



Criminal Justice Act 1988

1988 CHAPTER 33

PART V

JURISDICTION, IMPRISONMENT, FINES, ETC.

Jurisdiction

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 ^{F1}...^{F2} are disclosed by material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998 (procedure where person sent for trial under section 51 ^{F3}or 51A]), has been served on 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 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;
 - ^{F4}[(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)]
 - ^{F5}(ac) an offence under paragraph 14 or 24 of Schedule 10 to the Criminal Justice and Courts Act 2015 (assaulting secure college custody officer);]

Changes to legislation: *Criminal Justice Act 1988, Section 40 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (b) an offence under section 12(1) of the ^{M1}Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.);
 - (c) an offence under [^{F6}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 ^{M2}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

- F1** Words in s. 40(1) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 60\(7\)\(a\)](#), [Sch. 37 Pt. 4](#); [S.I. 2012/1320](#), art. 4(1)(c)(d)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), art. 4(2) and [S.I. 2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3)(c)(d), [Sch.](#) (with arts. 3, 4) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1102](#), art. 2(1)(d)
- F2** Words in s. 40(1) inserted (4.1.1999 for specified purposes and otherwise 15.1.2001) by [1998 c. 37](#), s. 119, [Sch. 8 para. 66](#); [S.I. 1998/2327](#), [art. 4\(2\)\(c\)](#); [S.I. 2000/3283](#), [art. 2\(c\)](#)
- F3** Words in s. 40(1) inserted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 60\(7\)\(b\)](#); [S.I. 2005/1267](#), arts. 2(1)(2)(b), [Sch. Pt. 2](#); [S.I. 2012/1320](#), art. 4(1)(c)(2)(3) (with arts. 3, 5) (see [S.I. 2012/2574](#), art. 4(2) and [S.I. 2013/1103](#) art. 4); [S.I. 2013/1103](#), art. 2(1)(d)
- F4** 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
- F5** S. 40(3)(ac) inserted (20.3.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 10 para. 31](#); [S.I. 2015/778](#), art. 2(1)(d)
- F6** Words substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 108:1\)](#), s. 4, [Sch. 3 para. 39](#)

Modifications etc. (not altering text)

- C1** S. 40 modified (1.12.1998) by [1998 c. 37](#), s. 52(6), [Sch. 3 para. 6\(8\)](#); [S.I. 1998/2327](#), [art. 4\(2\)](#)

Marginal Citations

- M1** [1968 c. 60](#).
M2 [1980 c. 43](#).

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 36(2)(b)(v) and word inserted by [2019 c. 17 s. 13\(3\)\(b\)](#)
- s. 36(3A)(3B) substituted for s. 36(3A) by [2008 c. 4 s. 46\(2\)](#)
- s. 41(4A) inserted by [2004 c. 28 Sch. 10 para. 28](#)
- s. 139AZA(1)(a)(iii) and word inserted by [2019 c. 17 s. 13\(4\)\(b\)](#)