. shotgun without shotgun certificate) there shall be substituted—

“(a) Summary.	6 months or the statutory maximum or both.
(b) On indictment.	3 years or a fine; or both.”

- (3) “Life imprisonment” shall be substituted for “14 years” in the fourth column of the entries relating to offences under—
- (a) section 17(2) (possessing firearm or imitation firearm at time of committing or being arrested for certain offences); and
  - (b) section 18(1) (carrying firearm or imitation firearm with criminal intent).
- (4) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

**Marginal Citations**

**M11** 1968 c. 27.

**45 Increase in maximum term of imprisonment for cruelty to children and young persons.**

- (1) In section 1(1)(a) of the <sup>M12</sup>Children and Young Persons Act 1933 (under which the maximum term of imprisonment for cruelty to persons under 16 is two years) and in section 12(1)(a) of the <sup>M13</sup>Children and Young Persons (Scotland) Act 1937 (which makes corresponding provision for Scotland), for “two” there shall be substituted “ten”.

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- (2) Nothing in subsection (1) above shall affect the punishment for an offence committed before this section comes into force.

**Marginal Citations**

- M12 1933 c. 12.  
M13 1937 c. 37.

**46 Maximum term of imprisonment on summary conviction under Prevention of Crime Act 1953 and maximum fine under Restriction of Offensive Weapons Act 1959.**

- (1) In section 1(1)(a) of the <sup>M14</sup>Prevention of Crime Act 1953 “six months” shall be substituted for “three months”.
- (2) The maximum fine that may be imposed for an offence under section 1 of the <sup>M15</sup>Restriction of Offensive Weapons Act 1959 shall be a fine not exceeding level 5 on the standard scale.
- (3) This section shall not have effect in relation to anything done before it comes into force.

**Marginal Citations**

- M14 1953 c. 14.  
M15 1959 c. 37.

**47 Corruption.**

- (1) The following paragraph shall be substituted for paragraph (a) of section 2 of the <sup>M16</sup>Public Bodies Corrupt Practices Act 1889 (penalty for corruption in office)—
- “(a) be liable—
- (i) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both; and”.
- (2) In subsection (1) of section 1 of the <sup>M17</sup>Prevention of Corruption Act 1906 (punishment of corrupt transactions with agents) for the words from “shall be liable” to the end of the subsection there shall be substituted the words “shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”.
- (3) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

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#### Marginal Citations

M16 1889 c. 69.

M17 1906 c. 34.

<sup>F4</sup>48 .....

#### Textual Amendments

F4 S. 48 repealed (15.2.1994) by 1993 c. 36, ss. 78(3), 79(14), Sch. 6 Pt.I; S.I. 1994/71, art. 2, Sch., Appendix

### 49 Repeal of s.134 of Magistrates' Courts Act 1980.

Section 134 of the <sup>M18</sup>Magistrates' Courts Act 1980 (under which a magistrates' court having power to impose imprisonment on any person may instead of doing so order him to be detained for any period not exceeding 4 days in a place certified by the Secretary of State to be suitable for the purpose) shall cease to have effect.

#### Marginal Citations

M18 1980 c. 43.

### 50 Suspended and partly suspended sentences on certain civilians in courts-martial and Standing Civilian Courts.

- (1) The Secretary of State may by order made by statutory instrument make such provision as appears to him to be appropriate—
  - (a) to give courts-martial and Standing Civilian Courts power to pass suspended and partly suspended sentences of imprisonment on civilians to whom this section applies; and
  - (b) to give courts power to deal with offenders in respect of suspended and partly suspended sentences passed by courts-martial and Standing Civilian Courts.
- (2) This section applies to the following civilians—
  - (a) persons to whom Part II of the <sup>M19</sup>Army Act 1955 applies by virtue of section 209 of that Act;
  - (b) persons to whom Part II of the <sup>M20</sup>Air Force Act 1955 applies by virtue of section 209 of that Act; and
  - (c) persons to whom Parts I and II of the <sup>M21</sup>Naval Discipline Act 1957 apply by virtue of section 118 of that Act.
- (3) An order under this section—
  - (a) may amend—
    - (i) the Army Act 1955;
    - (ii) the Air Force Act 1955;
    - (iii) the Naval Discipline Act 1957; and



