

WILKINSON'S  
ROAD TRAFFIC  
OFFENCES

GENERAL EDITOR  
KEVIN McCORMAC

PHILIP BROWN, OLWEN DAVIES  
MALCOLM DODDS

Sweet & Maxwell

# TABLE OF CONTENTS

<i>Preface</i> .....	xxvii
<i>Service Information</i> .....	xxix
<i>Table of Cases</i> .....	lix
<i>Table of Statutes</i> .....	cxli
<i>Table of Statutory Instruments</i> .....	clxxiii
<b>1. DEFINITIONS</b>	
General .....	1-01
"Magistrates court" .....	1-02
The 1988 road traffic legislation .....	1-03
<b>MOTOR VEHICLES</b> .....	1-04
"Motor vehicle" .....	1-04
"Motor car" .....	1-06
"Hovercraft" .....	1-08
"Invalid carriage" .....	1-12
"Motor cycle" .....	1-13
A "Three-wheeler cars" .....	1-14
B "Motor bicycle" .....	1-15
C "Side-car" .....	1-16
D "Standard motor cycle" .....	1-17
E "Learner motor bicycles" .....	1-18
F "Moped" .....	1-19
Other motor vehicles .....	1-22
"Pedal cycles" .....	1-23
Electrically assisted pedal cycles .....	1-25
Goods vehicles .....	1-26
"Heavy commercial vehicle" .....	1-27
"Constructed" and change of use .....	1-29
"Adapted" .....	1-32
"Vehicle" .....	1-33
"Mechanically propelled" .....	1-37
"Intended or adapted for use on roads" .....	1-38
A Go-carts, racing cars, powered transporters, etc. ....	1-41
B Dumper trucks, excavators, etc. ....	1-42
C Works' trucks .....	1-43
Miscellaneous vehicles .....	1-48
"Recovery vehicle" .....	1-53
"Breakdown vehicle" and "specialised breakdown vehicle" .....	1-55
"Disabled vehicle" .....	1-57
"TRAILER" .....	1-57
Meaning .....	1-59
"Semi-trailer", etc. ....	1-60
"Articulated vehicle" .....	1-63
Drawing of trailers .....	1-67
Attendants with special vehicles .....	1-68
"WEIGHT" .....	1-68
Meaning .....	1-68

"Loose equipment" .....	1-72
Removable containers .....	1-73
Weight generally .....	1-74
Plated weights .....	1-75
"Description of weight" .....	1-79
Transmission and ascertainment of weight .....	1-81
"ACCIDENT" .....	1-84
Meaning .....	1-84
"DRIVER" .....	1-89
Meaning .....	1-89
"Driving" .....	1-92
Continuing driving .....	1-104
"Drives or attempts to drive" .....	1-107
"In charge" .....	1-110
"Use" and "driving" .....	1-113
Pushing and driving .....	1-114
"Taking a conveyance" .....	1-115
"Rider" .....	1-116
Passenger .....	1-117
Automatism .....	1-118
"ROAD" .....	1-122
Roads and highways generally .....	1-122
"Highway" .....	1-127
A "Bridleway" .....	1-128
B "Carriageway" .....	1-129
C "Dual carriageway" .....	1-130
D "Cycle track" .....	1-131
E "Footpath" .....	1-132
F "Footway" .....	1-133
G "Walkway" .....	1-134
H "Public path" .....	1-135
I "Byway open to all traffic" .....	1-136
Determining the existence of a highway .....	1-137
Public access .....	1-141
Car parks, forecourts, "or other public place" .....	1-148
Harbour, airfield and Crown roads .....	1-158
"TO CAUSE", "TO PERMIT", "TO USE" .....	1-161
Meaning .....	1-161
"    To cause" .....	1-162
"    To permit" .....	1-166
Meaning .....	1-166
Cases .....	1-168
"    To use" .....	1-176
Meaning .....	1-176
Cases .....	1-180
"AGRICULTURE" .....	1-195
Meaning .....	1-195
"AIDING, ABETTING, COUNSELLING AND PROCURING" .....	1-198
Generally .....	1-198
Counselling .....	1-202
Cases .....	1-203
"ATTEMPT" .....	1-208

Generally .....	1-208
"OWNER" .....	1-213
Meaning .....	1-213
2. PROCEDURE .....	
COMMENCING PROCEEDINGS .....	2-01
Generally .....	2-01
The making of an application .....	2-03
The issue of a summons .....	2-06
The issue of a warrant .....	2-08
Form of summons or requisition .....	2-12
Authority to prosecute .....	2-15
JURISDICTION OVER OFFENDERS .....	2-20
Youths .....	2-20
Attaining 18 before the conclusion of proceedings .....	2-29
Sentencing .....	2-30
Commonwealth and foreign servicemen .....	2-31
Drivers from abroad .....	2-33
Diplomatic privilege .....	2-34
The Crown .....	2-35
Enactments not specifically naming the Crown .....	2-38
JURISDICTION OVER OFFENCES .....	2-40
Venue .....	2-40
Trying cases together .....	2-41
Limitation of time .....	2-42
Computing time .....	2-53
Continuing offences .....	2-54
ADVICE, ASSISTANCE AND REPRESENTATION .....	2-55
Grant .....	2-55
Application to road traffic offences .....	2-57
THE HEARING .....	2-58
General .....	2-58
The court .....	2-59
Refusal to hear a case .....	2-69
Proof of service; attendance of defendant .....	2-77
Waiving summons .....	2-80
Amending summonses .....	2-81
Duplicity .....	2-93
Adjournment .....	2-102
Preliminary points .....	2-117
Autrefois acquit or convict and pleas in bar .....	2-118
Categories of cases and advance information .....	2-124
Advance information .....	2-125
Presence of defendant .....	2-127
Allocation (mode of trial) procedure .....	2-130
Summary trial: speeches and no case to answer .....	2-138
Disclosure procedures under the Criminal Procedure and Investigations Act 1996 .....	2-145
Plea of guilty .....	2-150
Pleading guilty in writing .....	2-153
Equivocal plea and change of plea .....	2-159

Hearing charges together .....	2-160
Duress .....	2-166
Conviction .....	2-171
Mitigation .....	2-176
Defendant's previous convictions .....	2-178
Committals for sentence .....	2-185
Remitting to a magistrates' court for sentence from another magistrates' court or from the Crown Court .....	2-188
Discontinuance of proceedings .....	2-189
Irregularity .....	2-191
Reopening .....	2-195
NOTICES OF INTENDED PROSECUTION .....	2-200
Requirements: Road Traffic Offenders Act 1988 s.1 .....	2-200
Speeding .....	2-203
Offences causing death and courts-martial .....	2-204
Waiver .....	2-205
Accidents .....	2-206
Presumption of conformity with s.1 .....	2-210
Warning at the time .....	2-211
Service of summons .....	2-214
Service of notice of intended prosecution .....	2-215
Reasonable diligence .....	2-220
Errors in the notice .....	2-222
Errors in the nature of the offence .....	2-223
Errors in date, time or place .....	2-225
3. EVIDENCE .....	
Generally .....	3-01
Evidence on oath or affirmation .....	3-02
Enforcing attendance: production of documents .....	3-08
Hearsay .....	3-13
Witnesses abroad .....	3-24
Spouses or civil partners .....	3-25
Bad character .....	3-27
Disclosure of previous convictions of prosecution witnesses .....	3-34
Expert evidence .....	3-35
Evidence by the defendant .....	3-38
Trial within a trial .....	3-42
Witness statements .....	3-43
Statements generally .....	3-44
Refreshing memory .....	3-50
Documentary evidence .....	3-55
A Registration particulars and driving licence records .....	3-61
B Weight tickets and timetables .....	3-63
C Manufacturers' records and computer evidence .....	3-64
Plans, sketches and maps .....	3-67
Photographs, films, tapes and video tapes .....	3-69
CCTV .....	3-73
Exhibits .....	3-76
Inspections .....	3-78
Local and specialised knowledge .....	3-80

Admissions .....	3-83
Proof generally .....	3-85
Proof in respect of companies, partnerships and employers .....	3-99
Evidence generally .....	3-100
Evidence illegally obtained .....	3-105
4. DRINK/DRIVING OFFENCES .....	
INTRODUCTION .....	4-01
The legislative framework .....	4-01
Offences .....	4-04
Irrelevance of arrest to admissibility of evidence of analysis .....	4-05
Exclusion of evidence of analysis .....	4-07
SUMMARY OF OFFENCES .....	4-21
Failing to co-operate with a preliminary test (s.6(6)) .....	4-21
Driving or attempting to drive a mechanically propelled vehicle while unfit through drink or drugs (s.4(1)) .....	4-22
In charge of a mechanically propelled vehicle while unfit through drink or drugs (s.4(2)) .....	4-23
Driving or attempting to drive a motor vehicle with excess alcohol (s.5(1)(a)) .....	4-24
In charge of a motor vehicle with excess alcohol (s.5(1)(b)) .....	4-25
Driving a motor vehicle with concentration of a specified controlled drug above specified limit (s.5A(1)(a)) .....	4-26
In charge of a motor vehicle with concentration of a specified controlled drug above the specified limit (s.5A(1)(b)) .....	4-27
Failing to provide a specimen for analysis (s.7(6)) .....	4-28
Failing to allow specimen of blood to be subjected to laboratory test (s.7A) .....	4-29
Interaction of the offences .....	4-30
DEFINITIONS .....	4-31
"Drives or attempts to drive" .....	4-31
"In charge" .....	4-32
"Mechanically propelled vehicle" .....	4-33
"Motor vehicle" .....	4-34
"Road" .....	4-35
"Or other public place" .....	4-36
PRELIMINARY TESTS .....	4-37
Requirement to co-operate .....	4-40
Preliminary test on suspicion of alcohol, drugs or a moving traffic offence (s.6(2)-(4), (7)) .....	4-41
A "Preliminary breath test" .....	4-42
B "Constable in uniform" .....	4-43
C "May require" .....	4-45
D "Driving or attempting to drive" .....	4-46
E "Reasonably suspects" .....	4-47
F "Traffic offence" .....	4-53
G "At or near the place" .....	4-54
Random tests .....	4-55
Preliminary test following an accident (s.6(5)) .....	4-58
A "Accident" .....	4-59
B "Reasonably believes" .....	4-62

Preliminary breath testing devices .....	4-65
Radio interference .....	4-69
Failing to co-operate with a preliminary test (s.6(6)) .....	4-70
The Alcolmeter .....	4-74
The Alcolmeter 500 .....	4-75
Refusal to co-operate with a preliminary test .....	4-76
Defence of reasonable excuse .....	4-78
Powers of entry .....	4-81
Powers of arrest .....	4-86
DRIVING OR IN CHARGE WHILST UNFIT .....	4-88
Inter-relation of offences .....	4-88
The offence (s.4(1) and (2)) .....	4-90
Evidence of impairment .....	4-91
Drugs .....	4-96
DRIVING OR IN CHARGE ABOVE THE LIMIT .....	4-103
The offence (s.5(1)(a) and (b)) .....	4-103
Provision of breath specimens .....	4-109
A Reasonable cause to believe that a specimen cannot be provided (s.7(3)(a)) .....	4-114
B Reliable device not available for use (s.7(3)(b)) .....	4-119
C Reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the subject's breath (s.7(3)(bb)) .....	4-134
D Reasonable cause to believe following preliminary drug test that person has a drug in his body (s.7(3)(bc)); condition of person giving specimen may be due to drugs (s.7(3)(I)) .....	4-136
Defendant's option to provide blood or urine specimens .....	4-138
Alcohol levels .....	4-149
Back calculation .....	4-151
Evidential breath test devices .....	4-161
A Approval of devices .....	4-161
B Standard drink/drugs police pro forma .....	4-166
C Description of devices .....	4-169
D Calibration of devices .....	4-172
E Operation of devices .....	4-175
F Admissibility of specimens of breath .....	4-177
Challenging the evidential breath testing machines .....	4-185
A General serviceability and type approval .....	4-186
B Comparative specimens .....	4-194
C Amount of alcohol consumed .....	4-196
D Radio interference .....	4-200
Provision of blood or urine specimens .....	4-201
Blood specimens .....	4-204
Urine specimens .....	4-209
Results of laboratory analysis .....	4-214
Supply of specimen of blood or urine to the defendant .....	4-218
Certificates of analysis and printouts, etc. ....	4-224
Warning of prosecution .....	4-237
Detention at the police station .....	4-242
DRIVING OR IN CHARGE ABOVE THE SPECIFIED DRUGS LIMIT .....	4-244
Specified drug limits .....	4-245

FAILING TO PROVIDE A SPECIMEN .....	4-246
The offence (s.7(6)) .....	4-246
A "Fails" .....	4-250
B "Refuses" .....	4-251
C "Reasonable excuse" .....	4-254
FAILING TO ALLOW SPECIMEN TO BE LABORATORY TESTED .....	4-278
The offence (s.7A) .....	4-278
HOSPITAL PATIENTS .....	4-281
Introduction .....	4-281
"At a hospital" .....	4-282
"As a patient" .....	4-283
"Medical practitioner in immediate charge of his case" .....	4-285
Preliminary tests .....	4-286
Blood or urine specimens .....	4-288
POST-OFFENCE CONSUMPTION OF ALCOHOL OR DRUGS .....	4-295
Alcohol .....	4-295
DEFENCE OF DURESS .....	4-300
INSANITY .....	4-302
NON-INSANE AUTOMATISM .....	4-303
DEFENCES TO "IN CHARGE" OFFENCES .....	4-304
Defences under s.4(2) and s.5(1)(b) .....	4-304
SENTENCING, PROCEDURE AND TRIAL .....	4-311
Procedure and trial .....	4-311
Adjournment .....	4-318
Drink/driving: penalties .....	4-319
Sentencing guidelines .....	4-320
Obligatory disqualification .....	4-327
Penalty points disqualification .....	4-329
Obligatory disqualification for at least three years .....	4-330
Reduction of disqualification .....	4-333
Alcohol ignition interlocks .....	4-334
Problem drinkers .....	4-335
Legal position .....	4-337
OTHER OFFENCES INVOLVING DRINK OR DRUGS .....	4-338
Riding a cycle whilst unfit .....	4-338
In charge of a carriage, horse or cattle, when drunk .....	4-340
5.1 DANGEROUS, CARELESS AND INCONSIDERATE DRIVING, ETC. ....	
INTRODUCTION .....	5-01
DANGEROUS DRIVING .....	5-03
Abolition of reckless driving, etc. ....	5-03
What is dangerous driving? .....	5-04
Scope of the offence .....	5-16
Procedure .....	5-17
Alternative verdicts .....	5-21
CAUSING SERIOUS INJURY BY DANGEROUS DRIVING .....	5-25
CAUSING SERIOUS INJURY BY CARELESS OR INCONSIDERATE DRIVING .....	5-26
CAUSING DEATH BY DANGEROUS DRIVING .....	5-27
The offence (s.1) .....	5-27
Evidence and procedure .....	5-28
Alternative verdicts .....	5-43

