



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 3

APPEALS

Appeals by defendant

42 Power to dismiss certain appeals following references by the CCRC: England and Wales

After section 16B of the Criminal Appeal Act 1968 (c. 19) insert—

“Appeals following references by the CCRC

16C Power to dismiss certain appeals following references by the CCRC

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 9(1)(a), (5) or (6) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.
- (2) Notwithstanding anything in section 2, 13 or 16 of this Act, the Court of Appeal may dismiss the appeal if—
 - (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
 - (b) the condition in subsection (3) is met.
- (3) The condition in this subsection is that if—
 - (a) the reference had not been made, but

(b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,
the Court would not think it appropriate to grant the application by exercising the power conferred by section 18(3).”

43 Power to dismiss certain appeals following references by the CCRC: Northern Ireland

After section 13A of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) insert—

“Appeals following references by the CCRC

13B Power to dismiss certain appeals following references by the CCRC

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 10(1)(a), (6) or (7) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.
- (2) Notwithstanding anything in section 2, 12 or 13A of this Act, the Court of Appeal may dismiss the appeal if—
 - (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
 - (b) the condition in subsection (3) is met.
- (3) The condition in this subsection is that if—
 - (a) the reference had not been made, but
 - (b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,
the Court would not think it appropriate to grant the application by exercising the power conferred by section 16(2).”

Appeals by prosecution

44 Determination of prosecution appeals: England and Wales

In section 61 of the Criminal Justice Act 2003 (c. 44) (determination of prosecution appeal by Court of Appeal) for subsection (5) substitute—

“(5) But the Court of Appeal may not make an order under subsection (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under subsection (4)(a) or (b).”

45 Determination of prosecution appeals: Northern Ireland

In Article 20 of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I.9)) (determination of prosecution appeal by Court of Appeal) for paragraph (5) substitute—

“(5) But the Court of Appeal may not make an order under paragraph (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under paragraph (4)(a) or (b).”

Miscellaneous

46 Review of sentence on reference by Attorney General

(1) Section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) is amended as follows.

(2) For subsection (3A) substitute—

“(3A) Where a reference under this section relates to a case in which the judge made an order specified in subsection (3B), the Court of Appeal shall not, in deciding what sentence is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.

(3B) The orders specified in this subsection are—

- (a) an order under section 269(2) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence);
- (b) an order under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in relation to discretionary life sentences and certain other sentences).”

(3) In subsection (9) after paragraph (b) insert “, and

- (c) the reference in subsection (3A) to an order specified in subsection (3B) shall be construed as a reference to an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001.”

47 Further amendments relating to appeals in criminal cases

Schedule 8 amends the Criminal Appeal Act 1968 (c. 19), the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) and other Acts relating to appeals in criminal cases.