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- (iv) the <sup>M22</sup>Armed Forces Act 1976;
  - (b) may apply, with or without modifications, any enactment contained in—
    - (i) the <sup>M23</sup>Powers of Criminal Courts Act 1973;
    - (ii) the <sup>M24</sup>Criminal Law Act 1977; or
    - (iii) any other Act not mentioned in paragraph (a) above; and
  - (c) may make such incidental or consequential provision as the Secretary of State considers necessary or expedient.
- (4) Without prejudice to the generality of this section, an order under this section may make—
- (a) provision prohibiting a court which passes a suspended sentence on a person from making an order under paragraph 4 of Schedule 5A to the <sup>M25</sup>Army Act 1955 or the <sup>M26</sup>Air Force Act 1955 or paragraph 4 of Schedule 4A to the <sup>M27</sup>Naval Discipline Act 1957 (community supervision orders) in respect of another offence; and
  - (b) provision restricting the powers conferred by sections 110 and 113 of the Army Act 1955 and the Air Force Act 1955 (confirmation and review) and sections 70 and 71 of the Naval Discipline Act 1957 (review).
- (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.

#### Marginal Citations

- M19** 1955 c. 18.
- M20** 1955 c. 19.
- M21** 1957 c. 53.
- M22** 1976 c. 52.
- M23** 1973 c. 62.
- M24** 1977 c. 45.
- M25** 1955 c. 18.
- M26** 1955 c. 19.
- M27** 1957 c. 53.

#### *Maximum fines under subordinate legislation*

### **51 Statutory maximum as penalty on summary conviction for offences triable either way in subordinate legislation.**

- (1) For any offence triable either way under a subordinate instrument made before the commencement of this section, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the statutory maximum unless the offence is one for which by virtue of the instrument a larger maximum fine may be imposed on summary conviction.
- (2) Where apart from this section the maximum fine would be one amount in the case of a first conviction and a different amount in the case of a second or subsequent conviction, subsection (1) above shall apply irrespective of whether the conviction is a first, second or subsequent one.

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- (3) Subsection (1) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.
- (4) Where there is under any enactment (however framed or worded) contained in an Act passed before the commencement of this section a power by subordinate instrument to impose penal provisions, being a power which allows the creation of offences triable either way, the maximum fine which may in the exercise of that power be authorised on summary conviction in respect of an offence triable either way shall by virtue of this subsection be the statutory maximum unless some larger maximum fine can be authorised on summary conviction of such an offence by virtue of an enactment contained in an Act passed before the commencement of this section.
- (5) Where there is under any enactment (however framed or worded) contained in an Act passed before the commencement of this section a power by subordinate instrument to create offences triable either way, the maximum fine for an offence triable either way so created may be expressed as a fine not exceeding the statutory maximum.
- (6) Subsection (5) above has effect in relation to exercises of powers before as well as after the commencement of this section.
- (7) Nothing in this section shall affect the punishment for an offence committed before the commencement of this section.
- (8) In this section and sections 52, 53, 55, 57 and 59 below “fine” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

**52 Penalties on conviction for summary offences under subordinate legislation—  
conversion of references to amounts to references to levels on scale.**

- (1) Where under a relevant subordinate instrument the maximum fine on conviction of a summary offence specified in the instrument is an amount shown in the second column of the standard scale, the reference in the instrument to the amount of the maximum fine shall be construed as a reference to the level in the first column of the standard scale corresponding to that amount.
- (2) In subsection (1) above “relevant subordinate instrument” means any instrument made by virtue of an enactment or instrument after 30th April 1984 and before the commencement of this section.
- (3) Subsection (1) above shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued after conviction or the occurrence of any other specified event.
- (4) Where there is—
  - (a) under any enactment (however framed or worded) contained in an Act passed before the commencement of this section;
  - (b) under any instrument (however framed or worded) made by virtue of such an enactment,
 a power to provide by subordinate instrument that a person, as regards any summary offence (whether or not created by the instrument) shall be liable on conviction to a

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fine, a person may be so made liable to a fine not exceeding a specified level on the standard scale.

