

THE
CROWN COURT

AN
INDEX OF
COMMON PENALTIES
AND FORMALITIES IN
CASES TRIED ON
INDICTMENT OR
COMMITTED FOR
SENTENCE AND APPEALS IN
CRIMINAL PROCEEDINGS

ELEVENTH EDITION

By

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and

JUDGE IAN McLEAN

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EXPLANATORY NOTE

This Index is concerned with cases tried on indictment before the Crown Court. It is also relevant to cases committed to the Crown Court from magistrates' courts in criminal proceedings.

The following abbreviations appear in the text and refer to the respective enactments shown:

I.A., 1915	Indictments Act 1915
C.Y.P.A., 1933	Children and Young Persons Act 1933
C.A., 1948	Companies Act 1948
C.J.A., 1948	Criminal Justice Act 1948
P.A., 1952	Prison Act 1952
A.B.O.O.A., 1956	Magistrates' Courts (Appeals from Binding Over Orders) Act 1956
C.J.A., 1961	Criminal Justice Act 1961
C.P.(I).A., 1964	Criminal Procedure (Insanity) Act 1964
C.P.(A.W.).A., 1965	Criminal Procedure (Attendance of Witnesses) Act 1965
M.(A.D.P.).A., 1965	Murder (Abolition of Death Penalty) Act 1965
C.J.A., 1967	Criminal Justice Act 1967
R.T.R.A., 1967	Road Traffic Regulation Act 1967
C.A.A., 1968	Criminal Appeal Act 1968
J.P.A., 1968	Justices of the Peace Act 1968
T.A., 1968	Theft Act 1968
F.A., 1968	Firearms Act 1968
C.Y.P.A., 1969	Children and Young Persons Act 1969
A.J.A., 1970	Administration of Justice Act 1970
C.A., 1971	Courts Act 1971
I.A., 1971	Immigration Act 1971
M.D.A., 1971	Misuse of Drugs Act 1971
C.J.A., 1972	Criminal Justice Act 1972
R.T.A., 1972	Road Traffic Act 1972
C.C.C.A., 1973	Costs in Criminal Cases Act 1973
P.C.C.A., 1973	Powers of Criminal Courts Act 1973
L.A.A., 1974	Legal Aid Act 1974
R.T.A., 1974	Road Traffic Act 1974
R.O.A., 1974	Rehabilitation of Offenders Act 1974
B.A., 1976	Bail Act 1976
C.L.A., 1977	Criminal Law Act 1977
M.C.A., 1980	Magistrates' Courts Act 1980
LP(E)., 1980	Licensed Premises (Exclusion) Act 1980
S.C.A., 1981	Supreme Court Act 1981

Tr.A., 1981	Transport Act 1981
C.J.A., 1982	Criminal Justice Act 1982
L.A.A., 1982	Legal Aid Act 1982
M.H.(A)A., 1982	Mental Health (Amendment) Act 1982
M.H.A., 1983	Mental Health Act 1983
C.A.R., 1968	Criminal Appeal Rules 1968
I.(P.)R., 1971	Indictment (Procedure) Rules 1971
C.F.(A.)R., 1976	Central Funds (Appeal) Regulations 1977
C.C.R., 1982	Crown Court Rules 1982
R.S.C.	Rules of the Supreme Court

The abbreviation H.O. 1978 refers to the Home Office publication *The Sentence of the Court*; the abbreviation G.A.C. refers to Master Matthews' pamphlet *A Guide to the Award of Costs in Criminal Cases in the Crown Court*.

THIS EDITION has had to be completely revised in the light of the new legislation, and little of the old text remains. The bulk of new matter had led to some pruning of the former headings which were felt to be of less relevance to the purposes of the work. Of the procedural matters, only IDENTIFICATION EVIDENCE and MAJORITY VERDICT (inside rear cover) have been retained, and then only because so many people used them for handy reference. In addition to those sentencing options arising under the Criminal Justice Act 1982, we have added, for completeness' sake sections on COMPANY OFFICERS and COMMITTAL FOR SENTENCE, and have retained VARIATION OF SENTENCE from the former PRACTICE AND PROCEDURE section. We have rewritten the sections on DEPRIVATION AND FORFEITURE and CRIMINAL BANKRUPTCY in the light of the new cases, and have included a new section on MENTALLY DISORDERED OFFENDERS in the light of the changes in the law now consolidated in the Mental Health Act 1983. We have had to include the relevant section from the Legal Aid Act 1982, in anticipation of that Act coming into force.

The authors have sought to state the law as it was on July 14th 1983.

In the same series:

- The Magistrates' Court, An Index of Common Penalties and Formalities in Cases before Justices.
- The Trial of Breathalyser Offences, A Practitioner's Index of Practice and Procedure.

