

CRIMINAL JURISDICTION OF MAGISTRATES

BRIAN HARRIS, OBE, QC, LLB

NINTH EDITION



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THE CRIMINAL JURISDICTION OF MAGISTRATES

BY

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Clerk to the Poole Justices

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For My Father

INTRODUCTION

In the field of criminal procedure and sentencing the pace of legislative change continues unabated. There have been Criminal Justice or Criminal Law Acts in 1948, 1961, 1967, 1972, 1977 and 1982. No one can deny that profound changes have been made by the latest in the series but the most important of these have all been negative in content, in the sense that they are merely stripping from our laws the recently discarded myth of rehabilitation, the notion that it was somehow possible to make men better by order of the court. Worthy motive though that may be, it is no substitute for a re-moulding of our ancient structure of punishments and prerogatives which passes for a criminal justice system.

As a society we are profoundly ignorant of the causes of crime and of the means of preventing it, although informed opinion nowadays suspects that the criminal justice system has a less than central part to play in the latter. Indeed, the nicest thing the critics would say of the courts is that a failure on their part to sentence convicted offenders would be marginally more inimical to the good health of society than the effects of many of the sentences that are imposed. It is tempting to think that our present chaos results from a pragmatic approach to unsolvable problems, and maybe it does, but it is difficult to believe that even Parliament would have hit upon the present arrangements if called upon to design a criminal justice system from scratch. In the meantime we must live with what we have.

As well as the Criminal Justice Act 1982 I have had to cope in this edition with two major statutes, the Legal Aid Act 1982 and the Mental Health Act 1983.

The new Legal Aid Act provides for the setting up of duty solicitor schemes on a statutory basis, changes radically the basis of legal aid contribution orders and provides for the possibility of a "through" legal aid order to cover both committal proceedings and the trial at the Crown Court. It is expected to be brought into force by the time this edition is in print and has therefore been incorporated as if it were fully in force. Unfortunately, the new regulations are not yet available for inclusion.

The Mental Health Act 1983 is a new code replacing that in the Act of 1959. Hospital and guardianship orders may still be made by the court on conviction of an offence punishable with imprisonment but the procedure and the medical grounds have been largely re-written. There is a new interim hospital order and the possibility of a remand to hospital for medical reports. Except for these last two provisions the Act will be brought into force on September 30, 1983.

However, it is the Criminal Justice Act 1982 which has given rise to the greatest changes. Hardly a chapter of this book escapes its effects. Borstal training has been abolished and imprisonment removed as a sentence for offenders under 21. Instead, there is a new sentence of youth custody. The law of detention centres has been completely re-drawn in such a way that these two sentences present a single custodial continuum into which the court is expected to fit the offender according to the length of his sentence. The Act introduces a strict set of criteria designed to avoid unnecessary and undesirable custodial sentences and requires the opportunity of legal

representation before a custodial sentence is passed. Breach of supervision after release from these sentences will no longer be a matter for the Home Office, but for the courts.

The Act aims to strengthen the alternatives to custody by introducing locally run day centres and by a complex new set of requirements in probation orders designed to get round the decision of the House of Lords in *Cullen v Rogers*. Community service is extended to 16 year olds with a reduced minimum period. The Act gives greater emphasis to compensation, although the provision that compensation can be a sentence in its own right was untidy and unnecessary. For those who offend while in care there is a new "charge and control" order. The Act completes the last step towards a standard scale of fines for summary offences and makes a number of increases in the maximum fines, although the way in which this has been done could hardly be more tortuous. The attendance centre provisions have been repealed and re-enacted with minor improvements.

Against opposition from some parts of the legal profession a modest scheme for remand in the absence of the prisoner was introduced and appears to be working smoothly. The Crown Court has at last been given the power to grant bail in every case in which it may be refused by magistrates. The right of an accused to make an unsworn statement was finally killed off without a tear being shed, as was the need for a solicitor to be present at a paper committal. The much criticized decision in *R. v. Gilby* was reversed allowing magistrates to commit for sentence after a deferment which went wrong. Changes were also made in the law of suspended and partly suspended sentences.

The number of decided cases added to this edition are too many to be enumerated here, but they include:

- R. v. Dunnington* (aiding and abetting an attempt)
- R. v. Canterbury & St. Augustine Justices, ex parte Turner* (abuse of process)
- R. v. Lambeth Metropolitan Stipendiary Magistrate, ex parte McComb* (exhibits)
- R. v. Leeds Justices, ex parte Sykes* (restrictions on publicity of committal proceedings)
- R. v. St. Helens Justices, ex parte McClorie* (trial of criminal damage offences)
- Chief Constable of Norfolk v. Clayton* (joinder of offences and defendants)
- R. v. Epsom Justices, ex parte Gibbons* (ditto)
- R. v. Seisdon Justices, ex parte Dougan* (adjournment of trial)
- R. v. Aramah* (sentencing in drug offences)
- R. v. Holloway* (sentencing in obscene publications offences)
- R. v. Amey* (compensation)
- Bond v. Chief Constable of Kent* (compensation)
- Haime v. Walklett* (special reasons)
- R. v. Kent (Peter)* (penalty points)
- Johnson v. Finbow* (penalty points)
- R. v. Clerkenwell Metropolitan Stipendiary Magistrate, ex parte Director of Public Prosecutions* (refusal of jurisdiction)
- R. v. Reigate Justices, ex parte Argus Newspapers Ltd. & Another* (hearing mitigation in camera)

Finally, I have continued the process of amplifying and improving the

introductions to each chapter. The aim is that the reader wishing to have a clear statement of the principles of any subject should go first to the appropriate introduction. This will refer him in turn to the annotated statute or other source which will supply more detail. Those who already know which statutory provision to refer to may go directly there where they will find cross references to the introduction should they need to consider the subject in context.

Except where otherwise noted I have attempted to state the law as at February 1 1984.

Poole

Brian Harris

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