- (5) Subsection (4) above has effect in relation to exercises of powers before as well as after the commencement of this section.

**53 Powers to specify maximum fines for summary offences under subordinate instruments— conversion of references to amounts to references to levels on scale—England and Wales.**

- (1) Where an instrument which was made under an enactment on or after 11th April 1983 but before this section came into force confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable to a fine on conviction of a summary offence of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.
- (2) If an order under section 143 of the <sup>M28</sup>Magistrates' Courts Act 1980 alters the sums specified in section 37(2) of the <sup>M29</sup>Criminal Justice Act 1982, the second reference to the standard scale in subsection (1) above is to be construed as a reference to that scale as it has effect by virtue of the order.
- (3) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued.

**Marginal Citations**

- M28** 1980 c. 43.  
**M29** 1982 c. 48.

**54 Fines on summary conviction for offences under subordinate instruments— conversion to references to levels on scale—Scotland.**

In the <sup>M30</sup>Criminal Procedure (Scotland) Act 1975, after section 289GC (which is inserted by section 56 of this Act) there shall be inserted the following section—

**“289GD Fines on summary conviction for offences under subordinate instruments—conversion to references to levels on scale.**

- (1) Where an instrument which was made under an enactment on or after 11th April 1983 but before the commencement of section 54 of the Criminal Justice Act 1988 confers on any authority other than a harbour authority a power by subordinate instrument to make a person liable on summary conviction to a fine of an amount shown in the second column of the standard scale, as that scale had effect when the instrument was made, a reference to the level in the first column of the standard scale which then corresponded to that amount shall be substituted for the reference in the instrument conferring the power to the amount of the fine.

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- (2) This section shall not affect so much of any instrument as (in whatever words) makes a person liable on summary conviction to a maximum fine not exceeding a specified amount for each period of a specified length during which a continuing offence is continued”.

#### **Marginal Citations**

**M30** 1975 c. 21.

### **55 Fines under secondary subordinate instruments— England and Wales.**

- (1) This section applies to any instrument (however framed or worded) which—
- (a) was made before 11th April 1983 (the date of the commencement of sections 35 to 50 of the <sup>M31</sup>Criminal Justice Act 1982); and
  - (b) confers on any authority other than a harbour authority a power by subordinate instrument to make a person, as regards any summary offence (whether or not created by the latter instrument), liable on conviction to a maximum fine of a specified amount not exceeding £1,000,
- but does not affect so much of any such instrument as (in whatever words) confers a power by subordinate instrument to make a person liable on conviction to a fine for each period of a specified length during which a continuing offence is continued.
- (2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—
- (a) if the specified amount is less than £25, level 1 on the standard scale;
  - (b) if it is £25 or more but less than £50, level 2;
  - (c) if it is £50 or more but less than £200, level 3;
  - (d) if it is £200 or more but less than £400, level 4; and
  - (e) if it is £400 or more, level 5.
- (3) Subject to subsection (5) below, where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things, that fine shall be treated for the purposes of this section as being the maximum fine to which a person may be made liable by virtue of the instrument.
- (4) Where an instrument to which this section applies confers a power to provide for different maximum fines in relation to different circumstances or persons of different descriptions, the amounts specified as those maximum fines are to be treated separately for the purposes of this section.
- (5) Where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things but also confers a power by subordinate instrument to make a person, as regards such an offence, liable on conviction to an alternative fine, this section shall have effect in relation—
- (a) to the alternative fine; and
  - (b) to any amount that the instrument specifies as the maximum fine for which a subordinate instrument made in the exercise of the power conferred by it may provide,

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as well as in relation to the fine mentioned in subsection (3) above.

- (6) Section 36 of the <sup>M32</sup>Criminal Justice Act 1982 (abolition of enhanced penalties under subordinate instruments) shall have effect as if the references in it to an Act included references to an instrument and the reference in subsection (2) to the coming into force of the section were a reference, in relation to an instrument conferring a power such as is mentioned in subsection (1), to the coming into force of this section.