Inquests .....	5-45
<b>MOTOR MANSLAUGHTER</b> .....	5-47
Constituents of the offence .....	5-47
Hit-and-run drivers .....	5-50
<b>DANGEROUS, CARELESS AND INCONSIDERATE DRIVING</b> .....	5-51
Definition of careless or inconsiderate driving .....	5-51
The difference between dangerous and careless driving .....	5-52
Summary of careless and inconsiderate driving .....	5-56
The difference between careless and inconsiderate driving .....	5-57
Objective standard of care .....	5-58
Automatism .....	5-61
Res ipsa loquitur .....	5-62
Falling asleep .....	5-65
Drink .....	5-66
Speed .....	5-70
Evidence of previous driving .....	5-71
Mechanical defects .....	5-72
Cases on careless driving .....	5-74
Cases on inconsiderate driving .....	5-76
Civil cases .....	5-77
Highway Code .....	5-81
Visibility .....	5-86
Use of headlights .....	5-87
Two offences from one incident .....	5-88
Aiders and abettors and supervisors .....	5-89
Public emergencies .....	5-92
Defence of necessity or duress .....	5-93
Self defence .....	5-98
Defence of reasonable force to assist in arrest of offenders .....	5-99
<b>CAUSING DEATH BY CARELESS DRIVING WHEN UNDER THE INFLUENCE OF DRINK OR DRUGS</b> .....	5-100
The offence (s.3A) .....	5-100
Scope of the offence .....	5-105
Procedure and evidence generally .....	5-106
<b>CAUSING DEATH BY CARELESS, OR INCONSIDERATE, DRIVING</b> .....	5-109
The offence (s.2B) .....	5-109
<b>CAUSING DEATH BY DRIVING: UNLICENSED, DISQUALIFIED OR UNINSURED DRIVERS</b> .....	5-112
The offence (s.3ZB) .....	5-112
<b>CAUSING SERIOUS INJURY BY DRIVING: DISQUALIFIED DRIVERS</b> .....	5-115
<b>RELATED OFFENCES</b> .....	5-116
Causing bodily harm by furious driving, etc. ....	5-116
Motor racing on highways .....	5-120
Driving with uncorrected defective eyesight or refusing to submit to an eyesight test .....	5-123
Driving to the common danger, etc. ....	5-125
<b>DANGEROUS, CARELESS AND INCONSIDERATE CYCLING</b> .....	5-126
The offences (ss.28 and 29) .....	5-126
<b>PENALTIES AND SENTENCING</b> .....	5-129
Table of penalties .....	5-130
Mandatory life sentence for manslaughter .....	5-131
Compulsory driver retesting .....	5-132

Period of obligatory disqualification .....	5-133
Careless or inconsiderate driving .....	5-134
Alternative verdicts: sentencing .....	5-136
Driving to the common danger, etc. ....	5-137
<b>SENTENCING GUIDELINES</b> .....	5-138
Generally .....	5-138
Motor manslaughter .....	5-139
Causing death by dangerous driving, causing death by careless driving when under the influence of drink or drugs, causing death by careless driving, and causing death by driving: unlicensed, disqualified or uninsured drivers .....	5-143
Death by careless driving: Sentencing cases (many predate the new guidelines but still provide a useful illustration of the approach taken by the appeal courts so are set out below following consideration of cases where the more recent guidelines apply) .....	5-145
Death by careless driving whilst under the influence of drink or drugs, whilst unlicensed, uninsured or disqualified: Sentencing cases .....	5-168
Death by dangerous driving: Sentencing cases (many predate the new guidelines but still provide a useful illustration of the approach taken by the appeal courts so are set out below following consideration of cases where the more recent guidelines apply) .....	5-172
Ancillary Orders .....	5-195
Sentencing: causing serious injury by dangerous driving; causing serious injury by careless or inconsiderate driving; causing serious injury by driving: disqualified drivers .....	5-199
Dangerous and careless driving .....	5-223
Views of the victim or victim's family .....	5-244
Alcohol/drugs .....	5-245
Disqualification .....	5-246
<b>6.1 DRIVER OFFENCES</b> .....	6-210
Obstruction .....	6-211
<b>SIGNS AND SIGNALS</b> .....	6-01
Generally .....	6-01
Failing to comply with a sign .....	6-09
Cyclists, other vehicles and equestrians .....	6-12
Conformity of signs .....	6-13
Defences .....	6-15
Neglecting or refusing to comply with directions given by police or traffic officers .....	6-16
"Constable" and "traffic warden" .....	6-21
"Engaged in the regulation of traffic" .....	6-23
"In the execution of his duty" .....	6-24
"Stop" .....	6-26
Defences .....	6-28
Horse riders .....	6-29
Traffic lights .....	6-30
Motorway and dual carriageway traffic lights .....	6-37
Detection of offences .....	6-38

"Stop" signs at major roads	6-40
"Give Way" signs	6-42
"One Way", "No Right Turn", "Access Only", etc., orders	6-43
"Keep Left" signs and arrows	6-46
Automatic level crossings	6-48
Census points	6-51
Other signs	6-53
White lines and double white lines	6-54
Double white lines	6-55
Non-conforming and damaged signs	6-60
<b>SIGNS AND SIGNALS: PROCEEDINGS AND PENALTIES</b>	6-63
Warning of intended prosecution	6-63
Proceedings generally	6-64
Penalties	6-65
Sentencing guidelines	6-67
Signs and signals: penalties	6-68
<b>SPEED LIMITS</b>	6-69
Generally	6-69
Application	6-73
Exemptions	6-74
Defence of necessity	6-77
Driving at a dangerous speed	6-78
Evidence and corroboration	6-79
Speed check equipment	6-85
Enforcement and technology	6-88
Prescribed devices	6-89
Radar speed meters	6-91
Radar detection devices	6-93
Hand-held radar guns	6-94
Laser speed measuring equipment	6-98
Vascar	6-101
Police Pilot	6-102
Electric trip wire equipment	6-103
Warnings of speed traps: obstruction	6-104
Accident investigation	6-107
Evidence generally	6-108
Speed limits on restricted roads	6-114
Temporary speed limits	6-122
Temporary maximum speed limits	6-123
Temporary minimum speed limits	6-124
Temporary speed restrictions for road works, etc.	6-125
Speed limits applicable to particular classes of vehicle	6-126
A Passenger vehicles and motor caravans	6-129
B Goods vehicles	6-132
C Car-derived vans	6-137
D Dual-purpose vehicles	6-139
E Articulated vehicles and trailers	6-142
F Agricultural vehicles	6-146
Motorway speed limits	6-147
<b>SPEED LIMITS: PROCEEDINGS AND PENALTIES</b>	6-149
Warning of intended prosecution	6-149
Temporary speed restrictions for road works, etc.	6-150

Proceedings generally	6-151
Fixed penalties and penalty points for speeding	6-152
Sentencing guidelines	6-153
Speed limits: penalties	6-154
<b>MOTORWAYS</b>	6-155
Generally	6-155
<b>MOTORWAYS: PENALTIES</b>	6-162
Generally	6-162
Motorways: penalties	6-164
<b>PEDESTRIAN CROSSINGS</b>	6-165
Generally	6-165
Zebra crossings	6-167
The "limits" of a Zebra crossing	6-171
According precedence at Zebra crossings	6-172
Absolute liability of driver	6-176
Defence of mechanical failure, etc.	6-180
Stopping in the Zebra controlled area	6-181
Overtaking in the Zebra controlled area	6-182
Pelican crossings	6-184
Puffin crossings	6-187
<b>PEDESTRIAN CROSSINGS: PROCEEDINGS AND PENALTIES</b>	6-190
Generally	6-190
Pedestrian crossings: penalties	6-192
Proceedings for other offences	6-193
<b>EQUESTRIAN AND TOUCAN CROSSINGS</b>	6-194
Generally	6-194
<b>SCHOOL CROSSINGS AND STREET PLAYGROUNDS</b>	6-196
Generally	6-196
School crossings	6-197
Street playgrounds	6-207
Table of penalties	6-208
<b>OBSTRUCTION, PARKING, ETC.</b>	6-209
Generally	6-209
Nuisance parking	6-210
Obstruction	6-211
What amounts to obstruction	6-213
Arrest	6-225
Parking meters	6-226
"No Waiting" streets	6-232
Signs	6-235
Exemptions for loading, etc.	6-239
Exemptions for disabled drivers	6-243
Clearways	6-250
Parking on verges, footpaths and central reservations	6-251
Immobilisation of vehicles illegally parked	6-254
Private wheel clamping; criminal damage to wheel clamps	6-256
Abandoning vehicles	6-259
Driving on the footway and on common or private land	6-261
Depositing builders' skips on the highway	6-265
Negligent opening of car doors	6-268
Leaving vehicle in dangerous position	6-271
Parking or driving on cycle tracks	6-273

Parking at night .....	6-274
Depositing mud and other matter on highways .....	6-275
OBSTRUCTION, PARKING, ETC.: PENALTIES .....	6-277
Generally .....	6-277
Obstruction, parking, etc.: penalties .....	6-278
Removal of illegally parked and abandoned vehicles .....	6-279
Parking attendants .....	6-285
<b>7. ACCIDENTS AND FURNISHING INFORMATION</b> .....	
ACCIDENTS INVOLVING INJURY .....	7-01
Production of certificates (s.170(5)) .....	7-01
ACCIDENTS TO PERSONS, ANIMALS, VEHICLES OR PROPERTY .....	7-04
Stopping and reporting: requirements of ss.170(1)-(4), (6) and 168 .....	7-04
Knowledge of driver .....	7-07
Meaning of "stop", "driver", "injury" and "accident" .....	7-09
Duty to exchange names or report .....	7-13
One offence or two? .....	7-23
FURNISHING INFORMATION .....	7-24
Generally .....	7-24
Driver alleged to be guilty of a specified offence .....	7-26
Place of offence .....	7-40
"By or on behalf of a chief officer of police" .....	7-41
Vehicle driven without insurance .....	7-42
Other instances .....	7-43
PROCEEDINGS AND PENALTIES .....	7-45
Penalties for failure to stop and report .....	7-45
Penalties for refusal to give information, etc. ....	7-48
Accidents and furnishing information: penalties, etc. ....	7-50
<b>8. VEHICLE OFFENCES</b> .....	
CONSTRUCTION AND USE .....	8-01
Generally .....	8-01
The Construction and Use Regulations .....	8-03
TYPE APPROVAL SYSTEM .....	8-09
Vehicles subject to type approval .....	8-09
The optional EC type approval scheme .....	8-10
The compulsory British type approval scheme .....	8-13
Approval marks .....	8-16
Sale of vehicles and parts without required certificate .....	8-17
SPECIFIC CONSTRUCTION AND USE REGULATIONS .....	8-18
Agricultural trailed appliance .....	8-18
Length, width, height and overhang .....	8-20
Length .....	8-20
Width .....	8-23
Height .....	8-24
Overhang .....	8-26
Rear markings .....	8-27
Speedometers .....	8-28
Brakes .....	8-32
Designated approval marks .....	8-37

Pedal cycles .....	8-38
Vehicle or load in dangerous condition .....	8-40
Quitting vehicles, etc. ....	8-54
Tyres .....	8-56
Knobbly tyres .....	8-64
Mirrors .....	8-66
Mascots .....	8-67
Wings .....	8-68
Emissions .....	8-69
Silencers, noise and warning instruments .....	8-70
Fuel tanks .....	8-75
Televisions and videos .....	8-76
Mobile telephones .....	8-77
Sale of unroadworthy vehicles and parts .....	8-80
Special types of vehicles .....	8-85
Abnormal indivisible load .....	8-86
CONSTRUCTION AND USE: PENALTIES .....	8-88
Generally .....	8-88
Endorsement .....	8-90
Description of weight offences .....	8-93
Loads causing nuisance .....	8-94
Weight prosecutions .....	8-95
Defences to weight prosecutions .....	8-97
Penalty points and exemptions from endorsement .....	8-101
Disqualification .....	8-104
Endorsement code .....	8-105
Brakes on pedal cycles .....	8-106
Selling, etc., unroadworthy vehicles and parts .....	8-107
Construction and use: penalties .....	8-108
LIGHTING .....	8-109
The Road Vehicles Lighting Regulations .....	8-109
Application .....	8-112
Offences .....	8-113
Exemptions from the 1989 Regulations .....	8-114
Car, Vehicles towing or being towed .....	8-116
Fitting of lamps, etc. ....	8-117
Projecting trailers and projecting and overhanging loads .....	8-118
Headlamps—requirements .....	8-120
Position lamps—requirements .....	8-121
Rear registration plate lamps .....	8-122
Maintenance .....	8-123
Exemptions—maintenance .....	8-124
Further maintenance offences .....	8-126
Headlamps—keeping lit during darkness or seriously reduced visibility .....	8-127
Exemptions .....	8-128
Position lamps, etc.—keeping lit during darkness or seriously reduced visibility .....	8-129
Exemptions for parked vehicles .....	8-131
Seriously reduced visibility .....	8-134
Fog lamps .....	8-136
Improper use of lamps, etc. ....	8-137

