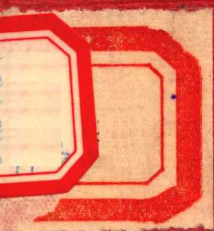


CRIMINAL LAW ACT 1977 PART III
(AND RELATED PROVISIONS)

by

HEATHER HALLETT, M.A. (Oxon.)
of the Inner Temple, Barrister.



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In November 1975, the Interdepartmental Committee on the Distribution of Criminal Business between the Crown Court and the Magistrates Courts,¹ under the chairmanship of Lord Justice James, after two years of study, published its report. The Committee's title speaks for itself and their practical objective was:

- (i) to reduce the caseload of the Crown Court, and
- (ii) to simplify the procedure by which offences are allocated for trial in either the Crown Court or the magistrates' court.

It is unarguable that the interests of justice demand a quick and efficient method of trial and that the present system is unable to cope satisfactorily with the enormous number of cases committed for trial each year. However, the problem is a highly complex one and cannot be solved by simply reducing the number of cases which may be tried in the Crown Court. The desire to reduce the delay and expense of the Crown Court system must be weighed in the balance with the general interests of justice and the particular interests of defendants, the prosecution and all other parties concerned. As the Committee pointed out in its report:

"the demand made on the Crown Court by the volume of criminal business and the considerable expense of trial in the Crown Court are important factors to be taken into account, but they are not the only factors".

One of the most important factors of all is the long established and jealously guarded right of an accused person to claim trial by jury in all but the most minor offences.

It was not surprising, therefore, that some of the Committee's recommendations, which involved restricting the right of a defendant to claim trial by jury met with considerable opposition not only in Parliament but in the country as a whole.²

However, the proposals of the James Committee were generally accepted and they have been, to a large extent, implemented in the Criminal Law Act 1977, which received the Royal Assent on 29th July, 1977. The entire Act has not yet come into force and those provisions which are now effective are contained in the following statutory instruments:

- Criminal Law Act 1977 (Commencement No. 1) Order S.I. No. 1365.
- Commencement No. 2 Order S.I. No. 1476.
- Commencement No. 3 Order S.I. No. 1682.

Part III of the Criminal Law Act 1977 is headed "Criminal Procedure and Penalties" and, for Parliamentary reasons, many important related provisions have been included in the Schedules to the Act. This work is concerned primarily with Part III of the Act and those provisions in the Schedules which affect the jurisdiction of the magistrates' courts.

Notes

- 1 Cmnd 6323.
- 2 See p.17 *infra*.

The Report of the James Committee was highly critical of the existing classification of offences which has developed over the years, and of the method by which certain categories of offences are allocated for trial on indictment or summarily. The present system classifies offences into five or more groups, depending on the method adopted. These are as follows:

- (1) Offences which can only be tried summarily;
 - (2) Summary offences which can be tried on indictment;
 - (3) "Hybrid offences" which are by definition triable either on indictment or summarily;
 - (4) Indictable offences which may be tried summarily;
 - (5) Offences which can only be tried on indictment.
- (1) **Summary offences:** i.e., those offences which have been created expressly, by statute, as summary offences and which can, therefore, only be tried in the magistrates' courts.
 - (2) **Summary offences triable on indictment:** i.e., offences which on conviction of an adult carry a penalty of three months' imprisonment or more and which with a few exceptions³ enable the defendant to claim the right to be tried by jury.
 - (3) **Hybrid offences:** i.e., offences for which a statute expressly provides for trial on indictment or summarily. Such statutes frequently provide for increased penalties on conviction on indictment. The Court proceeds as if the matter is an indictable offence unless the prosecution requires summary trial. However, the Court has a discretion as to the mode of trial and is not bound to grant the prosecution request. A defendant cannot demand summary trial if the prosecution proceeds as if the matter is an indictable offence.
 - (4) **Indictable offences triable summarily:** i.e., offences which are treated as indictable offences but are triable summarily if the accused consents thereto.
 - (5) **Indictable offences:** i.e., offences which are only triable on indictment and for which there is no provision whatsoever for summary trial.

The James Committee formed the view that such a system of classification was far too complicated and involved a presumption that trial by jury is the "natural" mode of trial. Their recommendations which have been implemented in the Criminal Law Act 1977 were designed, therefore,

- (i) to reduce the number of categories;
- (ii) to provide a single procedure for the determination of the mode of trial of offences triable either on indictment or summarily; and
- (iii) to remove any suggestion that trial on indictment is the "natural" mode of trial.

Notes

- 3 Assault and certain summary offences involving prostitution.

The Committee recommended a system of dividing offences, for jurisdictional purposes, into three groups: indictable offences, summary offences and offences triable either way. Under s. 14 of the Criminal Law Act 1977 Offences⁴ are classified as follows:-

1. Offences triable only on indictment.
2. Offences triable only summarily, and
3. Offences triable either way, i.e. on indictment or summarily.

Sections 15-17 of the Act allocate offences to the three main classes mentioned above.⁵

Section 15 declares which offences are to become triable only *summarily*, namely:-

- (a) *the offences listed in sch. 1 of the Act.*
These are former "hybrid" offences for most of which the accused hitherto had the right to claim trial by jury. As that right has been removed, it was thought appropriate to alter the maximum penalties available on summary conviction. The most noteworthy of the offences included in this category, are offences under s.5 of the Public Order Act 1936⁶ assaulting a police officer under s.51 (1) of the Police Act 1964,⁶ and offences under the drinking and driving provisions of the Road Traffic Act 1972.⁷
- (b) *Summary offences triable on indictment.*
These are offences for which the accused previously had the right to claim trial by jury because they carried a penalty of more than three months' imprisonment on conviction.⁸
- (c) *Other existing summary offences.*
- (d) *Any incitement to commit a summary offence.*
- (e) *Offences under ss.2 and 9 of the Night Poaching Act 1828.*

Notes

- 4 If committed by persons over the age of 17.
- 5 As recommended by the James Committee.
- 6 For which hitherto there was a right to trial by jury at the request of the prosecution only.
- 7 namely: (i) driving or being in charge when unfit through drink or drugs.
(ii) driving or being in charge with excess alcohol in the blood.
(iii) failing to provide a laboratory specimen.
- 8 Mainly under s.25 of the Magistrates Courts Act 1952, which ceases to have effect.