#### Marginal Citations

**M31** 1982 c. 48.

**M32** 1982 c. 48.

## 56 Fines under secondary subordinate instruments: Scotland.

- (1) In the <sup>M33</sup>Criminal Procedure (Scotland) Act 1975, after section 289GB (which was inserted by the <sup>M34</sup>Criminal Justice (Scotland) Act 1987) there shall be inserted the following section—

### “289GC Fines under secondary subordinate instruments— Scotland.

- (1) This section applies to any instrument (however framed or worded) which—
- was made before 11th April 1983 (the date of commencement of Part IV of the Criminal Justice Act 1982);
  - confers on any authority other than a harbour authority a power by subordinate instrument to make a person, as regards any summary offence (whether or not created by the latter instrument), liable on conviction to a maximum fine of a specified amount not exceeding £1,000,
- but does not affect so much of any such instrument as (in whatever words) confers a power by subordinate instrument to make a person liable on conviction to a fine for each period of a specified length during which a continuing offence is continued.
- (2) The maximum fine to which a subordinate instrument made by virtue of an instrument to which this section applies may provide that a person shall be liable on conviction of a summary offence is—
- if the specified amount is less than £25, level 1 on the standard scale;
  - if it is £25 or more but less than £50, level 2;
  - if it is £50 or more but less than £200, level 3;
  - if it is £200 or more but less than £400, level 4; and
  - if it is £400 or more, level 5.
- (3) Subject to subsection (5) below, where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things, that fine shall be treated for the purposes of this section as being the maximum fine to which a person may be made liable by virtue of the instrument.

*Status: Point in time view as at 01/04/1995.*

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- (4) Where an instrument to which this section applies confers a power to provide for different maximum fines in relation to different circumstances or persons of different descriptions, the amount specified as those maximum fines are to be treated separately for the purposes of this section.
- (5) Where an instrument to which this section applies confers a power by subordinate instrument to make a person, as regards a summary offence, liable on conviction to a fine in respect of a specified quantity or a specified number of things but also confers a power by subordinate instrument to make a person, as regards such an offence, liable on conviction to an alternative fine, this section shall have effect in relation—
- (a) to the alternative fine; and
  - (b) to any amount that the instrument specifies as the maximum fine for which a subordinate instrument made in the exercise of the power conferred by it may provide,
- as well as in relation to the fine mentioned in subsection (3) above.”
- (2) Section 289E of the <sup>M35</sup>Criminal Procedure (Scotland) Act 1975 (penalties for first and subsequent convictions of summary offences to be the same) shall have effect as if the references in it to an Act included references to an instrument and the reference in subsection (5) to the commencement of the section were a reference, in relation to an instrument conferring a power such as is mentioned in subsection (1), to the coming into force of this section.

#### Marginal Citations

- M33** 1975 c. 21.  
**M34** 1987 c. 41.  
**M35** 1975 c. 21.

## 57 Powers of harbour authorities to provide for maximum fines up to level 4 on standard scale.

- (1) Where a harbour authority is empowered to provide—
- (a) in an instrument made by virtue of an enactment; or
  - (b) in an instrument made by virtue of an instrument made under an enactment,
- that a person, as regards any summary offence (whether or not created by the instrument), shall be liable on conviction to a fine not exceeding an amount less than level 4 on the standard scale, the power shall extend by virtue of this section to making him liable to a fine not exceeding level 4.
- (2) Where any enactment or instrument (“the enabling legislation”) (however expressed) provides that a person who contravenes any provision of an instrument (“a regulatory instrument”) made by a harbour authority—
- (a) by virtue of the enabling legislation; or
  - (b) by virtue of an instrument made under the enabling legislation,
- shall be guilty of a summary offence and liable on conviction to a fine not exceeding an amount less than level 4 on the standard scale, the power conferred by the enabling legislation shall by virtue of this section enable the harbour authority to provide in a regulatory instrument that a person, as regards any summary offence created by the

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regulatory instrument, shall be liable on summary conviction to a fine not exceeding level 4.