LIGHTING: PROCEEDINGS AND PENALTIES .....	8-138
Generally .....	8-138
Lighting: penalties .....	8-140
TEST CERTIFICATES AND TESTING .....	8-141
Generally .....	8-141
Test certificates .....	8-142
Goods vehicles .....	8-149
Roadside tests .....	8-153
Trailer registration and testing .....	8-157
Foreign goods vehicles .....	8-158
TEST CERTIFICATES: PENALTIES .....	8-161
Generally .....	8-161
Test certificates: penalties .....	8-163
<b>9. PROTECTION OF DRIVERS AND PASSENGERS</b> .....	<b>9-01</b>
<b>GENERALLY</b> .....	<b>9-01</b>
<b>SEAT BELTS</b> .....	<b>9-03</b>
Wearing of seat belts by persons of 14 and over .....	9-03
Aiding and abetting .....	9-06
Persons 14 and over: non-availability of seat belts .....	9-07
Persons 14 and over: non-compliance seat belts exemption .....	9-09
Persons 14 and over: general exemptions from wearing seat belts .....	9-10
Exemption on medical grounds .....	9-14
Wearing of seat belts, restraints, etc., by children in rear of motor vehicles .....	9-17
Children under 14 in rear: description of belts to be worn as required by s.15(3) .....	9-21
Children in rear: non-availability exemption .....	9-23
Children in rear of motor vehicles: vehicle exemptions .....	9-26
Children in rear of motor vehicles: other exemptions .....	9-28
Section 15(3A) offence: driver not moving unprotected small child to the front—summary of requirements and exemptions .....	9-30
Wearing of seat belts by children in the front of motor vehicles .....	9-32
Children in the front: description of belts to be worn as required by s.15(1) and the regulations .....	9-34
Children in the front: description of vehicles .....	9-36
Children in the front: exemptions .....	9-37
Specified motor vehicles and vehicle exemptions generally .....	9-38
Definitions .....	9-39
"Motor vehicle" .....	9-39
"Bus", "large bus", "small bus" .....	9-40
"Passenger car" and "light goods vehicle" .....	9-42
"Large child", "small child", "front", "rear" .....	9-43
"Adult belt" .....	9-44
"Child restraint" .....	9-45
"Seats", and various "seat belts" .....	9-46
"Front seat" .....	9-47
"Rear seat" .....	9-48
"Specified passenger seat" .....	9-49

Other definitions .....	9-50
Provision of seat belts .....	9-51
Maintenance of seat belts .....	9-53
<b>SAFETY EQUIPMENT FOR CHILDREN IN MOTOR VEHICLES</b> .....	<b>9-54</b>
<b>MOTOR CYCLE HELMETS</b> .....	<b>9-56</b>
Wearing of helmets .....	9-56
Aiding and abetting .....	9-61
Eye protectors .....	9-63
Sale, etc., of helmets .....	9-65
"Third party" proceedings .....	9-67
Sale, etc., of eye protectors .....	9-68
Helmets, eye protectors and child safety equipment: warranty offences .....	9-69
<b>MOTOR CYCLE PASSENGERS</b> .....	<b>9-70</b>
Carrying passengers .....	9-70
<b>PENALTIES AND PROCEEDINGS</b> .....	<b>9-71</b>
Seat belts (ss.14 and 15) .....	9-71
Motor cycle helmets (ss.16 and 17) .....	9-72
Motor cycle passengers (s.23) .....	9-73
Eye protectors (s.18) .....	9-74
Helmets, eye protectors and child safety equipment: warranties .....	9-75
Protection of drivers and passengers: penalties .....	9-77
<b>10. INSURANCE</b> .....	<b>10-01</b>
Introduction .....	10-01
<b>THIRD PARTY INSURANCE POLICIES</b> .....	<b>10-02</b>
Generally .....	10-02
Nature of the insurance .....	10-06
The Motor Insurers' Bureau .....	10-12
Certificates and policies .....	10-14
Green Card system .....	10-17
Social and business purposes .....	10-18
Car sharing; hire or reward .....	10-21
Employees and agents .....	10-23
Driving licence condition .....	10-25
Public authorities and other special cases .....	10-29
Void conditions .....	10-31
Trailers .....	10-35
<b>LIABILITY OF INSURERS</b> .....	<b>10-37</b>
General conditions of liability .....	10-37
General conditions of liability: criminal acts .....	10-40
General conditions of liability: temporary cover on renewal .....	10-42
General conditions of liability: disposal and acquisition .....	10-44
General conditions of liability: death of insured .....	10-46
Meaning of "use" generally .....	10-47
"Use" on private land .....	10-51
Use by passengers .....	10-52
Policy obtained by misrepresentation .....	10-56
<b>ABSOLUTE LIABILITY: USING, CAUSING AND PERMITTING</b> .....	<b>10-57</b>
Generally .....	10-57

Special defence for persons using vehicles in the course of their employment .....	10-63
A "Belonging" .....	10-64
B "In the course of his employment" .....	10-65
C "Neither knew nor had reason to believe that there was not in force" .....	10-67
KEEPING VEHICLE NOT MEETING INSURANCE REQUIREMENTS .....	10-68
Liability .....	10-69
Exemptions .....	10-70
Penalty .....	10-71
EVIDENCE AND PROCEDURE .....	10-72
Burden of proof .....	10-72
Evidence .....	10-73
Production of certificates .....	10-74
Production of certificates—defence .....	10-76
Production of certificates—other provisions .....	10-77
PROCEEDINGS AND PENALTIES .....	10-78
Limitation of time .....	10-78
Penalties .....	10-79
Special reasons .....	10-82
Compensation and insurance .....	10-85
Insurance: penalties .....	10-92
<b>11. DRIVING LICENCES</b>	
PROVISIONS AND OFFENCES .....	11-01
Generally .....	11-01
Renewal of licences and pending applications .....	11-18
Production of licences .....	11-22
Driving otherwise than in accordance with a licence .....	11-29
Employing an unlicensed driver .....	11-31
Driving under age .....	11-33
Learner drivers .....	11-34
Supervision of learner drivers .....	11-40
Learner drivers and unqualified passengers .....	11-43
Aiding and abetting .....	11-44
Qualified drivers .....	11-45
Miscellaneous offences .....	11-48
Disease or disability .....	11-54
Appeal .....	11-61
Electrically assisted pedal cycles .....	11-62
Drivers from abroad .....	11-63
Exchangeable driving licences .....	11-70
DRIVING WHILE DISQUALIFIED .....	11-73
The offence (s.103) .....	11-73
Applying for a licence while disqualified .....	11-82
Obtaining a licence while disqualified .....	11-84
Disqualification quashed on appeal .....	11-85
Power of arrest .....	11-86
Attempts .....	11-87
PENALTIES AND PROCEEDINGS .....	11-88
General offences .....	11-88

Endorsement, disqualification and penalty points .....	11-90
Driving while disqualified .....	11-92
Disqualification .....	11-96
Driving licences: penalties .....	11-98
<b>12. EXCISE AND TRADE LICENCES</b>	
Generally .....	12-01
VEHICLE EXCISE DUTY AND LICENCES .....	12-03
RATES OF DUTY .....	12-09
General .....	12-10
Motor cycles .....	12-11
Buses .....	12-12
Special vehicles .....	12-13
"Digging machines" and "mobile cranes" .....	12-14
"Works truck" .....	12-15
Recovery vehicles .....	12-16
Vehicles used for exceptional loads .....	12-17
Haulage vehicles .....	12-18
Showmen's vehicles .....	12-19
Goods vehicles .....	12-21
Meaning of "goods vehicle" .....	12-22
Trailers .....	12-25
Taxation of goods vehicles .....	12-26
Goods vehicles not exceeding 3,500kg laden weight .....	12-27
Goods vehicles over 3,500kg laden weight .....	12-28
Showmen's and island goods vehicles .....	12-29
Exceptional load vehicles .....	12-30
Ascertainment of weight of vehicles .....	12-31
Exemptions from duty .....	12-32
General .....	12-32
Electrically propelled vehicles .....	12-35
Trams .....	12-36
Police vehicles .....	12-37
Fire-engines, etc .....	12-38
Ambulances .....	12-39
Mine rescue vehicles .....	12-40
Lifeboat vehicles .....	12-41
Vehicles for disabled people .....	12-42
Vehicles used for the carriage of disabled people .....	12-44
Vehicles used between different parts of land .....	12-45
Other exempt vehicles .....	12-46
Vehicles being tested .....	12-47
Old vehicles .....	12-48
Collection of duty .....	12-49
Vehicle licences .....	12-50
Road user levy .....	12-51
OFFENCES IN RESPECT OF LICENCES .....	12-52
Using or keeping a vehicle on a public road without a licence .....	12-52
Use in contravention of the statutory off-road notification (SORN) .....	12-63
Effect of failure to transfer licence .....	12-67

Calculation of back-duty .....	12-68
Summary as to proceedings for payment of back-duty, etc .....	12-74
Examples .....	12-77
Failing to display licence .....	12-79
Void cheques: failure to deliver up excise licences .....	12-80
Under-payment of duty .....	12-82
Information as to user .....	12-85
Immobilisation, removal and disposal of vehicles .....	12-87
Immobilisation, removal and disposal .....	12-88
Offences relating to vouchers .....	12-89
Appeals against refusal to refund .....	12-90
Exemptions .....	12-91
Northern Ireland and Scotland .....	12-92
TRADE LICENCES .....	12-93
Generally .....	12-93
Limitations on use of trade licences .....	12-96
Duration of licences .....	12-99
Improper use of vehicles under a trade licence .....	12-100
A "Public road" .....	12-101
B "Holder of a trade licence" .....	12-102
C Purposes for which a vehicle is used .....	12-103
Business purposes .....	12-104
Paragraph 12 purposes .....	12-105
Specified loads .....	12-106
Research and development .....	12-107
Vehicle testers .....	12-108
D "Vehicles temporarily in his possession" .....	12-110
E "Workshops" .....	12-111
Display of trade plates .....	12-112
Offences under the regulations .....	12-113
TRADE LICENCES: PROCEEDINGS AND PENALTIES .....	12-115
Generally .....	12-115
Trade licences: penalties .....	12-117
EXCISE LICENCES: REGISTRATION .....	12-118
Registration .....	12-118
Registration document issued before 24 March 1997 .....	12-122
Change on or after 24 March 1997 and new keeper not a vehicle trader .....	12-123
Change on or after 24 March 1997 and new keeper is a vehicle trader .....	12-124
Using an incorrectly registered vehicle .....	12-127
Sale and transfer of registration marks .....	12-128
Visitors from abroad .....	12-129
Rear number plate lamps .....	12-130
Display of registration marks .....	12-131
Exiting the EU .....	12-134
EXCISE LICENCES: PROCEEDINGS AND PENALTIES .....	12-135
Fines for breach of the 2002 Regulations .....	12-135
Who may prosecute and authorisation to do so .....	12-136
Limitation of time .....	12-138
Evidence .....	12-141
Venue .....	12-142

Burden of proof .....	12-143
Written plea of guilty procedure .....	12-145
Mitigated penalties .....	12-146
Remission of fine or penalty .....	12-148
Vehicle excise licences: penalties .....	12-150
13. GOODS AND PASSENGER VEHICLES .....	
DRIVER LICENSING: LARGE GOODS VEHICLES, HEAVY GOODS VEHICLES, PASSENGER-CARRYING VEHICLES AND PUBLIC SERVICE VEHICLES .....	13-01
Generally .....	13-01
LGV and PCV drivers' licences .....	13-02
Certificates of professional competence .....	13-06
Fitness of LGV and PCV licence applicants and holders .....	13-13
The LGV and PCV regulations .....	13-19
Court disqualification until test passed .....	13-21
Disqualification with revocation when LGV driver under 21 .....	13-22
Duration of licence authorisation .....	13-23
Exemptions from the LGV and PCV licensing requirements and from the regulations .....	13-24
Other exemptions and special provisions .....	13-25
LGV and PCV drivers' licences: exemptions for persons from abroad .....	13-26
LGV AND PCV DRIVERS' LICENCES: PROCEEDINGS AND PENALTIES .....	13-28
Generally .....	13-28
Large goods and passenger-carrying vehicles: driving licence penalties .....	13-30
GOODS VEHICLE OPERATORS' LICENCES .....	13-31
Generally .....	13-31
Types of operator's licence .....	13-36
Standard operator's licence .....	13-37
Restricted operator's licence .....	13-38
Professional competence, financial standing, etc. ....	13-39
Good repute .....	13-43
Authorised vehicles .....	13-49
Using a goods vehicle without an operator's licence .....	13-50
A "Goods vehicle" .....	13-51
B "Use" .....	13-54
C "Hire or reward" .....	13-55
Conditions attached to licences .....	13-59
Operating centres .....	13-62
Environmental control .....	13-63
Exemptions .....	13-65
Exclusions or modifications for certain foreign and Northern Ireland vehicles .....	13-73
GOODS VEHICLE OPERATORS' LICENCES: PROCEEDINGS AND PENALTIES .....	13-76
Offences of breaches of conditions .....	13-76
Proceedings and penalties: generally .....	13-77
HGV user levy .....	13-81
Goods vehicle operators' licences: penalties .....	13-82
CARRIAGE OF GOODS, ETC. ....	13-83
Carriage of controlled waste .....	13-83

Offences	13-87
Exemptions	13-88
Defences	13-89
Carriage of controlled waste: proceedings and penalties	13-90
Conveyance of dangerous substances generally	13-91
Defences and exemptions	13-95
Carriage of dangerous goods: training	13-96
Conveyance of dangerous substances: radioactive material	13-97
Codes of practice, regulations etc.: use in evidence	13-99
Conveyance of dangerous substances: proceedings	13-100
Conveyance of dangerous substances: penalties	13-101
International carriage	13-102
International haulage authorisations/permits	13-103
Exiting the EU	13-109
International haulage authorisations/permits: penalties	13-110
International carriage of perishable foodstuffs	13-111
International carriage of perishable foodstuffs: penalties	13-114
<b>PUBLIC SERVICE VEHICLES</b>	13-115
Generally	13-115
<b>PSVs: DEFINITION AND CLASSIFICATION</b>	13-117
"Public service vehicle"	13-117
Hiring of taxis at separate fares	13-119
Local, express and contract services	13-121
Local services	13-124
Local service: traffic regulation conditions	13-127
Other definitions	13-128
A "Excursion or tour"	13-128
B "Stopping place"	13-129
"Used for carrying passengers"	13-130
"Adapted"	13-131
"More than eight passengers"	13-133
"Hire or reward"	13-134
"Separate fares"	13-138
"In the course of a business of carrying passengers"	13-141
Certain PSVs not treated as such	13-142
Certain PSV services not to be regarded as local services	13-144
Registration of PSV services	13-145
Penalties	13-149
London local services	13-150
<b>PSV LICENSING AND FITNESS REQUIREMENTS</b>	13-151
Transport systems including tramways	13-151
PSV operators' licences	13-153
Standard PSV operator's licence	13-156
Restricted PSV operator's licence	13-157
PSV operators' licences: conditions	13-162
Special licences (restricted PSV operators' licences)	13-165
Relaxations and exemptions from the PSV requirements	13-167
Examples	13-169
Fitness of PSVs	13-173
Services by certain educational and other bodies	13-178
Offences	13-185
Community bus services	13-187