Proceedings in the Criminal Division of the Court of Appeal—
An Index of Practice and Procedure (together with Master Thompson, C.B.)

The Industrial Tribunal, A Practical Guide to Employment Law and Tribunal Procedures (by John Mulhern and Ian McLean).

The County Court Practice and Procedure: General (by Nicolas Yell and W. T. West).

An index of cases referred to, showing alternative case references, will be found at the end of the volume, on pp. 207-219.

ABSOLUTE AND CONDITIONAL DISCHARGE

The Crown Court by or before which a person is convicted of an offence may, where it is of opinion having regard to the circumstances, including the nature of the offence and the character of the offender, that:

PCCA 1973,
ss.7(1) (2)
57(1)

1) the infliction of punishment is inexpedient, and

2) a probation order is not appropriate,

make an order discharging the offender either absolutely or conditionally, that is subject to the single condition that the offender commit no offence during such period not exceeding three years from the date of the order as may be specified in it.

Use of absolute discharge

An absolute discharge is an order which is unlikely to be made often in the Crown Court. It may be imposed where the court considers that no further action is required beyond the finding of guilt. It may reflect the triviality of the offence, the circumstances in which it came to be prosecuted or factors relating to the offender.

HO 1978

Effect of conditional discharge to be explained

It is the duty of the trial judge, before making an order for conditional discharge, to explain to the offender in ordinary language that if he commits a further offence during the operational period of the order he is liable to be sentenced for the original offence.

PCCA 1973,
s.7(3)

There seems to be no reason why the duty should not be delegated, say to the clerk of the court, provided that the trial judge is satisfied that an explanation has been given and understood, before he makes the order.

R v Wehner
(1977) 65 Cr
App Rep 1

Conditional discharge distinguished from other orders

In deciding whether to make an order for conditional discharge rather than, say, binding the offender over, making a probation order or imposing a suspended sentence, it should be borne in mind that such an order differs from:

- 1) a bind-over, in that the condition attached to the former relates to the commission of a further offence, while recognizances may be estreated for behaviour less than that;
- 2) a probation order, in that:
 - a) a conditional discharge may be imposed on an offender under the age of 17;
 - b) a conditional discharge involves no continuing supervision of the offender; and
 - c) only a single condition—that the offender commit no further offence during the period—may be imposed;
- 3) a suspended sentence of imprisonment, in that if the offender does commit a further offence:

ABSOLUTE AND CONDITIONAL DISCHARGE (*Continued*)

- a) there is no statutory obligation on the court to deal with him for the original offence, even though it is clearly desirable; and
- b) there is no pre-determined sentence which would ordinarily be put into effect.

Restriction on ancillary orders

Since both an absolute and a conditional discharge are limited to cases in which ‘punishment is inexpedient’, it follows that no form of ‘penalty’ may be coupled with such an order for the same offence, whether that penalty is in the form of a fine, a custodial sentence, or even a deprivation order under section 43 of the Powers of Criminal Courts Act 1973 (see *R v Hunt* [1978] Crim L R 697)

There is, however, nothing to prevent the court, in an appropriate case, from exercising its powers to:

- 1) award costs against the offender;
- 2) make a compensation order;
- 3) make a restitution order;
- 4) make a recommendation for deportation;
- 5) disqualify from driving under the provisions of the Road Traffic Acts and the Transport Act 1981; or
- 6) make a licensed premises exclusion order.

PCCA 1973,
s.12(4)

PCCA 1973,
s.13(4)(b)

IA 1971, s.6(3)

PCCA 1973,
s.13(3), sch.5,
para.45

LP(E)A 1980,
s.1(2)(b)

Owen v Imes
[1972] RTR 489
PCCA 1973,
s.12(1)

The trial judge is bound to impose any obligatory disqualification or endorsement of penalty points.

Further, on making an order for conditional discharge, if the trial judge thinks it expedient for the purpose of the reformation of the offender, he may allow any person who consents to do so to give security for the offender’s good behaviour.

Legal effect of discharge

A conviction of an offence for which an order of absolute or conditional discharge is made is, subject to certain exceptions, deemed not to be a conviction for any purpose other than:

- 1) the purpose of the proceedings in which the order is made; and
- 2) any subsequent proceedings which may be taken against the offender for breach of an order for conditional discharge;

PCCA 1973,
s.13(1); CCA
1968, s.50(1A);
CJA 1982,
s.66(1)

but this provision does not apply where the offender was 17 or over at the time of his conviction of the offence in question and is subsequently sentenced for that offence.

PCCA 1973,
s.13(2)

Again, subject to certain exceptions, the conviction of an offender made the subject of an absolute or conditional discharge is to be disregarded for the purposes of any enactment or instrument which imposes any disqualification or disability upon

ABSOLUTE AND CONDITIONAL DISCHARGE (*Continued*)

convicted persons, or authorizes or requires the imposition of such.