<sup>F5</sup>58 .....

**Textual Amendments**

**F5** S. 58 repealed (18.2.1993) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), Sch. 16 Pt. IX; S.I. 1993/274, art.2

*Exceptionally high maximum fines*

**59 Power to alter exceptionally high maximum fines.**

- (1) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
  - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
  - (b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.
- (2) Subsection (1) above applies to any sum which—
  - (a) is specified as the maximum fine which may be imposed on conviction of a summary offence; and
  - (b) is higher than level 5 on the standard scale.
- (3) The Secretary of State may by order amend an enactment or subordinate instrument specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
  - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
  - (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.
- (4) Subsection (3) above applies to any sum which—
  - (a) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either way; and
  - (b) is higher than the statutory maximum.
- (5) An order under this section—
  - (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) shall not affect the punishment for an offence committed before it comes into force.
- (6) In this section—

“enactment” includes an enactment contained in an Act passed after this Act; and

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“subordinate instrument” includes an instrument made after the passing of this Act.

*Default in payment of fines etc.*

**60 Periods of imprisonment for default.**

(1) In the Tables in section 31(3A) of the <sup>M36</sup>Powers of Criminal Courts Act 1973 and paragraph 1 of Schedule 4 to the <sup>M37</sup>Magistrates’ Courts Act 1980, for the entries relating to amounts not exceeding £10,000 there shall be substituted—

“An amount not exceeding £50	5 days
An amount exceeding £50 but not exceeding £100	7 days
An amount exceeding £100 but not exceeding £400	14 days
An amount exceeding £400 but not exceeding £1,000	30 days
An amount exceeding £1,000 but not exceeding £2,000	45 days
An amount exceeding £2,000 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months”.

(2) In the Table in section 31(3A) of the <sup>M38</sup>Powers of Criminal Courts Act 1973, for the entry relating to an amount exceeding £10,000 there shall be substituted—

“An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years”.

**Marginal Citations**

**M36** 1973 c. 62.

**M37** 1980 c. 43.

**M38** 1973 c. 62.



*Status: Point in time view as at 01/04/1995.*

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## 61 Default – procedure.

- (1) The <sup>M39</sup>Magistrates’ Courts Act 1980 shall be amended as follows.
- (2) The following subsections shall be added after section 77(2)—
  - “(3) A magistrates’ court shall have power at any time to do either or both of the following—
    - (a) to direct that the issue of the warrant of commitment shall be postponed until a time different from that to which it was previously postponed;
    - (b) to vary any of the conditions on which its issue is postponed, but only if it thinks it just to do so having regard to a change of circumstances since the relevant time.
  - (4) In this section “the relevant time” means—
    - (a) where neither of the powers conferred by subsection (3) above has been exercised previously, the date when the issue of the warrant was postponed under subsection (2) above; and
    - (b) in any other case, the date of the exercise or latest exercise of either or both of the powers.
  - (5) Without prejudice to the generality of subsection (3) above, if on an application by a person in respect of whom issue of a warrant has been postponed it appears to a justice of the peace acting for the petty sessions area in which the warrant has been or would have been issued that since the relevant time there has been a change of circumstances which would make it just for the court to exercise one or other or both of the powers conferred by that subsection, he shall refer the application to the court.
  - (6) Where such an application is referred to the court, it shall be the duty of the clerk of the court—
    - (a) to fix a time and place for the application to be heard; and
    - (b) to give the applicant notice of the time and place which he fixes.
  - (7) Where such a notice has been given but the applicant does not appear at the time and place specified in the notice, the court may proceed with the consideration of the application in his absence.
  - (8) If a warrant of commitment in respect of the sum adjudged to be paid has been issued before the hearing of the application, the court shall have power to order that the warrant shall cease to have effect and, if the applicant has been arrested in pursuance of it, to order that he shall be released, but it shall only make an order under this subsection if it is satisfied that the change of circumstances on which the applicant relies was not put before the court when it was determining whether to issue the warrant.”
- (3) The following subsection shall be inserted after subsection (4) of section 82 (restriction on power to impose imprisonment for default)—
  - “(4A) The methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—
    - (a) a warrant of distress under section 76 above;
    - (b) an application to the High Court or county court for enforcement under section 87 below;

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- (c) an order under section 88 below;
- (d) an attachment of earnings order; and
- (e) if the offender is under the age of 21, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).”.