Offences	13-192
International passenger services	13-194
PSVs registered in Northern Ireland	13-196
PSVs registered abroad	13-197
Further requirements	13-198
Non-regular national passenger services to be permitted by EU Member States	13-199
Penalties	13-200
Offences	13-201
Cases	13-203
"Operator of the vehicle"	13-207
"Operator of the service"	13-209
Defences	13-210
<b>PSV LICENSING: PROCEEDINGS AND PENALTIES</b>	13-211
Generally	13-211
Public service vehicles operators' licences, etc.: penalties	13-215
<b>CONDUCT ON PUBLIC SERVICE VEHICLES AND TRAMCARS, ETC.</b>	13-216
Generally	13-216
Conduct of drivers, inspectors and conductors	13-218
Conduct of passengers	13-225
Carrying capacity	13-230
Conduct on tramcars, etc	13-232
Conduct on tramcars: proceedings and penalties	13-234
<b>CONDUCT ON PSVs: PROCEEDINGS AND PENALTIES</b>	13-236
Generally	13-236
Conduct on PSVs: penalties	13-240
<b>TAXIS AND PRIVATE HIRE VEHICLES</b>	13-241
Generally	13-241
London	13-268
<b>TAXIS AND PRIVATE HIRE VEHICLES: PROCEEDINGS AND PENALTIES</b>	13-280
Proceedings generally	13-280
Rights of appeal: taxis and private hire vehicles	13-283
Penalties	13-287
Taxis and private hire vehicles: penalties	13-288
<b>14. DRIVERS' HOURS AND RECORDS</b>	
<b>INTRODUCTION</b>	14-01
Generally	14-01
Application	14-08
EC law: summary	14-11
Applicable Community rules	14-17
National and international journeys	14-22
Domestic journeys	14-26
EC law: definitions	14-32
Definitions: "carriage by road"	14-44
<b>DRIVERS' HOURS</b>	14-46
Generally	14-46
Exiting the EU	14-48
<b>DRIVERS' HOURS: GOODS VEHICLES</b>	14-49
National and international journeys	14-49
Daily driving period (art.6)	14-50

Maximum driving period (art.7(1))	14-51
Rest breaks	14-52
Daily rest period (art.8)	14-53
Weekly rest period (art.8)	14-54
Definitions	14-58
Exceptions and exemptions	14-62
A Exceptions	14-62
B Exemption for safety purposes (art.12) applicable to both national and international journeys	14-63
C National territory exemptions (which may also be extended by agreement to EU Member States)	14-65
Various exemptions (art.13)	14-66
Public authorities (art.13(1)(a))	14-67
Agricultural, etc., vehicles (art.13(1)(c))	14-68
Goods vehicles carrying working materials and equipment (art.13(1)(d))	14-69
Island exemption (art.13(1)(e))	14-71
Electric and gas driven vehicles (art.13(1)(f))	14-72
Driving instruction (art.13(1)(g))	14-73
D Exemptions for exceptional circumstances (art.13(3)) applicable to both national and international journeys	14-74
Domestic journeys	14-81
Exemptions for the drivers of goods vehicles in cases of emergency	14-87
Mixed journeys	14-88
Domestic journeys or work to take into account national and international journeys or work	14-88
Goods vehicles' and passenger vehicles' drivers	14-89
The AETR agreement	14-90
Generally	14-90
Provisions	14-91
Application	14-92
Exemption for emergencies	14-94
Enforcement	14-95
DRIVERS' HOURS: PASSENGER VEHICLES	14-97
Generally	14-97
National and international journeys	14-98
Exemptions	14-100
Burden of proof of exemption	14-103
Provisions	14-104
Domestic journeys	14-106
Mixed journeys	14-107
DRIVERS' HOURS: PROCEEDINGS	14-108
Offences and proceedings; driving and duty periods	14-108
DRIVERS' RECORDS	14-117
Generally	14-117
DRIVERS' RECORDS: TACHOGRAPHS	14-122
Goods vehicles on national and international journeys	14-122
Provisions	14-122
Digital tachographs: general provisions	14-133
Definitions	14-140

Exceptions and exemptions	14-143
Proceedings	14-146
Defences	14-147
Liability of employers for staff defaults	14-152
Tachograph records replacing handwritten records	14-157
Voluntary use of the tachograph	14-160
Passenger vehicles	14-162
Passenger vehicles: exceptions—domestic journeys or work	14-163
Passenger vehicles: exemptions	14-165
Passenger vehicles: summary	14-169
DRIVERS' RECORDS: MANUAL RECORDS	14-171
Generally	14-171
Definitions	14-172
When the manual records requirements apply	14-173
A Domestic journeys	14-173
B Where the Community rules are not applicable	14-174
C Universal service providers and the domestic rules	14-175
Manual records: exemptions from the 1987 Regulations	14-176
Mixed driving	14-178
Provisions of the regulations and cases	14-179
The AETR agreement	14-184
Liability of employers for staff defaults: generally	14-185
DRIVERS' HOURS AND RECORDS: PROCEEDINGS AND PENALTIES	14-191
Proceedings	14-191
Penalties	14-198
Drivers' hours: penalties	14-202
Drivers' records: penalties	14-203
ROAD TRANSPORT (WORKING TIME) REGULATIONS 2005	14-204
Offences	14-207
Protection from unauthorised access	14-208
15. THEFT, TAKING CONVEYANCES, AGGRAVATED VEHICLE-TAKING, CRIMINAL DAMAGE AND CAUSING DANGER TO ROAD USERS	15-01
Generally	15-01
THEFT AND TAKING CONVEYANCES	15-02
The offences	15-02
Conveyance	15-06
Take	15-07
Drive	15-09
The difference between theft (s.1) and taking a conveyance (s.12)	15-10
Pedal cycles	15-12
Consent of owner	15-14
Defences: belief of lawful authority or owner's consent (s.12(6))	15-16
Passengers	15-18
Employees and hirers	15-19
Attempts	15-21
THEFT AND TAKING CONVEYANCES: PROCEEDINGS AND PENALTIES	15-22
Generally	15-22
Penalties generally	15-24
Endorsement and disqualification	15-28

AGGRAVATED VEHICLE-TAKING .....	15-31
The offence (Theft Act 1968 s.12A) .....	15-31
AGGRAVATED VEHICLE-TAKING: PROCEEDINGS AND PENALTIES .....	15-35
Sentencing guidelines .....	15-39
OTHER RELATED OFFENCES .....	15-44
Interfering with vehicles .....	15-44
Tampering with vehicles; getting on vehicles .....	15-49
Criminal damage .....	15-51
Causing danger to road users .....	15-53
OTHER RELATED OFFENCES: PROCEEDINGS AND PENALTIES .....	15-57
Generally .....	15-57
<b>16. FORGERY, FRAUDULENT USE AND FALSE STATEMENTS</b>	
Introduction .....	16-01
FORGERY AND FRAUDULENT USE .....	16-02
Generally .....	16-02
False declarations .....	16-06
FORGERY AND FRAUDULENT APPLICATIONS .....	16-08
Generally .....	16-08
Forgery .....	16-09
False statements, etc. ....	16-12
Issue of false documents .....	16-14
Test certificates .....	16-15
Driving licences .....	16-16
PROCEEDINGS AND PENALTIES .....	16-19
Generally .....	16-19
Forgery, fraudulent use and false statements: penalties .....	16-22
<b>17. FIXED PENALTIES</b>	
Introduction .....	17-01
Crown roads and royal parks .....	17-05
DEFINITIONS .....	17-06
"Fixed penalty" .....	17-06
"Graduated fixed penalties" .....	17-08
"Fixed penalty notice" .....	17-09
"Suspended enforcement period" .....	17-10
"Owner" .....	17-11
"Relevant person" and "appropriate person" .....	17-12
"Notice to owner" .....	17-14
"Statutory statement of ownership" .....	17-15
"Statutory statement of facts" .....	17-16
FIXED PENALTY PROCEDURE: AN OUTLINE .....	17-17
Person present .....	17-18
Stationary vehicle .....	17-24
Nil response .....	17-26
Person served requests hearing .....	17-27
Person served not the owner .....	17-28
Person served not the driver .....	17-29
SCHEDULE OF FIXED PENALTY OFFENCES .....	17-30
Description of offences .....	17-30
TABLE OF FIXED PENALTY OFFENCES .....	17-33

10-8 FIXED PENALTY NOTICE .....	17-34
Issue of a fixed penalty notice .....	17-34
Driver present; offence endorsable .....	17-34
Driver present; offence not endorsable .....	17-37
Driver absent .....	17-38
Contents of a fixed penalty notice .....	17-39
SUSPENDED ENFORCEMENT PERIOD .....	17-40
Provisions of ss.78 and 52(3)(a) .....	17-40
Requests for court hearings .....	17-42
Driver present .....	17-42
Driver absent .....	17-43
Events subsequent to the suspended enforcement period .....	17-44
The consequences of inertia .....	17-44
Driver present .....	17-45
Driver absent; notice affixed to vehicle .....	17-48
SERVICE OF NOTICE .....	17-50
Procedure following service of notice to owner .....	17-50
Payment during the period allowed for response .....	17-51
Nil response .....	17-52
Person served requests a hearing .....	17-53
Person served not the owner .....	17-54
Person served not the driver .....	17-55
False statements in response to notice to owner .....	17-56
RECTIFICATION OF MISTAKES .....	17-57
Driver liable to penalty points disqualification .....	17-57
Statutory declarations .....	17-59
Procedure where fixed penalty notice given to offender .....	17-61
Procedure where fixed penalty notice affixed to stationary vehicle .....	17-63
Protection from unauthorised actions .....	17-65
MISCELLANEOUS PROVISIONS .....	17-66
Penalty points: modification where fixed penalty also in question .....	17-66
Special provisions for hired vehicles .....	17-67
OPERATION OF THE FIXED PENALTY SYSTEM .....	17-69
Conclusions and practical problems .....	17-69
FLOW CHARTS .....	17-71
Explanation and key .....	17-71
"Driver present"—endorsable offence .....	17-72
Conditional offer—endorsable offence .....	17-73
"Driver present"—non-endorsable offence .....	17-74
"Stationary vehicle"—non-endorsable offence .....	17-75
CONDITIONAL OFFER OF FIXED PENALTY .....	17-76
Introduction .....	17-76
Issue of conditional offer .....	17-77
VEHICLE EMISSIONS .....	17-80
INSURANCE REQUIREMENTS OFFENCES .....	17-83
<b>18. CUSTODIAL AND OTHER PENALTIES</b>	
INTRODUCTION .....	18-01
The legislative framework .....	18-01

Reduction for guilty plea .....	18-03
The Magistrates' Court Sentencing Guidelines .....	18-05
18-07	18-07
<b>FINES</b> .....	18-07
Generally .....	18-07
The assessment and imposition of fines .....	18-08
Fines, costs and compensation imposed on youths .....	18-15
<b>IMPRISONMENT AND OTHER CUSTODIAL SENTENCES</b> .....	18-16
Statutory restrictions on imposition of discretionary custodial sentences .....	18-16
Length of custodial sentences .....	18-20
Young offenders and youths; custodial sentences .....	18-21
Suspended sentences .....	18-23
Detention in police cells, etc .....	18-24
Deferment of sentence .....	18-25
<b>NON-CUSTODIAL SENTENCES</b> .....	18-27
Community sentences .....	18-27
Absolute or conditional discharge .....	18-30
Compensation .....	18-32
Forfeiture of property used for criminal purposes .....	18-38
<b>COSTS</b> .....	18-44
Award of costs against the accused .....	18-44
<b>19. ENDORSEMENT AND PENALTY POINTS</b> .....	
<b>ENDORSEMENT</b> .....	19-01
Summary .....	19-01
Table of endorsable offences and discretionary disqualifications .....	19-02
Requirement to endorse .....	19-03
Omission to order endorsement .....	19-06
Endorsement as evidence .....	19-07
Notification of endorsement .....	19-08
Committal for sentence .....	19-10
Remittal for sentence .....	19-11
Deferment of sentence .....	19-12
Adjournment for sentence .....	19-13
Attempts .....	19-14
Aiders and abettors .....	19-16
<b>PENALTY POINTS</b> .....	19-18
Summary .....	19-18
Endorsement .....	19-19
Number of points to be endorsed .....	19-20
Disqualification .....	19-22
"Wiping the slate clean" .....	19-23
Period of disqualification .....	19-24
Crown servants .....	19-25
Number of points to be endorsed .....	19-26
Attendance on courses .....	19-27
Variable points .....	19-28
Fixed penalties and penalty points .....	19-29
Fixed points offences .....	19-30
Penalty points for obligatorily disqualifiable offences .....	19-32

Offences committed on the same occasion .....	19-33
<b>PROCEDURE ON CONVICTION</b> .....	19-37
Production of driving licence .....	19-37
<b>REMOVAL OF ENDORSEMENT</b> .....	19-41
Removal of endorsement .....	19-41
<b>20. DISQUALIFICATION</b> .....	
<b>GENERAL PRINCIPLES</b> .....	20-01
Introduction .....	20-01
Obligatory orders of disqualification .....	20-02
Discretionary orders of disqualification .....	20-03
Period, commencement and extension of disqualification .....	20-04
Escaping disqualification by deception .....	20-05
Notification of disease or disability .....	20-06
Probationary period for newly qualified drivers .....	20-07
Removal of disqualification .....	20-08
Scope and effect of disqualification .....	20-09
Disqualifications imposed outside Great Britain .....	20-13
Disqualifications imposed in Northern Ireland, the Isle of Man, the Channel Islands and Gibraltar .....	20-13
Mutual recognition of disqualifications between the UK and EU States (apart from Ireland) .....	20-14
Mutual recognition of disqualifications between the UK and Ireland .....	20-15
Undertaking not to drive .....	20-16
Period and commencement of disqualification .....	20-17
Start and end date .....	20-17
Length .....	20-19
Disqualification and custodial sentences .....	20-22
Court of Appeal guidance: R. v Needham and others .....	20-26
<b>OBLIGATORY DISQUALIFICATIONS</b> .....	20-33
Obligatory disqualification .....	20-33
Second conviction for drink/driving, etc., offences .....	20-38
Summary of penalty points disqualification .....	20-39
Penalty points required to be taken into account .....	20-43
Attendance on courses .....	20-54
"Wiping the slate clean" .....	20-55
Period of disqualification .....	20-57
<b>DISCRETIONARY DISQUALIFICATIONS</b> .....	20-59
Exercise of discretionary power .....	20-59
Disqualification where vehicle used for crime .....	20-62
Disqualification for any offence or for the enforcement of fines .....	20-70
Disqualification pending passing a driving test .....	20-73
Interim disqualification .....	20-82
Disqualification on committal for sentence .....	20-86
Disqualification from driving for non-payment of child support .....	20-90
<b>MISCELLANEOUS MATTERS</b> .....	20-92
Escaping disqualification by deception .....	20-92
Notification of disease or disability .....	20-94
Courses for drink/drive offenders .....	20-98

