

**The
CRIMINAL
JURISDICTION
of
MAGISTRATES**

10th edition

Brian Harris

BARRY ROSE

THE CRIMINAL JURISDICTION OF MAGISTRATES

BY
BRIAN HARRIS, OBE, QC, LLB,

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For My Father

INTRODUCTION

Few people have a good word for the Police and Criminal Evidence Act 1984. The civil rights lobby complain about the draconian new powers given to the police and the police see it as yet another set of bureaucratic restrictions on powers which they had long claimed to enjoy. Both these viewpoints have an element of validity. The best way to understand the Act however is to see it as an attempt to bring police law up to date in the closing years of the 20th century. With terrorism, the international drugs trade, commercial armed robbery and the problems of inner city disorder the challenges to and demands on the police service are now infinitely greater than ever before. It says a great deal for the robustness of the English constitution that the 18th century model of the peace officer upon which our law has hitherto been based has lasted so long. The new Act firmly pushes to the side the notion of the justice as a person actively involved in the investigation and recognizes belatedly the importance of the procedure of arrest and charge. What happens in the police station can be critical to the successful outcome of an arrest. It is also the stage in the process of investigation at which the citizen is most in need of protection from abuse of police powers. The effectiveness of the careful and balanced solutions adopted by the Act will have to be tested in the courts, but even now it is possible to pick out areas where further changes will be necessary, for example in relation to what constitutes the initiation of proceedings, where legal theory looks to the laying of the information while police practice focuses on the act of charging.

Possibly the most interesting aspects of the Act are its evidential provisions. While s. 76 gets rid of the old technical rules on the admissibility of confessions it leaves wide open the question of what conduct on the part of a police officer will make a confession unreliable. There will probably never be an end to the debate about where the balance should be struck between the demands of the state and the rights of the individual, but the ill considered provisions of s. 78 concerning the exclusion of unfair evidence will do little to shed light on this important question. I was in two minds about whether to include those parts of the Act which deal with what happens on the streets rather than in the courtroom, but eventually decided on a policy of inclusion on the basis that they will constantly be referred to in court by the advocate who seeks to exclude inadmissible evidence or who is trying to show that a police officer was not acting in the execution of his duty. The whole of the Act has therefore been included except Parts IX and X, which deal with police complaints and other internal police matters. The all important codes of practice are to be found as a new appendix A in place of the Judges' Rules which they supersede. The Act itself is contained mainly in a new chapter 1 (all other chapters being renumbered accordingly) and an expanded chapter 3.

I have taken advantage of this edition to revise and improve the presentation of the chapter on legal aid (where the new law had to be hastily incorporated into the last edition). I have also made a few changes to the chapter on bail to improve the presentation. Those provisions of the Mental Health Act 1983 concerning remands to hospital for mental reports and the making of an interim hospital order have been brought into force since the last edition. This volume also includes the Probation Rules 1984 and the Magistrates' Courts (Advance Disclosure) Rules 1985. No one who sits in court daily can fail to be depressed by the misplaced faith of the administration in the ability of defendants to take in verbal formulae while standing

in the dock. The mode of trial procedure, barely understood by some practitioners, is quite incomprehensible to the vast majority of defendants. To this must now be added the 'remand in absence' explanation and the incantation concerning advance disclosure. It is high time that the assumptions behind these verbal warnings so beloved of Parliament were challenged.

The Strand has been no less prolific than Westminster in revising the law. In one important area of judge made law at least we seem to have reached some degree of certainty, namely the rules concerning oppression and abuse of process. Among the other more important decisions are the following:

- Anderton v. Ryan* (the crime of attempt) ch. 2.
- R. v. Greenwich Juvenile Court, ex parte Greenwich London Borough Council* (witness summons) ch. 3.
- R. v. Uxbridge Justices, ex parte Heward Mills* (principles of bail) ch. 4.
- R. v. Mansfield Justices, ex parte Sharkey & Others*, (bail conditions) ch. 4.
- R. v. Leicester Juvenile Justices, ex parte Capenhurst* (secure accommodation) ch. 4.
- R. v. Lewis Crown Court, ex parte Turner* (age of majority for trial purposes) ch. 4.
- R. v. Cambridge Justices, ex parte Fraser* (committal proceedings) ch. 5.
- R. v. Brooks* (preferment of more serious charge to obtain trial on indictment) ch. 5.
- Shah v. Swallow* (the rule against duplicity) ch. 6.
- R. v. Bromley Justices, ex parte Haymills (Contractors) Ltd.* (remission for re-hearing by a different bench) ch. 6.
- R. v. Derby Magistrates' Court, ex parte Brooks* (oppression and abuse of process) ch. 6.
- JM (a minor) v. Runeckles* (the presumption of incapacity) ch. 6.
- R. v. George* (deferment of sentence) ch. 6.
- Stowers v. Darnell* (conviction on a repealed statute) ch. 6.
- R. v. Seymour* (sentencing for burglary) ch. 7.
- R. v. Dobbs and Hitchings* (sentencing of young offenders) ch. 7.
- R. v. Guildhall Justices, ex parte Cooper* (committal for sentence) ch. 7.
- R. v. Wilcox* (the effect of an order of conditional discharge) ch. 8.
- Walsh v. Barlow* (the requirement to serve on the offender a copy of a community service order) ch. 8.
- R. v. Ramsgate Justices, ex parte Kazmarek* (hospital order without conviction) ch. 8.
- R. v. Holden* (the twelve months rule for the payment of compensation) ch. 9.
- In re Wilson* (postponed warrant of commitment on a fine defaulter) ch. 9.
- R. v. Horsham Justices, ex parte Richards* (compensation) ch. 9.
- Pridge v. Gant* (laced drink) ch. 10.
- Johnston v. Over* (road traffic offences committed on the same occasion) ch. 10.
- R. v. Thomas (Kevin)* (hardship and the totting up rule) ch. 10.
- R. v. Sandbach Justices, ex parte Pescud* (mitigating circumstances) ch. 10.
- R. v. Central Criminal Court, ex parte Boulding* (the amount of a bind-over) ch. 11.
- Howley v. Oxford* (refusal of young offender to enter into bind over) ch. 11.
- Neville v. Gardner Merchant* (costs) ch. 12.
- R. v. Stockport Magistrates' Court, ex parte Cooper* (costs) ch. 12.
- Streames v. Copping* (appeal on an interlocutory matter) ch. 14.

Universal Salvage Ltd. and Robinson v. Boothby (appeal against sentence) ch. 14.
R. v. Moran (punishment for contempt) ch. 15.
In re McC (liability of justices) ch. 15.
R. v. Waltham Justices, ex parte Solanke (liability of justices) ch. 15.
R. v. Uxbridge Justices, ex parte Smith (role of the clerk) ch. 15.
R. v. Havant Justices, ex parte Palmer (contempt) ch. 15.

The law is stated as at 1 January 1986 except that I have anticipated the coming into force before publication of the Police and Criminal Evidence Act 1984.

BRIAN HARRIS

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