(4) The following subsections shall be inserted after subsection (5) of that section—

“(5A) A magistrates’ court may not issue a warrant of commitment under subsection (5) above at a hearing at which the offender is not present unless the clerk of the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends.

(5B) Where after the occasion of an offender’s conviction by a magistrates’ court the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it shall consider such information about the offender’s means as is available to it unless it has previously—

- (a) inquired into the offender’s means; and
- (b) postponed the issue of the warrant of commitment under section 77(2) above.

(5C) A notice under subsection (5A) above—

- (a) shall state the time and place appointed for the hearing; and
- (b) shall inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the court in person or in writing,

but the court may exercise its powers in relation to the issue of a warrant whether or not he makes representations.

(5D) Except as mentioned in subsection (5E) below, the time stated in a notice under subsection (5A) above shall not be earlier than 21 days after the issue of the notice.

(5E) Where a magistrates’ court exercises in relation to an offender the power conferred by section 77(2) above and at the same hearing issues a notice under subsection (5A) above in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed.

(5F) A notice under subsection (5A) above to be served on any person shall be deemed to be served on that person if it is sent by registered post or the recorded delivery service addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.”.

(5) The following section shall be substituted for section 85—

**“85 Power to remit fine.**

- (1) Where a fine has been imposed on conviction of an offender by a magistrates’ court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred—

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- (a) where the court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of the fine has been postponed under subsection (2) of section 77 above, since the relevant time as defined in subsection (4) of that section; and
    - (b) in any other case, since the date of the conviction.
  - (2) Where the court remits the whole or part of the fine after a term of imprisonment has been fixed, it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole or, as the case may be, shall remit the whole term.
  - (3) In calculating the reduction in a term of imprisonment required by subsection (2) above any fraction of a day shall be left out of account.
  - (4) Notwithstanding the definition of “fine” in section 150(1) below, references in this section to a fine do not include any other sum adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise.”.
- (6) In section 121(2) (magistrates’ court to consist of at least 2 justices when holding an inquiry into the means of an offender for the purposes of section 82) after the word “above” there shall be inserted the words “or determine under that section at a hearing at which the offender is not present whether to issue a warrant of commitment”.

#### Marginal Citations

M39 1980 c. 43.

## 62 Fines on companies.

- (1) The following section shall be inserted after section 87 of the <sup>M40</sup>Magistrates’ Courts Act 1980—

### “87A Fines imposed on companies.

- (1) Where—
  - (a) a magistrates’ court has, or is treated by any enactment as having, adjudged a company by a conviction to pay a sum; and
  - (b) the court has issued a warrant of distress under section 76(1) above for the purpose of levying the sum; and
  - (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the same,the clerk of the court may make an application in relation to the company under section 9 or 124 of the Insolvency Act 1986 (administration or winding up).
- (2) Any expenses incurred under subsection (1) above by the clerk of a magistrates’ court shall be treated for the purposes of Part VI of the Justices of the Peace Act 1979 as expenses of the magistrates’ courts committee.”.

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- (2) The words “ or by the clerk of a magistrates’ court in the exercise of the power conferred by section 87A of the Magistrates’ Courts Act 1980 (enforcement of fines imposed on companies) ” shall be inserted—
  - (a) before the words “or by all” in section 9(1) of the Insolvency Act 1986;
  - (b) after the word “contributories” in section 124(1) of that Act.