Reduced disqualification period for attendance on course; other offences .....	20-100
Probationary period for newly qualified drivers .....	20-101
REMOVAL OF DISQUALIFICATION .....	20-105
Application for removal .....	20-105
Procedure for removal .....	20-107
<b>21. SPECIAL REASONS AND MITIGATING CIRCUMSTANCES</b>	
Introduction .....	21-01
SPECIAL REASONS .....	21-03
Definition and criteria .....	21-03
EXAMPLES OF SPECIAL REASONS .....	21-09
Generally .....	21-09
Insurance .....	21-11
Drink/driving .....	21-18
Explanations for being unfit: charges under s.4 .....	21-20
Explanations for having excess alcohol in the body: charges under s.5 .....	21-22
Emergency .....	21-31
Shortness of distance driven .....	21-40
Miscellaneous circumstances .....	21-45
Dangerous and careless driving .....	21-51
Traffic signs, pedestrian crossings, school crossings .....	21-53
Speed limits .....	21-55
Motorways .....	21-58
Accidents .....	21-59
Driving whilst disqualified .....	21-60
Construction and Use Regulations .....	21-61
SPECIAL REASONS: PRACTICE AND PROCEDURE .....	21-62
Onus of proof, etc. ....	21-62
MITIGATING CIRCUMSTANCES .....	21-66
Penalty points disqualification .....	21-66
MITIGATING CIRCUMSTANCES: EXCLUDED GROUNDS .....	21-69
Circumstances alleged to make the offence not serious .....	21-69
Hardship other than exceptional hardship .....	21-70
Any circumstances previously taken into account .....	21-75
MITIGATING CIRCUMSTANCES: PRACTICE AND PROCEDURE .....	21-77
Onus of proof, etc. ....	21-77
Discretionary disqualifications where mitigating circumstances have been found. ....	21-79
<b>22. APPEALS</b>	
INTRODUCTION .....	22-01
Rights of appeal .....	22-01
Appeals generally .....	22-03
Suspension of disqualification pending appeal .....	22-11
CROWN COURT .....	22-18
Scope of right and procedure .....	22-18
Offences heard at the same time .....	22-28
Abandonment of appeal .....	22-29
Constitution of the Crown Court .....	22-31

HIGH COURT .....	22-32
Cases stated .....	22-32
Application for judicial review .....	22-43
COURT OF APPEAL .....	22-56
REVIEWS OF SENTENCING .....	22-57
ROYAL PARDON .....	22-58
APPENDIX 1. DRINK/DRIVING	
ALCOHOL CONCENTRATIONS .....	1A-02
Conversion of breath-alcohol (µg/100ml) to blood/urine-alcohol (mg/100ml) .....	1A-02
TABLE OF METABOLIC LOSSES FOR BREATH AND BLOOD ANALYSES WITH TIME .....	1A-04
(Annex A to cancelled Home Office circular of 1984) .....	1A-04
APPENDIX 2. ENDORSEMENT AND SENTENCE CODES	
DVLA ENDORSEMENT CODES .....	2A-02
SENTENCE CODE .....	2A-03
APPENDIX 3. SENTENCING GUIDELINES	
APPENDIX 4. STOPPING DISTANCES, ETC.	
TABLE OF STOPPING DISTANCES .....	4A-01
STANDARD SCALE FINES .....	4A-04
Index .....	1337

We have continued to see developments arising from the changes necessary because of the decision by the UK to leave the EU and also in relation to the jurisdiction and procedures of traffic commissioners.

I continue to be grateful to the editorial team who contribute with erudition and thoroughness as we seek to produce a work of the highest quality.

Considerable thanks are also due to the staff at Sweet & Maxwell who provide professional support with regard to every aspect of production and publication.

Kevin McCormick  
New Forest  
August 2022

any defect in process or wrongful arrest might be of no avail. This approach is even more likely now that the Criminal Procedure Rules 2020 (SI 2020/759) provide that a court may treat a document as served if the person to whom it was addressed has responded to it even if it was not served as required by the rules: r.4.13(2).

An appearance simply to draw attention to an irregularity in service is not a waiver (*Pearks, Gunston & Tee Ltd v Richardson* (1902) 56 J.P. 119). It has long been accepted that a court cannot deal with a defendant who appears under protest, unless the protest be properly overruled. The court must, of course, in every case have jurisdiction to deal with the offence: see paras 2-40 onwards.

### Amending summonses

2-81 Under s.123 of the Magistrates' Courts Act 1980 no objection is allowed to any information or complaint, or to any summons or warrant to procure the presence of the defendant, for any defect in it in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecutor or complainant at the hearing of the information or complaint. If it appears to a magistrates' court that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor or complainant is such that the defendant has been misled by the variance, the court must, on the application of the defendant, adjourn the hearing (s.123(2)).

This means in effect that the summons can be amended but it is necessary that a defendant must be clearly told what offence he is facing and given sufficient time to prepare his case. It is certainly the case that the burden of proof is generally on the prosecution and the defence is entitled to leave the prosecution to prove the case without drawing attention to any absence of evidence on essential ingredients of the offence. However, there will be areas where the defence, by remaining silent or by not taking a particular course, can be taken to have let points go, by default. Particularly in magistrates' courts, it is very important that all points are taken as clearly as possible and at the appropriate time. See also *Jolly v DPP* [2000] Crim. L.R. 471 quoting with approval *R. v Pydar JJ Ex p. Foster* (1995) 160 J.P. 87 "justice will not be done if defendants are acquitted purely because of an oversight which was capable of being corrected there and then".

2-82 A crucial amendment cannot be made under s.123 on appeal (*Garfield v Maddocks* [1973] 2 All E.R. 303). However, in *Lee v Wiltshire Chief Constable* [1979] R.T.R. 349, the defect in the original information was merely technical and could not mislead anybody and it was held that in such a case the Crown Court could not dismiss the appeal because the information was defective and could not be amended on appeal.

08-5 In *R. v Greater Manchester JJ Ex p. Aldi GmbH & Co KG; Aldi GmbH & Co KG v Mulvenna* (1995) 159 J.P. 717 judicial review was allowed to quash the amendment of an information. Justices at Eccles had amended an information brought by Salford Council by substituting Aldi GmbH & Co KG for Aldi Stores Ltd. The Divisional Court applied *Marco (Croydon) Ltd v Metropolitan Police* [1984] R.T.R. 24 in which a distinction had been drawn between those cases where the justices were satisfied the right person had received the summons and knew it was intended for him and was not prejudiced in any way, and a case where the wrong defendant company of a group had been summoned. The latter situation applied in the *Aldi* case. The remedy sought was granted and the amendment quashed. Similarly, in *Sainsbury's Supermarkets Ltd v HM Courts Service and Plymouth City Council* [2006] EWHC 1749; (2006) 170 J.P. 690 a decision to permit an amend-

ment was quashed where the wrong company was named and it should have been perfectly obvious to the prosecutor what the correct name was.

2-83 A more flexible approach was adopted in *Platinum Crown Investments Ltd v North East Essex Magistrates' Court* [2017] EWHC 2761 (Admin). Believing that there had been offences committed under the Housing Act 2004, a local authority entered into correspondence with T, addressing him personally and in his capacity "as a director of Platinum Crown Investments Ltd (PCIL)". Subsequently, informations and summonses were issued against T and against a company described as PCL. T instructed solicitors on behalf of himself and as a director, and entered pleas of not guilty. The matter was listed for trial and evidence was produced that showed that the building was leased to PCIL as opposed to PCL. At the time the information was laid, PCL was a defunct company, albeit still on the Register at Companies House at the date of the alleged offences. The matter was adjourned and, at the adjourned hearing, the prosecution accepted that the name on the informations and summonses was incorrect, and applied to amend the name of the defendant pursuant to the Magistrates' Courts Act 1980 s.123. The claimant objected, arguing that the purpose of s.123 was to permit amendments to charges faced by an existing defendant and not for substituting a different person as a defendant. It was argued that, as PCL was a separate entity from PCIL, an amendment would have the effect of bringing fresh proceedings against a different party outside the six-month limitation period contained in s.127(1) of the 1980 Act. The justices allowed the amendment, concluding that the claimant was the correct defendant in the proceedings and that the amendment of the name was merely a correction and not the substitution of a different defendant from the one originally summonsed. The claimant appealed by way of case stated. Before the High Court, the prosecution submitted that there was no jurisdiction to hear the case stated (for which, see Ch.22) and that the amendment should not have been allowed. Allowing the application to be treated as an application for judicial review, on a proper construction of the Magistrates' Courts Act 1980 s.123, the High Court stated that a different approach had to be adopted when considering an application to amend where a prosecutor had proceeded against the wrong member of a corporate group and there had been another member of the group that could have been charged appropriately, compared with the situation where there had been a misstatement of the name. If the facts supported that there had been a mere misstatement of name, there could be an amendment. The High Court considered that the instant case was not one where there was any room for confusion of the defendant with some other legal entity. It was clear that the prosecuting authority always intended to prosecute PCIL, and that both PCIL and its director, T, were aware of that fact prior to the laying of the information. Indeed, it was clear that all the parties had acted on the basis that T and PCIL were the defendants. PCL had never appeared before the magistrates' court. For those reasons, the justices had been entitled to amend the information and summonses notwithstanding the expiry of the statutory time-limit and it was a course which had been properly taken.

2-84 A summons may be amended even if it is outside the six months' time-limit for laying an information imposed by s.127 of the Magistrates' Courts Act 1980 (*R. v Newcastle JJ Ex p. Bryce* [1976] R.T.R. 325). Justices should, however, exercise their powers under s.123 judicially and so as to do justice between the parties. (Limited company charged with *permitting* its vehicle to be used whilst overloaded, charge amended to the absolute offence of *using* its vehicle whilst so overloaded—held, justices were entitled to allow the amendment, the prosecutor was not introducing new facts.) Again, in an unlicensed sex establishment prosecution, an

information was amended from "neglect" to "connivance" even though the amendment was more than technical and made outside the time-limit. No injustice was caused (see *R. v Bow Street Acting Stipendiary Magistrate Ex p. Spiteri*, *The Times*, 16 October 1984). *R. v Newcastle JJ Ex p. Bryce* was applied in *R. v Sandwell JJ Ex p. West Midlands Passenger Transport Board* [1979] Crim. L.R. 56.

The potentially wide discretion allowing a court to amend an information was confirmed by the decision of the Divisional Court in *R. v Scunthorpe JJ Ex p. McPhee and Gallagher* (1998) 162 J.P. 635. The court set out the following principles:

- (a) the purpose of the six-month time-limit under s.127 was to ensure that summary offences were charged and tried as soon as was reasonably practicable after their alleged commission;
- (b) where an information had been laid within six months it could be amended after expiry of that period;
- (c) an information could be amended after expiry of that period even to allege a different offence or offences provided that:
  - (i) such offence alleged the "same misdoing" as the original offence, and
  - (ii) the amendment could be made in the interests of justice.

His Lordship stated that the phrase "same misdoing" was not to be construed too narrowly: it meant that the new offence should arise out of the same, or substantially the same, facts as gave rise to the original offence. Once justices were satisfied that the amended offence did so arise, they had to go on to consider whether it was in the interests of justice to allow the amendment. In exercising their discretion, they should pay particular regard to the interests of the defendant. If an amendment would result in a defendant facing a significantly more serious charge, that should "weigh heavily, perhaps conclusively" against allowing the amendment after the six-month time-limit had expired. In dealing with the possibility of an application for an adjournment where there was a late application to amend, his Lordship considered that the need for an adjournment ought to be "rare" because the amended offence would arise out of the same, or substantially the same, facts as the original offence.

In *R. v Thames Magistrates' Court Ex p. Stevens* (2000) 164 J.P. 233, the original charge was for assault occasioning actual bodily harm on 1 April 1999; the revised charge was for common assault and the application to amend was made on 15 October 1999 outside the six months' time-limit for a summary offence. The amendment was allowed. Dismissing the appeal the Divisional Court confirmed as the key elements that the amended charge arose out of the same facts as the original charge, that the applicant was not prejudiced by the amendment and had not been deprived of any defence to the charge, that the evidence to be adduced was no different and that the effect of the amendment was to reduce the gravity of the charge. However, in *Dougall v CPS* [2018] EWHC 1367 (Admin) the Divisional Court allowed a defence appeal from the decision of a district judge to permit an amendment to provide for a summary offence in place of an indictable offence after the six-month time-limit for the summary offence would have expired. The defendant had been charged with assault occasioning actual bodily harm. More than six months after the incident and on the first appearance before a court, the prosecution sought to change the charge to the summary only offence of assault by beating. Applying the reasoning of the *Scunthorpe JJ* case, this was permitted but the Divisional Court allowed the appeal on the basis that the commencement of an indictable offence did not override the requirement that an information for a summary offence must be laid

within six months. The Court does not appear to have been referred to the *Thames Magistrates' Court* case referred to above but an important distinction appears to be that the proceedings for the indictable offence in *Dougall* did not commence until after the six months had passed whereas they had been commenced within the six months in the earlier case (and the application to amend to the summary offence was just 14 days outside that limit). In *R. (on the application of Fisher) v Weymouth Magistrates' Court* unreported 3 November 2000 DC, an amendment out of time was refused where a defendant had pleaded guilty to common assault but the prosecution wanted to adduce an account of actual violence. The defendant objected and the stipendiary magistrate acceded to a request to amend the information out of time to one alleging assault by beating. The Divisional Court drew attention to the fact that assault by beating was more serious and that the defendant had already pleaded guilty to the lesser offence; it was not in the interests of justice to amend the information.