None of the above provisions, however, affect:

- a) the right of an offender so discharged to appeal against his conviction, or to rely on it in bar of any subsequent proceedings for the same offence;
- b) the restoration of any property in consequence of any such offender's conviction; or
- c) the duty to take a conviction resulting in such a discharge into account in determining an offender's liability to disqualification under the Road Traffic Acts and the Transport Act 1981.

Order ceases to have effect on subsequent conviction

An order for conditional discharge ceases to have effect where the offender is sentenced for the offence in respect of which the order was made.

PCCA 1973,
s.7(4)

Commission of further offence during operational period

Where a person in whose case an order for conditional discharge was made is convicted in any part of Great Britain of an offence committed during the period of that discharge, and is dealt with in respect of that offence, then:

- 1) where the original order was made by the Crown Court and the offender is convicted by a magistrates' court of the subsequent offence, the justices may commit him either in custody or on bail to appear before the Crown Court;
- 2) where the original order was made by the Crown Court, that court may deal with him for the offence for which the original order was made in any manner in which it could have dealt with him as if he had just been convicted by or before it of that offence;
- 3) where the original order was made by a magistrates' court and the offender is convicted of a further offence by the Crown Court, or is dealt with for any such offence in respect of which he was committed to the Crown Court for sentence, that court may deal with him for the offence for which the original order was made:
 - a) in any manner in which the magistrates' court could have dealt with him as if it had just convicted him of that offence; but
 - b) where the order was made by a magistrates' court in the case of an offender under 17 in respect of an offence triable only on indictment in the case of an adult, any powers exercisable by that court or any other in respect of the offender after he has attained the age of 17 are those which would be exercisable if that offence were one triable either way and had been tried summarily.

PCCA 1973,
s.8(b)

PCCA 1973,
s.8(7)

PCCA 1973,
s.8(8)

PCCA 1973,
s.9(1);
CLA 1977,
sch.12

ABSOLUTE AND CONDITIONAL DISCHARGE (*Continued*)

Note:

- i) for the purposes of (b) above, the age of any offender at a particular time is deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at the time; but PCCA 1973, s.9(2)
- ii) the relevant date for considering the appropriate sentencing option of the breach is the date of the subsequent sentence, not the original conviction; R v Keelan (1975) 119 Sol Jo 589
- iii) although there is no statutory obligation to deal with a conditional discharge on the breach, failure to do so makes the whole object of such an order pointless;
- iv) there is nothing to prevent the trial judge dealing with a breach by making a fresh order for conditional discharge if that is justified on the facts;
- v) an order for conditional discharge made on appeal is deemed to have been made by the court from which the appeal is brought. PCCA 1973, s.12(2)

Procedure on the breach

The alleged breach of a conditional discharge must be put to the offender in the same manner as the alleged breach of a probation order. Thus:

- 1) the offender should be asked whether he was convicted on the date specified by the particular court and made the subject of an order for conditional discharge; and
- 2) the offender should be asked whether he admits that his subsequent conviction was within the period of the discharge, thus rendering him liable to be dealt with for the original offence.

If the breach is disputed, then the matter is determined by the trial judge and not by a jury.

Note that any order to pay compensation which was coupled with the original order remains in force despite any fresh sentence passed on the breach.

PCCA 1973, 12(3);
R v Evans (1961) 125 JP 134

Conditional discharge substituted for probation order

Where the Crown Court is:

- 1) the court before which a probationer was convicted; or
- 2) the court from which an appeal to the Criminal Division of the Court of Appeal was made resulting in the making of a probation order;

and the probation order included a direction that the power to discharge the order be reserved to the Crown Court, and there is no appeal pending against the probation order, then the Crown Court may, on the application of a probation officer or the prob-

PCCA 1973, s.5(1) 11(1) 11(1A) sch.1, para 3;
CJA 1982, s.66(3)

ABSOLUTE AND CONDITIONAL DISCHARGE (*Continued*)

ationer, substitute for the probation order an order for conditional discharge if it appears to the court that the former order is no longer appropriate.

In such a case:

- a) the period of the conditional discharge is from the date of the making of the order until the expiration of the probation period; and PCCA 1973, s.11(1)
- b) a person in respect of whom such an order is made is, so long as the condition remains in force, treated in all respects as if the original order had been of conditional discharge. PCCA 1973, s.11(2)

An order may be made in the absence of the probationer provided that the probation officer produces to the court a statement by the probationer that he understands the effect of the order and consents to the application being made. PCCA 1973, s.11(3)

The appropriate officer of the Crown Court must give the requisite copies of the order to the probation officer, who will then give a copy to the person in respect of whom the order is made and to the person in charge of any institution in which that person was required by the probation order to reside. PCCA 1973, s.11(4)

AGE OF OFFENDER

The sentencing options available to the Crown Court will in certain circumstances depend upon the age of the offender. The Table below indicates by an * where a particular option is, and by an x where it is not, available in the case of an offender of the specified age.