**Marginal Citations**  
 M40 1980 c. 43.

*Fines and other pecuniary penalties—miscellaneous*

63 ..... F6

**Textual Amendments**  
 F6 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

**64 Increase of maximum fine under s.32 of the Game Act 1831.**

- (1) In section 32 of the Game Act 1831 (persons found armed using violence etc.) for “level 1” there shall be substituted “level 4”.
- (2) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

**65 Powers of civilian fine enforcement officers.**

- (1) The following paragraph shall be inserted after the first paragraph of subsection (2) of section 125 (warrants) of the <sup>M41</sup>Magistrates’ Courts Act 1980—
 

“A warrant of arrest, warrant of commitment or warrant of distress which is issued by a justice of the peace for the enforcement of a fine may also be executed by a person who—

  - (a) is employed by an authority of a prescribed class;
  - (b) is authorised in the prescribed manner to execute such warrants; and
  - (c) is acting within the area for which the authority that employs him performs its functions.”.
- (2) In section 136(2)(a) of that Act (by virtue of which a warrant for the detention of a fine defaulter overnight in a police station may be executed by any police constable) after the word “constable” there shall be inserted the words “or any person who—

  - (a) is employed by an authority of a prescribed class;
  - (b) is authorised in the prescribed manner to execute such warrants; and
  - (c) is acting within the area for which the authority that employs him performs its functions.”.

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**Marginal Citations**

**M41** 1980 c. 43.

**66 Fisheries offences on River Tweed.**

- (1) Section 38 of the <sup>M42</sup>Fisheries Act 1981 (which applied certain enactments to so much of the River Tweed as is situated outwith Scotland as if it were situated in Scotland) shall be deemed not to have been excluded from the operation of section 38(1) of the <sup>M43</sup>Criminal Justice Act 1982 (general increase of fines for summary offences) by paragraph (c) of that subsection (exclusion of offences where fine or maximum fine altered since 29th July 1977).
- (2) Nothing in this section shall affect the punishment for an offence committed before this section comes into force.

**Marginal Citations**

**M42** 1981 c. 29.

**M43** 1982 c. 48.

**67 Fines imposed and recognizances forfeited by coroners.**

- (1) A fine imposed by a coroner, including a fine so imposed before this section comes into force, shall be treated for the purpose of its collection, enforcement and remission as having been imposed by the magistrates' court for the area in which the coroner's court was held, and the coroner shall as soon as practicable after imposing the fine give particulars of the fine to the clerk of that court.
- (2) A coroner shall proceed in the like manner under subsection (1) above in relation to a recognizance forfeited at an inquest held before him, including a recognizance so forfeited before this section comes into force, as if he had imposed a fine upon the person forfeiting that recognizance, and subsection (1) above shall apply accordingly.

**68** ..... <sup>F7</sup>

**Textual Amendments**

**F7** 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

*Forfeiture*

**69 Forfeiture general.**

- (1) The following subsections shall be substituted for section 43(1) of the <sup>M44</sup>Powers of Criminal Courts Act 1973—

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“(1) Subject to the following provisions of this section, where a person is convicted of an offence and—

- (a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—
  - (i) has been used for the purpose of committing, or facilitating the commission of, any offence; or
  - (ii) was intended by him to be used for that purpose; or
- (b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
  - (i) has been lawfully seized from him; or
  - (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this section in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in an enactment contained in an Act passed before the Criminal Justice Act 1988.

(1A) In considering whether to make such an order in respect of any property a court shall have regard—

- (a) to the value of the property; and
- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).”

(2) At the end of section 12(4) of that Act (which authorises a court, on making a probation order in respect of an offender or discharging an offender absolutely or conditionally, to order him to pay costs or compensation) there shall be added the words “or to make an order under section 43 below”.

**Marginal Citations**

**M44** [1973 c. 62.](#)

**70 Forfeiture for drug offences.**

In section 27(1) of the <sup>M45</sup>Misuse of Drugs Act 1971 (forfeiture on conviction of an offence under that Act) after the words “under this Act” there shall be inserted the words “or a drug trafficking offence, as defined in section 38(1) of the <sup>M46</sup>Drug Trafficking Offences Act 1986”.

**Marginal Citations**

**M45** [1971 c. 38.](#)

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*Status: Point in time view as at 01/04/1995.*

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**M46** [1986 c. 32.](#)

**Status:**

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**Changes to legislation:**

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