In *R. (on the application of James) v DPP* [2004] EWHC 1663; (2004) 168 J.P. 596, the defendant was charged with supplying cannabis resin. At the close of the prosecution case, the defence submitted that there was no case to answer since there was no proof of actual supply. The prosecution sought to amend the charge to "attempting to supply" and this was permitted. Dismissing the defendant's appeal, the Administrative Court emphasised not only that no injustice was caused to the defendant but also that the timing of the change did not deprive the appellant of the chance to plead guilty at the earliest opportunity. Further, justices were correct not to restart the mode of trial proceedings.

The principles in *R. v Scunthorpe JJ Ex p. McPhee and Gallagher* were applied in *Ward v London Borough of Barking and Dagenham* [1999] Crim. L.R. 920. These were proceedings under the Food Safety Act 1990. The original summons described the misdoing so unclearly that it was not possible to identify what was being alleged. In those circumstances the application to amend should have been refused. The power to amend is not a safety net for inexcusably bad drafting.

*R. (on the application of the DPP) v Everest* [2005] EWHC 1124; (2005) 169 J.P. 345 is a further example where a refusal to amend an information was upheld. The respondent was prosecuted under the Highways Act 1980 as a result of his lighting of a bonfire. Smoke was alleged to have blown across a road obscuring visibility and an accident occurred. At the close of the prosecution case, the prosecutor sought to amend the information so that a different offence was prosecuted, though under the same Act. The new offence attracted a higher maximum penalty. The magistrates' court declined and the Divisional Court upheld that decision on the grounds that the court had approached the issue correctly. The magistrates' court had recognised that it had discretion to amend even at that stage of the proceedings and after the six-month time-limit had expired. A number of key elements were identified by the Divisional Court as being relevant to such an application, but it may be that it was the final one that was critical! The key elements were:

- (a) This amendment was more than just a simple one to cure a technical defect. It involved a different offence with a new statutory defence. If the change had been allowed, the respondent would have had to prove a statutory defence when he had already established a complete defence to the offence charged.
- (b) To allow the application would have placed an unfair burden on the respondent just before he was to give evidence. This could not have been cured by an adjournment because a rehearing would have been required

since the prosecution witnesses had been cross-examined on one basis and were likely to need to be questioned on the statutory defence.

- (c) If the amendment had been allowed, the respondent would have faced a more serious offence with a substantially higher maximum penalty.
- (d) The respondent was unrepresented and so would find it more difficult to adjust to the new offence.
- (e) The "evident, and frankly lamentable, failure of the appellant from the outset to prosecute the right offence, and the failure to review the file or to review it intelligently and to seek an amendment at earlier stages".

A slightly more surprising decision was *Shaw v DPP* [2007] EWHC 207. The offender had been summoned for having custody of a dog contrary to a disqualification order. Initially the summons described that order (incorrectly) as being made under Dangerous Dogs legislation but it was amended to show (correctly) that it was made under Protection of Animals legislation. The amendment was made after the expiry of the statutory time-limit so no further information could have been laid. The main consequence was that the maximum penalty was three months' imprisonment rather than a fine of level 5 and it was on this ground alone that the Divisional Court quashed the decision to allow the amendment to be made. Given the fact that the defendant could not have been misled or disadvantaged in any way and that the court did not consider that the prosecution was particularly at fault, this is perhaps a decision that should be confined to its own facts. That might also be the correct approach to the decision in *R. (on the application of Thornhill) v Uxbridge Magistrates' Court* [2008] EWHC 508; (2008) 172 J.P. 297. The defendant was charged with four offences, one of which was failing to provide a specimen of breath for analysis. After the expiry of the six-month period, the prosecution made a successful application to amend the charge to one of failure to provide a specimen of urine. That decision was overturned by the Divisional Court which considered that there was a distinct difference between failing to provide a specimen of breath and failing to provide one of urine. One could perhaps understand it if the prosecutor felt aggrieved at this decision; clearly the essence of the offence is failure to provide a specimen for analysis and whether that specimen is of blood, breath or urine seems to be of secondary importance. On the facts of this particular case, there seemed to be common ground that there was a valid reason for the defendant not being required to supply a specimen of breath and so it is very unlikely that the defendant would have been at a disadvantage. The doubts about the approach in *Thornhill* appear to have been confirmed by the Divisional Court when it was considering another appeal concerning an application to amend an information alleging failure to supply a specimen for analysis so that it referred to a specimen of urine rather than one of breath, a similar situation to that which had occurred in *Thornhill*: *Williams v DPP* [2009] EWHC 2354. The Divisional Court drew attention to the principles that apply to such application as set out in the decision in *R. v Scunthorpe JJ Ex p. McPhee* (1998) 162 J.P. 635 (see para.2-85) and examined what was included within the phrase "the same misdoing". Here the failure to provide a urine sample followed almost immediately the failure to provide a blood sample (and, presumably, the failure to provide a sufficient sample of breath); since both tests were designed to establish the fitness to drive and the offence is created under the same subsection, the court concluded that, in the overwhelming majority of these types of case, a court would find that the offences arose out of the same (or substantially the same) facts and so would come within the "same misdoing" aspect of the principles established in the *Scunthorpe JJ* case.

What is now s.123 of the Magistrates' Courts Act 1980 was held to obviate the necessity for a summons to repeat the date upon which the information was laid (*R. v Godstone JJ. Ex p. Secretary of State for the Environment* [1974] Crim. L.R. 110); *aliter* if there was any question as to the information being out of time. In *Atterton v Browne* (1945) 109 J.P. 25, magistrates were held entitled to dismiss the summons altogether for a serious defect, but apparently there were also other grounds for dismissing it. See *Westminster City Council v Peart* [1968] Crim. L.R. 504 for a case where a magistrate was justified in dismissing an insufficiently detailed summons. In *Wright v Nicholson* [1970] 1 All E.R. 12, it was held that the words of what is now s.123(1) of the Magistrates' Courts Act 1980 should not be read literally as meaning that there can be no attack on an information however fundamental the defect. Each case depends on its own merits and circumstances are infinitely variable. It depends in every case whether the variance is of such a character as to require amendment.

If the defendant has been misled or the variance is fundamental so that there might be injustice to an accused, an amendment is required. Once an amendment is required s.123(2) operates and requires the court to adjourn if the defence applies. If the defendant does not require an adjournment, the amendment may be made forthwith and the case proceeded with on the amended summons. Thus, where a defendant had been required to provide a specimen of breath by a constable "who had reasonable cause to suspect him of having alcohol in his body", justices cannot convict him on the basis that the constable had reasonable cause to suspect him of having committed a moving traffic offence, without first informing the defendant of the charge and giving him the opportunity of applying for an adjournment under s.123(2) if he had been misled (*Morriss v Lawrence* (1977) 121 S.J. 187).

The variance may be so trivial that no amendment at all is required. In *Darnell v Holliday* [1973] R.T.R. 276 the defendant was charged on five informations with using a car in "South Parade". The justices dismissed the case on the grounds that the offences occurred not in South Parade but in an unnamed cul-de-sac opposite. The justices were directed to convict by the Divisional Court as no sort of injustice was suffered by the defendant because of the misnaming of the road. Justices were also held to be entitled in *Turberville v Wyer* [1977] R.T.R. 29 to apply what is now s.123 in respect of an insecure load carried on a "motor lorry" without the necessity of formal amendment when the load was in fact carried on the trailer of an articulated motor lorry.

At the other extreme, one can have a defect that is so fundamental that, far from it being required to be cured by amendment, it is in fact incapable of being cured. Thus the summons cannot be amended to a different offence altogether (*Loadman v Cragg* (1862) 26 J.P. 743—from "drunk and disorderly" to "drunk"; *Lawrence v Fisher* [1947] Jo.Crim.L. 356; *Atterton v Browne* (1945) 109 J.P. 25). Where a defendant is charged with an offence under a repealed statute he cannot be convicted unless the summons has first been amended, even if the statutes are word for word the same. An amendment has been allowed to insert a reference to a statute which had been omitted (*Thornley v Clegg* [1982] R.T.R. 405).

Where the defendant is the wrong limited company the summons cannot be amended to show the correct limited company, see paras 2-82 and 2-83.

Section 123 can be used after conviction and before sentence (*Allan v Wiseman* [1975] Crim. L.R. 37: defendant convicted in the name of "Jeffrey Thomas Loach"—real name "Jeffrey Thomas Allan"—arrested—name amended to Allan on appearance for sentence). *Allan v Wiseman* was applied in *R. v Eastbourne JJ Ex p. Kisten* (1984) *The Times*, 22 December (clerical error amended after conviction

and before sentence). Where offences are charged in the alternative, the prosecutor must elect at the outset on which he will proceed and it is too late after that to amend the information (*Hargreaves v Alderson* [1962] 3 All E.R. 1019).

2-92 Generally, the later the stage in the proceedings and the more material the amendment, the less desirable it becomes to grant the amendment because of the prejudice to the defendant. One useful test for amending summonses may be to follow the comment of Ormrod LJ in *Thornley v Clegg* [1982] R.T.R. 405 at 410. This was that if the objection to amendment was an objection of substance and indicated some real injustice, or a risk of injustice being occasioned to the defendant, then the objection might well prevail. Where the prosecutor does not avail himself of his chance to seek amendment of a defective information, a conviction on that information will be bad (*Hunter v Coombs* [1962] 1 W.L.R. 573). A defendant who disputes the case on its merits is generally deemed to waive objection to unchallenged irregularities in the summons, etc.

A defective summons can be withdrawn and a regular one issued in its place, if within the time-limit and if there has been no adjudication on the first one.

### Duplicity

2-93 Rule 7.3(2) of the Criminal Procedure Rules 2020 (SI 2020/759) (as amended) provides that more than one incident of the commission of an offence may be included in the allegation if they amount to a course of conduct.

In *R. v T* [2005] EWCA Crim 3511; (2006) 170 J.P. 313, the Court of Appeal again emphasised that the rule is to be applied in a practical, rather than strictly analytical, way. It exists to ensure that a defendant is not misled nor left uncertain about the charge that is faced.

2-94 In *Shah v Swallow* [1984] 2 All E.R. 528 HL substantial factual and legal material common to five informations was set out in a preamble and subsequently incorporated by reference. The document was held to be *not* bad for duplicity. In *Kite v Brown* [1940] 4 All E.R. 295 supplying several kinds of rationed food was held to be one illegal act. In *Thomson v Knights* [1947] 1 All E.R. 112 an offence of driving whilst unfit through drink or drugs was held not to be bad for duplicity. In *Mallon v Allon* [1963] 3 All E.R. 843 admitting and allowing to remain in a betting shop was held to be bad for duplicity.

The question has been raised whether it is one offence or more than one offence to fail to produce the various documents specified in s.165(2)(a), (b), (c) of the 1988 Act, namely the certificate of insurance, the test certificate and the goods vehicle test certificate, if applicable. This matter was considered in a practical point at (1966) 130 J.P. 543. The answer given there was that this offence is in essence a failure to give to the police constable all the information to which he is entitled.

2-95 Support for the answer was also found in the wording of the proviso. It was considered that the use of the phrase "offence under this subsection by reason only of failure to produce" supported the argument that there was only one offence committed however many items of information were withheld. The answer was given in respect of the former section which was in similar terms, although the proviso is now contained in s.165(4). The answer would still seem to be that only one offence is committed by the failure to produce one or more of the relevant documents.

Under s.172(3) of the 1988 Act it is an offence to fail to give information as to the identity of the driver of the vehicle. The circumstances and type of information are specified in s.172(2)(a) and (b) and are varied depending on whether or not the person from whom the information was sought was the keeper of the vehicle,

An argument that two offences were created and that a simple allegation under s.172(3) was void for duplicity was rejected in *Mohindra v DPP; Browne v Chief Constable of Manchester* [2004] EWHC 490; [2005] R.T.R. 7 (p.95). The offence is a failure to comply with the requirement whilst s.172 simply defines the nature of the obligation that has been breached.

For a case where an information under s.170(4) of the 1988 Act (requirement to stop and report) was found not to be bad for duplicity, see *DPP v Bennett* [1993] R.T.R. 175.

Where there are different constituent elements of an offence such as an offence of theft, assault or careless driving, the various incidents may be included to constitute a single offence contained in a single application. 2-96

An information alleging a single offence of driving without due care and attention was not bad for duplicity where the facts revealed two separate incidents separated by a 10-minute interval and two miles in distance witnessed by two different police officers (*Horrix v Malam* [1984] R.T.R. 112). The test was whether the single count charged more than one activity even though the activity might involve more than one act. The justices were entitled to take the view that the acts alleged constituted one, continuous, activity, taking into account the time and distance apart and that in each case the appellant was seen to be swerving erratically. See now Criminal Procedure Rules 2020 (SI 2020/759) (as amended) r.7.3(2).

The authorities governing circumstances justifying departure from the normal principle of charging each alleged criminal act as a separate offence were reviewed in *Barton v DPP* [2001] EWHC Admin 223; (2001) 165 J.P. 779. A defendant had been charged with a single count of theft alleging that she had stolen small amounts from a till on 94 occasions over the period of a year. Although it would have been possible to have identified each of the 94 occasions, the magistrates' court considered that the transactions were part of a continuing course of conduct of the same type of dishonesty with no prospect of different defences being raised or of the defendant being prejudiced and declined to reject the information as bad for duplicity. This decision was upheld by the Divisional Court. Drawing attention to the two lines of justification to depart from the normal principle ("general deficiency" and "continuous offence"), and noting the decisions that specimen counts or informations were not possible, the court stated that duplicity is to be applied practically and is a question of fact and degree. Where, as here, there are a number of connected acts of a similar nature which can properly be regarded as being part of the same transaction, they can properly be contained in one count or information where there is sufficient certainty and where the defendant is unlikely to raise different defences for different actions within those connected acts. 2-97

There may be one activity but separate issues. There are instances where it is better to charge separate items separately particularly to avoid special findings (*R. v Bristol Crown Court Ex p. Willetts* [1985] Crim. L.R. 219). Again there are instances where the multiplicity of charges may operate unfairly, as e.g. with the single activity of selling a motor vehicle (see below). In such instances the court may approve the combination of issues in a single charge as in *Cullen v Jardine* [1985] Crim. L.R. 668, where the *Willetts* decision was distinguished.