	Under 14	14	15	16	17	18	19	20	21 and over
Absolute discharge	*	*	*	*	*	*	*	*	*
Attendance centre	* 1)	* 1)	* 1)	* 1)	* 1)	* 1)	* 1)	* 1)	x
Bind over	x	* 2)	* 2)	* 2)	*	*	*	*	*
Care order	* 3)	* 3)	* 3)	* 3)	* 3)	x	x	x	x
CSO	x	x	x	* 4)	*	*	*	*	*
Conditional discharge	*	*	*	*	*	*	*	*	*
Compensation	* 5)	* 5)	* 5)	* 5)	*	*	*	*	*
Costs	* 5)	* 5)	* 5)	* 5)	*	*	*	*	*
Criminal bankruptcy	x	x	x	x	*	*	*	*	*
Custody for life, s.8(1)	*	*	*	*	*	*	*	*	*
Custody for life, s.8(2)	x	x	x	x	*	*	*	*	*
Deprivation order	*	*	*	*	*	*	*	*	*
Detention centre	x	*	*	*	*	*	*	*	x
Detention s.9 CJA	x	x	x	x	* 6)	* 6)	* 6)	* 6)	x
Detention s.53(2)	*	*	*	*	x	x	x	x	x
Fine	* 7)	* 5)	* 5)	* 5)	*	*	*	*	*
Guardianship order	x	x	x	*	*	*	*	*	*
Hospital order	*	*	*	*	*	*	*	*	*
Imprisonment	x	x	x	x	x	x	x	x	* 8)
Licensed premises exclusion	*	*	*	*	*	*	*	*	*
Probation order	x	x	x	x	*	*	*	*	*
Recommendation for deportation	x	x	x	*	*	*	*	*	*
Restitution order	*	*	*	*	*	*	*	*	*
Supervision CYPA	* 3)	* 3)	* 3)	* 3)	x	x	x	x	x
Suspended sentence supervision	x	x	x	x	x	x	x	x	*
Youth custody	x	x	* 9)	* 9)	*	*	*	*	*

The figures in the Table refer to the notes which follow.

AGE OF OFFENDER (Continued)

Notes:

- 1) The aggregate number of hours for which an order may require an offender to attend, must normally be:
 - a) not less than 12 except where the offender is under 14 and the court is of opinion that 12 hours would be excessive; and
 - b) not more than 24 where the offender is under 17, or 36 where the offender is not less than 17 but under 21;
 - 2) Where the parent or guardian of a child or young person is bound over to take proper care and exercise proper control over the offender, the amount of the recognizance must not exceed £200 and the period must not exceed three years, or until the offender reaches 18 years of age, whichever is the sooner;
 - 3) Although the Crown Court is expressly empowered by statute to make such an order, s.56 of the 1933 Act and *R v Holden* (1981) 3 Cr App Rep (S) 78 make it clear that such orders, if appropriate, should be made by the juvenile court, and the offender ought to be remitted for that purpose;
 - 4) The number of hours which a person may be required to work under an order must be in the aggregate:
 - a) not less than 40, and
 - b) in the case of an offender aged 16, not more than 120, in other cases not more than 240;
 - 5) Where a young person is found guilty or is convicted of an offence for the commission of which a fine may be imposed, or costs ordered or a compensation order made, and the Crown Court is of opinion that the case would best be met by such an order, whether with or without any other punishment, the judge must order the fine, costs or compensation to be paid by the parent or guardian of the offender instead of by him, unless:
 - a) the parent or guardian cannot be found; or
 - b) it would be unreasonable to make such an order, having regard to the circumstances of the case.
- ‘Guardian’ in this context does not include a local authority; a local authority which has received a young person into its care is not liable to pay fines, compensation or costs if that juvenile commits offences.
- Note that:
- i) an order should not be made under these provisions unless the parent or guardian is first given an opportunity of being heard, or has been required to attend and has failed to do so;
 - ii) a parent or guardian against whom an order is made in the magistrates’ court may appeal to the Crown Court against it; similarly, a parent or guardian may appeal to the Court of Appeal

CJA 1982,
s.17(4)(5)

CYPA 1969,
s.7(7);
CLA 1977, s.58

PCCA 1973,
s.14 (1A);
CJA 1982,
sch.12,
para.1(b)

CYPA 1933,
s.55(1);
CJA 1982, s.26

Leeds City
Council v W.
Yorks. Met.
Police [1982] 2
WLR 186

CYPA 1933,
s.55(2);
CJA 1982, s.26

CYPA 1933,
s.55(3)(4);
CJA 1982, s.26