In *DPP v Dziurzynski* [2002] EWHC 1380; (2002) 166 J.P. 545, on two separate dates, the defendant had attended the premises of a company and been abusive to employees. He was charged with pursuing a course of conduct which amounted to harassment of the employees. The district judge found that the charge was bad for duplicity because it recounted an unknown number of offences and only identified the complainants under the general title of employees of the company. Dismissing 2-98

the prosecution appeal, the Administrative Court held that only some of the employees had been present on both dates and only some of those had given evidence. Of those giving evidence, only some had been distressed. Accordingly, on the facts, the evidence fell well short of that necessary to support the charges laid. The issue appears to have been the generality of the term used and the outcome may have been different if the charges had identified those concerned with more precision.

The informations should be distinct even though set out in one document. It was decided in *Streames v Copping* [1985] 2 All E.R. 122 that there is a single offence under what is now s.75 of the 1988 Act of selling, etc. an unroadworthy vehicle even though various breaches of the regulations are alleged. Such a charge for a single offence is not bad for duplicity. The decision was obiter but is nevertheless persuasive. It is submitted that selling, supplying, etc. are separate and should still be charged as separate offences.

In *Cross v Oliver* (1964) 108 S.J. 583 a defendant was charged with speeding in a road controlled as to part by 1957 regulations and as to part by 1958 ones. The speeding had occurred in both parts and the information alleged one offence of speeding contrary to both regulations. The prosecutor declined to elect to proceed for one offence against one of the regulations only and the conviction was quashed on the ground that the information was bad for duplicity as charging two offences. If a statute forbids the doing of act A or act B, it creates two offences and a conviction of both offences on one information is bad for uncertainty (*Field v Hopkinson* (1944) 108 J.P. 21, but contrast *Davis v Loach* (1886) 51 J.P. 118, where a byelaw forbade the emission of "smoke or steam" and a conviction for emitting "smoke and steam" (they being mingled together) was upheld). But if there is one single incident *R. v Clow* [1963] 2 All E.R. 216 is authority for allowing alternatives to be charged conjunctively. Thus in *Vernon v Paddon* [1972] 3 All E.R. 302 a charge under s.5 of the Public Order Act 1936 of insulting words and insulting behaviour was upheld where it arose out of a single incident.

In *R. v Pontefract Magistrates Ex p. Wright (Heavy Haulage) Ltd* Unreported 1995 (CO/3060/95), the Divisional Court considered an application for judicial review after the magistrates had rejected an argument that an information was bad for duplicity. A single information alleged that a motor vehicle and trailer both had specified defects to their braking systems. It was held that the Divisional Court did have a discretion to give leave for judicial review to bring up and quash the determination of the justices in relation to duplicity. The court thought that the simple answer would appear to be for the applicants to plead to the information, but on a specific and clear basis, namely to plead to those elements which related to the motor lorry only (having regard to the instructions given by the applicants to their solicitors, which indicated that they would not in all probability have a defence with respect to the brakes of the tractor unit). It would then be open to the prosecution to invite the justices to deal with the matter on the basis of that plea and that nothing relating to the trailer would be taken into account in sentencing. Alternatively, if the prosecution were to insist that all the elements were taken into account, there would have to be a hearing and it would have to be established beyond reasonable doubt that the braking system of the trailer, in addition to that of the motor lorry, was defective. If the prosecution failed to prove their further contentions, then the court would find itself, by a different route, sentencing in relation to the plea.

The Divisional Court took a practical and enlightened view of the problem recognising that the alternative of judicial review would involve substantial expenditure in costs and would lead to substantially the same situation. Although

there may have been factors in the prosecution which were not brought to light in the application to the Divisional Court, it is difficult to see whether there would have been a great deal of difference in sentencing terms if the information had been amended before the magistrates to delete references to the trailer. A practical solution giving effect to the broad justice of the case was much the preferred outcome and the Divisional Court encouraged that to happen.

The House of Lords considered duplicity in *DPP v Butterworth* [1994] R.T.R. 181. Where a defendant has been charged under s.7(6) of the 1988 Act with failing to give a specimen when required by a constable in the course of an investigation into an offence of being unfit to drive through drink or drugs under s.4 or of having excess alcohol under s.5, it is not necessary to specify in the information whether the charge relates to s.4 or s.5. Lord Slynn, in an opinion with which all of their Lordships agreed, stated that it did not have to be shown that the constable had in his mind a specific offence under one of those sections and that he was investigating that specific offence. It was not therefore necessary to specify in the charge which, if any, specific offence was being investigated by the constable. Lord Slynn dealt with the "separate penalty" point by saying that his reading of s.7(6) was not vitiated by the fact that separate penalties were provided for driving or attempting to drive on the one hand and being in charge on the other. The question whether the person was driving or in charge of the motor vehicle was not part of the inquiry into whether there had been a refusal for the purposes of s.7(6). That question only became relevant after conviction and went to the appropriate penalty. Their Lordships therefore followed the decisions in *Commissioner of Police v Curran* [1976] 1 W.L.R. 87, *Roberts v Griffiths* [1978] R.T.R. 362, and *Shaw v DPP* [1993] R.T.R. 45, but stated that their conclusion was not inconsistent with *R. v Courtie* [1984] A.C. 463 or *R. v Shivpuri* [1987] A.C. 1. Each statute had to be considered separately to decide whether separate offences were created.

However, where the offence is contrary to s.5(1)(a) of the 1988 Act—"If a person drives or attempts to drive a motor vehicle ... after consuming so much alcohol that the proportion in his breath, blood or urine exceeds the prescribed limit ..." it is necessary to show whether the allegation is of attempting to drive or of driving and whether the specimen to be relied on is of breath or blood or urine. If this is not done, the allegation is bad for duplicity and the court is deprived of jurisdiction: *R. v Bolton JJ Ex p. Khan* [1999] Crim. L.R. 912.

### Adjournment

A single magistrate and an authorised court officer may adjourn a case (Criminal Procedure Rules 2020 (SI 2020/759) (as amended)).

The power to adjourn has come under increasing scrutiny. Magistrates have been enjoined to examine critically all applications for adjournments with a view to minimising unnecessary delay. Provisions contained in the Crime and Disorder Act 1998 have speeded up the process of bringing matters commenced by charge before the court; and the Criminal Case Management Framework has drawn attention to the need for all concerned in criminal proceedings to work more closely together to improve the speed and effectiveness of the process. This approach needs to be balanced by the obligation under the European Convention on Human Rights to allow proper time for preparation but also to incorporate the need to be conscious of the impact on victims and witnesses of inappropriately extending the time taken to bring a case to conclusion. The principles drawn from the various authorities are summarised in the Criminal Practice Directions 2023 Pt 5.4.10 <https://assets.publ>

ishing.service.gov.uk/media/66a75bd1fc8e12ac3edb05ce/criminal-practice-directions-2023-amended220724.pdf. Key elements which a court is required to consider are stated as:

- The court's duty is to deal justly with the case, which includes doing justice between the parties.
- The need for expedition. Delay is generally inimical to the interests of justice and brings the criminal justice system into disrepute. Proceedings in a magistrates' court should be simple and speedy.
- Applications for adjournments should be rigorously scrutinised and the court must have a clear reason for adjourning. To do this, the court must review the history of the case and may take account of the nature and gravity of any fault of the applicant for the adjournment.
- Where the prosecutor asks for an adjournment the court must consider not only the interest of the defendant in getting the matter dealt with without delay but also the public interest in ensuring that criminal charges are adjudicated upon thoroughly, with the guilty convicted as well as the innocent acquitted.
- With a more serious charge the public interest that there be a trial will carry greater weight. It is, however, reasonable for the court to expect that parties should have given especially careful attention to the preparation of trials involving serious offences or where the trial has significant implications for victims or witnesses.
- Where the defendant asks for an adjournment the court must consider whether he or she will be able to present the defence fully without and, if not, the extent to which his or her ability to do so is compromised (though note also the effects of Direction 5.4.5 "A court may be justified in refusing an adjournment even if that means the prosecutor is unable to prove the prosecution case or a part of it, or that the defendant is unable to explore an issue. Even in the absence of fault on the part of either party it may not be in the interests of justice to adjourn, notwithstanding that an imperfect trial may be the result.").
- The court must consider the consequences of an adjournment and its impact on the ability of witnesses and defendants accurately to recall events.
- The impact of adjournment on other cases. The relisting of one case almost inevitably delays or displaces the hearing of others. The length of the hearing and the extent of delay in other cases will need to be considered.

Since this is an issue that regularly appears before the appeal courts, the law and approach are set out in detail below. The basic approach for a magistrates' court is set out in s.10 of the Magistrates' Courts Act 1980 which states:

#### "Adjournment of trial

10.—(1) A magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial, and may do so, notwithstanding anything in this Act, when composed of a single justice.

(2) The court may when adjourning either fix the time and place at which the trial is to be resumed, or, unless it remands the accused, leave the time and place to be determined later by the court; but the trial shall not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice thereof.

(3) A magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise its power to

adjourn after convicting the accused and before sentencing him or otherwise dealing with him; but, if it does so, the adjournment shall not be for more than 4 weeks at a time unless the court remands the accused in custody and, where it so remands him, the adjournment shall not be for more than 3 weeks at a time.

(3A) A youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—

(a) that the court commits the accused for trial for another offence; or

(b) that the accused is charged with another offence.

(4) On adjourning the trial of an information the court may remand the accused and, where the accused has attained the age of 18 years, shall do so if the offence is triable either way and—

(a) on the occasion on which the accused first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) the accused has been remanded at any time in the course of proceedings on the information;

and, where the court remands the accused, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below."

The statutory provision is now supplemented by the Criminal Procedure Rules and the Criminal Practice Directions 2023 Part 5.4.

The relevant part of these rules is both the overriding objective—

"Rule 1.1(1) The overriding objective of this procedural code is that criminal cases be dealt with justly"

and, more specifically, r.24.12 which includes the following relating to the absence of the prosecutor or the defendant:

#### "Rule 24.12 ...

(2) Where the prosecutor is absent, the court may:

(a) if it has received evidence, deal with the case as if the prosecutor were present; and

(b) in any other case—

(i) enquire into the reasons for the prosecutor's absence, and

(ii) if satisfied there is no good reason, exercise its power to dismiss the allegation.

(3) Where the defendant is absent the general rule is that the court must proceed as if the defendant were present and had pleaded not guilty (unless a plea already has been taken), but the general rule—

(a) does not apply if the defendant is under 18;

(b) is subject to the court being satisfied that—

(i) any summons or requisition was served on the defendant a reasonable time before the hearing, or

(ii) in a case in which the hearing has been adjourned, the defendant had reasonable notice of where and when it would resume; and

(c) is subject to rule 24.11(10)(a) (restrictions on passing sentence in the defendant's absence)."

In *Saunders v Bristol Magistrates' Court* [2022] EWHC 2544 (Admin), it was emphasised that the authorities do not support the proposition that a prosecution ap-

plication to adjourn will never succeed if it results from a cause for which the prosecution is culpable. Much will depend on the facts and the gravity of the breach will be important. Successful applications to adjourn will, in general, require a clear and adequate explanation of the reasons for the default. The seriousness of the offence may also be significant.

2-105

As regards applications by a *defendant*, the most important provision in relation to magistrates' courts (but not to the Crown Court where there is no equivalent provision) is set out in s.11 of the Magistrates' Courts Act 1980 which states:

**"Non-appearance of accused: general provisions"**

11.—(1) Subject to the provisions of this Act, where at the time and place appointed for the trial or adjourned trial of an information the prosecutor appears but the accused does not—

- (a) if the accused is under 18 years of age, the court may proceed in his absence; and
- (b) if the accused has attained the age of 18 years, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so.

This is subject to subsections (2), (2A), (3), (4) and (8).

(2) Where a summons has been issued, the court shall not begin to try the information in the absence of the accused unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons was served on the accused within what appears to the court to be a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer to the information.

(2A) The court shall not proceed in the absence of the accused if it considers that there is an acceptable reason for his failure to appear.

(3) In proceedings to which this subsection applies, the court shall not in a person's absence sentence him to imprisonment or detention in a young offender institution or make a detention and training order or an order under paragraph 13(1)(a) or (b) of Schedule 16 to the Sentencing Code that a suspended sentence passed on him shall take effect.

(3A) But where a sentence or order of a kind mentioned in subsection (3) is imposed or given in the absence of the offender, the offender must be brought before the court before being taken to a prison or other institution to begin serving his sentence (and the sentence or order is not to be regarded as taking effect until he is brought before the court).

(4) [In proceedings to which this subsection applies, the court shall not in a person's absence impose any disqualification on him, except on resumption of the hearing after an adjournment under section 10(3) above; and where a trial is adjourned in pursuance of this subsection the notice required by section 10(2) above shall include notice of the reason for the adjournment.

(5) Subsections (3) and (4) apply to—

- (a) proceedings instituted by an information, where a summons has been issued; and
- (b) proceedings instituted by a written charge.

(5A) Subsection (4) does not apply in relation to proceedings adjourned under section 16C(3)(a) because of section 16C(2) (adjournment of a section 16A trial because the accused indicates a wish to make representations).

(6) Nothing in this section requires the court to enquire into the reasons for the accused's failure to appear before deciding whether to proceed in his absence.

(7) The court shall state in open court its reasons for not proceeding under this section in the absence of an accused who has attained the age of 18 years; and the court shall cause those reasons to be entered in its register of proceedings.

(8) This section and sections 12 to 16 do not apply if and for so long as a written charge is to be tried by a magistrates' court in accordance with section 16A [trial by a single justice on the papers]."

It is clear from case law that the difference in approach between prosecution and defence applications is recognised and needs to be applied in practice. See, in particular, the judgment of Sir Brian Leveson PQBD in *Houston v DPP* [2015] EWHC 4144 (Admin) in which he stated (at [7]):

2-106

"Since the amendment to the legislation there is in reality a very real difference between a magistrates' court and the Crown Court. Thus the provisions of section 11 of the Act, in particular the fact that it was specifically amended to provide that proceeding in the absence of a defendant was the default position where the defendant was proved to be aware of the date of trial and in respect of whom no good reason for absence was shown. Clearly the interests of justice must prevail, but that is far from saying that the reversal of the default position does not have a material effect on the exercise of judicial discretion."

In effect, a magistrates' court considering an application must apply the tests set out in r.24.12(3) of the Criminal Procedure Rules 2020 (SI 2020/759) (as amended) and Pt 5.4 of the Criminal Practice Directions 2023. There is no obligation to enquire into the reasons for the failure of the defendant to appear (Magistrates' Courts Act s.11(6)) though the overriding objective must, of course, be considered. An example of this is seen in *R. (on the application of Rathor) v Southampton Magistrates' Court* [2018] EWHC 3278 (Admin) where the refusal of a defence application to adjourn was overturned. There had been three adjournments of a trial for reasons that were not attributable to the defendant. The defendant failed to attend the fourth hearing because he was taken ill the previous night. The medical certificate provided did not state he was unfit to attend court and the district judge refused the application to adjourn. On appeal it was stated that it would be rare to decide it was safe to proceed if the absence of the defendant was due to involuntary illness or incapacity especially where, as in this case, the decision turned on the evidence of the defendant. Although the court was not bound by the medical certificate, it had to take account of the fact it had been provided. The judge had been entitled to take s.11(1)(b) as the starting point but was also obliged to consider whether it would be contrary to the interests of justice to refuse the adjournment. Another example of application of the overriding objective can be seen in *R. (on the application of Payne) v South Lakeland Magistrates' Court* [2011] EWHC 1802; [2012] R.T.R. 6 (p.67), where a defendant was prosecuted for exceeding a 60mph speed limit. He was represented in court by a solicitor, but had no intention of attending or giving evidence. The prosecutor omitted to lead evidence of the speed of the vehicle and the solicitor invited the court to dismiss the charge. The court acceded to the prosecution request for an adjournment in order to recall a witness and this was upheld by the Divisional Court. The prosecution had closed its case on the basis of a genuine misunderstanding which provided a windfall to the defence that was nothing to do with the merits of the case. No prejudice was done to the defendant and it was not in the public interest that "cases should be decided upon the vagaries of forensic mistakes made by lawyers".

The Divisional Court was critical of the length of adjournments in *Williams v DPP* [2009] EWHC 2354. The defendant was charged with failing to supply a specimen of breath for analysis; he was bailed to appear at court on 6 January 2007,

2-107

pleaded not guilty and the case was adjourned until 3 July 2007 for a case management hearing—the Divisional Court considered that an adjournment of that length was wrong in principle and “completely unacceptable in a modern system of justice”. Following the case management hearing, the trial was adjourned to 19 October 2007 for hearing, 9 months and 14 days after the charge; the Divisional Court also considered that period to be completely unacceptable. See also Pt 5.4.6 of the Criminal Practice Directions 2023 emphasising the importance of making every effort to make an adjournment as short as possible. The difficulty of the balancing exercise that must often take place was also demonstrated in *Visvaratnam v Brent Magistrates’ Court* [2009] EWHC 3017; (2010) 174 J.P. 61. The defendant had been charged with driving whilst unfit through drugs; the prosecution relied on the evidence of a doctor but that doctor had not been warned to attend on the day on which the trial was listed whilst the other critical witness was a forensic scientist who had told the prosecutor well in advance of the trial date that he was unable to attend. The prosecution was unable to explain why one witness had not been warned, why an earlier application for an adjournment had not been made or why evidence had not been served in advance but argued that this was a serious case and that justice required the case to be heard on its merits. This was the first time the prosecution had applied for the case to be adjourned and it was not a case which depended on recollection. The decision of the magistrates’ court to grant the prosecution application to adjourn was overturned on appeal. It does appear that the Divisional Court wished to emphasise the importance of the prosecution doing its job properly and not being able to rely on any assumption that it will always be allowed one adjournment. The alleged offence was not so serious that it outweighed the “gravity of a series of very serious errors made by the prosecution which were unexplained and indeed inexplicable”.

2-108

Some cases have dealt with specific aspects of the approach to granting an adjournment. They may continue to provide useful guidance on the application of the principles now set out in the Criminal Practice Directions 2023.

In *Smith (George) v DPP*, *The Times* 28 July 1999, it was confirmed that, where a person is charged with a road traffic offence (other than motor manslaughter or causing death by either dangerous or careless driving) justices ought not to proceed with a summary trial pending an inquest into the death.

2-109

The difficulties faced by justices seeking to make progress in a timely fashion were illustrated in *R. v Ealing JJ Ex p. Avondale* [1999] Crim. L.R. 840. A defendant had two witnesses available to support his defence. At the first listing of the trial one witness (*E*) attended but the other (*D*) did not because he was on his honeymoon. The second listing was scheduled for 12 noon. *E* had notified the defendant that morning that he could not attend that morning. The case did not come on until 2pm and by then the defendant had time difficulties because of child care responsibilities. Both witnesses were able to give important but different evidence. The bench refused an application to adjourn but this was overturned on appeal. The Divisional Court emphasised that justices should not focus on the perceived irresponsibility of a witness but rather on whether the defendant was the author of the difficulties in question. The fundamental question was whether, in all the circumstances of the case, including the legitimate interests of the prosecution and the court, it was fair to continue the hearing. The Divisional Court expressed considerable sympathy for justices faced with such questions and reaffirmed the propriety of insisting on a hearing in the appropriate circumstances even where a defence witness is unavailable. However, that was a course to be pursued with the

very greatest caution if the witness might have significant evidence to give and if the unavailability of the witness was due to no fault on the part of the defendant and his advisers.

The principles in the European Convention on Human Rights will also apply in similar circumstances. It appears that the loss of a case is considered to be a disproportionately great penalty for the failure of an important witness to attend.

A court faced with an application to adjourn should, therefore, first ascertain the likely substance of the evidence capable of being given by the witness, then ascertain the reasons why the witness has not attended and then apply the principles set out above, balancing the legitimate interests of both parties and the court, to decide whether it was fair to continue the hearing. The importance of doing justice to all involved was emphasised in *R. (on the application of the DPP) v North and East Hertfordshire JJ* [2008] EWHC 103; (2008) 172 J.P. 193. The defendant was prosecuted for driving with excess alcohol. Issues arose concerning identification, post-incident consumption and the reliability of the sample of blood. An initial trial date was set aside because a new issue raised by the defence required more time than had been allocated. The key prosecution witness was unable to attend the new hearing date at short notice because of adverse weather conditions that both made her own travel difficult and had resulted in unexpected school closures that presented difficulties in arranging for care of a child. The witness was a willing witness who had kept the prosecution and the court fully informed. The court’s refusal of the prosecution application to adjourn was overturned by the Divisional Court as being irrational and perverse. The Divisional Court noted that neither the Crown Prosecution Service nor the witness could be said to be at fault and a proper balance needed to be struck between the interests of the defendant (including his legitimate interest in being dealt with promptly) and the general public interest in prosecuting and convicting offenders. Consistent with the overriding objective to do justice, an adjournment is likely to be appropriate where needed to deal with an unmeritorious technical point: *R. (on the application of Taylor) v Southampton Magistrates’ Court* [2008] EWHC 3006. Guidance for courts faced with a defendant ready to proceed and a prosecutor present but without a prosecution file was given in *DPP v Shuttleworth* [2002] EWHC 621; (2002) 166 J.P. 417. A defendant attended court intending to plead guilty to a charge of driving without due care and attention. The prosecution were present and aware of the case being listed but the file had gone astray. There was no information in the court papers sufficient for the case to proceed. The court gave the prosecutor just over an hour to trace the file. When it was not found, they dismissed the case. Allowing the prosecutor’s appeal, the Divisional Court gave three points of general application. First, whilst understanding the frustration of benches faced by the absence of a prosecution file, the power to dismiss the case is not to be used as a punitive or disciplinary provision against the Crown Prosecution Service. Secondly, where an additional hearing is necessary as a result of the fault of the prosecution, magistrates may consider whether there is a costs implication for the defaulting party. Thirdly, whilst it is entirely proper to consider the position of the defendant and the legitimate expectation to have their case dealt with promptly, there is also the general interest in prosecuting and convicting offenders and the particular interest of those personally affected by the offence. Where these interests are in competition with each other, a proper balance must be struck.

Whilst courts have a discretion regarding the decision to adjourn with which an

2-110

2-110

2-110

2-110

2-111

appellate court will not interfere lightly, nonetheless it is imperative that that discretion is exercised judicially.

The provision of an interpreter was an issue in *R. (on the application of Bozkurt) v Thames Magistrates' Court* [2001] EWHC Admin 400; [2002] R.T.R. 15 (p.246). The defendant was a Kurd who spoke little English. He was arrested and taken to a police station where the drink/drive procedure was followed. An interpreter had been called and interpreted throughout. The same interpreter attended the first hearing at the magistrates' court two days later, introduced the defendant to the duty solicitor and interpreted what was said. It was likely that the defendant would plead not guilty and the point was taken that there could not be a fair trial because the prosecution would need to rely on the interpreter to give evidence of the procedure at the police station if that was called into question. Drawing attention to the Guidelines for Interpreters and the emphasis on the importance of there being different interpreters at the police station and the court wherever possible and to the fact that an interpreter is bound by the same rule of privilege as the solicitor, the Divisional Court agreed with the deputy district judge that, since the only questions that could be asked of the interpreter were factual ones about the procedure, that could not be affected by privileged conversation between the solicitor and the client. Although the events which occurred in this case were undesirable because, arguably, they created a perception of unfairness, nonetheless, that perception was dispelled and would be recognised to be dispelled by an objective onlooker aware of the relevant facts. Accordingly there had been no breach of the requirement that there be a fair trial.

2-112 Where a case is adjourned part way through one of the party's case, evidence can be adduced at the resumed hearing that was not available at the original hearing: *DPP v Jimale* [2001] Crim. L.R. 138.

The effect of a lengthy delay between the commencement and the conclusion of a trial that had to be adjourned was considered in *Khatibi v DPP* [2004] EWHC 83; (2004) 168 J.P. 361. An issue arose regarding the analysis of a specimen of blood at the conclusion of the prosecution case. In the event, the justices adjourned the proceedings to allow the prosecutor to call further evidence. The hearing resumed over four months later and the defendant argued before the justices (and subsequently on appeal) that, inter alia, such a delay meant that a fair trial was not possible. That argument was rejected both by the justices and on appeal. The court and counsel had been able to refresh their memories from notes and no new submissions were made on the substance of the case; in these circumstances, the court was right to continue with the trial.

2-113 In *R. v Al-Zubeidi* [1999] Crim. L.R. 906, the Court of Appeal allowed an appeal against a decision of the Crown Court to refuse an adjournment to allow the defendant to instruct fresh counsel where the original counsel had had to withdraw in the light of changed instructions from the defendant. Although conscious of the danger of a defendant rejecting counsel on spurious grounds in order to prolong a trial, this was a case where a foreign national facing a serious charge (robbery) was seeking to run a complex defence.

In *R. (on the application of Rashid) v Horseferry Road Magistrates' Court* [2000] 11 WLUK 165, two defendants were represented by the same counsel who did not receive details of the prosecution case until the day of the trial. Counsel had concerns about whether she ought to represent both defendants on which she sought advice, following which she had about 30 minutes to take proofs from her clients, one of whom needed an interpreter. She sought an adjournment which the stipendi-

ary magistrate refused but which the Divisional Court held should have been allowed. The defendants could not have received a fair trial.

The court does not always have to tolerate the persistent failure of a defendant to attend even in serious cases. In *R. v Ealing Magistrates' Court Ex p. Burgess* (2001) 165 J.P. 82, a defendant charged with harassment secured adjournments on a number of occasions on the basis of letters from himself and his doctor describing nervous exhaustion, anxiety and stress. The defendant had, however, managed to dismiss his solicitor, commence nine private prosecutions against police officers and attend another magistrates' court on three occasions to prosecute other proceedings. On the court having decided to proceed and convict in his absence, the defendant attended later that day to seek the rehearing of the case. Not surprisingly, the Divisional Court rejected his challenge to the decision of the justices. A defendant has to have a "fair opportunity" to be present at his trial—this is not an "unlimited opportunity".

A full review of the authorities touching on the defendant's right to attend his trial was carried out by the Court of Appeal in *R. v Hayward; R. v Jones; R. v Purvis* [2001] Q.B. 862. Having reviewed the English and European authorities, the Court of Appeal set out six principles to guide a court in relation to the trial of a defendant in his absence in the Crown Court. This approach differs from that in a magistrates' court for which see para.2-105.

They emphasise the discretion that lies with the court and the importance of fairness to both the defendant and the prosecution. The Court of Appeal certified the following question as one of general public importance "Can the Crown Court conduct a trial in the absence, from its commencement, of the defendant?" and the appeal has been considered by the House of Lords and reported under the name of *R. v Jones (Anthony William)* [2002] UKHL 5; [2003] 1 A.C. 1. Although dismissing the appeal and supporting the checklist promoted by the Court of Appeal as invaluable in the exercise with the utmost care and caution of the discretion to commence a trial in the absence of the defendant, the House of Lords did adjust that checklist in two respects. First, the proposal of the Court of Appeal that the seriousness of the offence was relevant to the exercise of the discretion was not to be applied. The objects were to ensure that the trial was as fair as the circumstances permitted and lead to a just outcome and they were equally important whether the offence was serious or relatively minor (though see the decision in *R. v Arshad* [2024] EWCA Crim 67 for a situation where the seriousness of the offence was considered to be an appropriate factor for a court to consider). Secondly, even if the defendant had absconded voluntarily, it was generally desirable that he be represented. Since these decisions, the Criminal Procedure Rules (SI 2020/759) (as amended) r.25.2(1)(b) has further provided that the Crown Court must be satisfied that the defendant has waived his right to be present and that the trial will be fair despite the absence of the defendant.

Particular care should be taken where the absent defendant is a youth who will not have the same development and understanding as an adult. Arrest and retention in custody for an unrelated offence was not something over which a young person had control at the time even though he could have avoided it by not committing the offence: *R. (on the application of R) v Thames Youth Court* [2002] EWHC 1670; (2002) 166 J.P. 613.

The defendant must have adequate notice of the adjournment in accordance with s.10(2) of the Magistrates' Courts Act 1980 and the Criminal Procedure Rules 2020 (SI 2020/759) (as amended) r.4 as to service. In *R. v Dervishi* [2016] EWCA Crim