

SCHEDULES

SCHEDULE 8

Section 47

APPEALS IN CRIMINAL CASES

PART 1

AMENDMENTS OF CRIMINAL APPEAL ACT 1968

- 1 The Criminal Appeal Act 1968 (c. 19) has effect subject to the following amendments.

Time limit on grant of certificates of fitness for appeal

- 2 In section 1 (appeal against conviction), in subsection (2)(b) after “if” insert “, within 28 days from the date of the conviction,”.
- 3 In section 11 (supplementary provisions as to appeal against sentence), in subsection (1A)—
- (a) after “if” insert “, within 28 days from the date on which the sentence was passed,”, and
 - (b) for “the sentence” substitute “it”.
- 4 In section 12 (appeal against verdict of not guilty on ground of insanity), in subsection (1)(b) after “if” insert “, within 28 days from the date of the verdict,”.
- 5 In section 15 (appeal against finding of disability), in subsection (2)(b) after “if” insert “, within 28 days from the date of the finding that the accused did the act or made the omission charged,”.

Powers of Court to substitute different sentence

- 6 (1) Section 4 (sentence when appeal allowed on part of indictment) is amended as follows.
- (2) For the heading substitute “Power to re-sentence where appellant remains convicted of related offences”.
- (3) For subsection (1) substitute—
- “(1) This section applies where—
 - (a) two or more related sentences are passed,
 - (b) the Court of Appeal allow an appeal against conviction in respect of one or more of the offences for which the sentences were passed (“the related offences”), but
 - (c) the appellant remains convicted of one or more of those offences.”
- (4) In subsection (2)—

Status: This is the original version (as it was originally enacted).

- (a) for “in respect of any count on which the appellant remains convicted” substitute “in respect of any related offence of which the appellant remains convicted”, and
- (b) omit “for the offence of which he remains convicted on that count”.

(5) In subsection (3)—

- (a) for “on the indictment as a whole” substitute “(taken as a whole) for all the related offences of which he remains convicted”, and
- (b) for “for all offences of which he was convicted on the indictment” substitute “for all the related offences”.

(6) After subsection (3) insert—

“(4) For the purposes of subsection (1)(a), two or more sentences are related if—

- (a) they are passed on the same day,
- (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence, or
- (c) they are passed on different days but in respect of counts on the same indictment.

(5) Where—

- (a) two or more sentences are related to each other by virtue of subsection (4)(a) or (b), and
- (b) any one or more of those sentences is related to one or more other sentences by virtue of subsection (4)(c),

all the sentences are to be treated as related for the purposes of subsection (1)(a).”

Interim hospital orders

7 The following provisions (which relate to the effect of interim hospital orders made by the Court of Appeal) are omitted—

- (a) section 6(5) and the definition of interim hospital order in section 6(7),
- (b) section 11(6),
- (c) section 14(5) and the definition of interim hospital order in section 14(7), and
- (d) section 16B(3).

8 Before section 31 (but after the cross-heading preceding it) insert—

“30A Effect of interim hospital orders

(1) This section applies where the Court of Appeal—

- (a) make an interim hospital order by virtue of any provision of this Part, or
- (b) renew an interim hospital order so made.

(2) The court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.”

Status: This is the original version (as it was originally enacted).

9 In section 31 (powers of Court which are exercisable by single judge) after subsection (2) insert—

“(2ZA) The power of the Court of Appeal to renew an interim hospital order made by them by virtue of any provision of this Part may be exercised by a single judge in the same manner as it may be exercised by the Court.”

Evidence

10 (1) Section 23 (evidence) is amended as follows.

(2) In subsection (1) after “an appeal” insert “, or an application for leave to appeal,”.

(3) In that subsection, for paragraph (b) substitute—

“(b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and”.

(4) After subsection (1) insert—

“(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—

- (a) the Court;
- (b) the appellant;
- (c) the respondent.”

(5) In subsection (4) after “an appeal” insert “, or an application for leave to appeal,”.

(6) After subsection (5) insert—

“(6) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.”

Powers of single judge

11 (1) Section 31 (powers of Court of Appeal which are exercisable by single judge) is amended as follows.

(2) In the heading, omit “under Part 1”.

(3) After subsection (2C) insert—

“(2D) The power of the Court of Appeal to grant leave to appeal under section 9(11) of the Criminal Justice Act 1987 may be exercised by a single judge in the same manner as it may be exercised by the Court.

(2E) The power of the Court of Appeal to grant leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996 may be exercised by a single judge in the same manner as it may be exercised by the Court.”

Appeals against procedural directions

12 In section 31C (appeals against procedural directions), omit subsections (1) and (2).

Status: This is the original version (as it was originally enacted).

Detention of defendant pending appeal to Supreme Court

- 13 (1) Section 37 (detention of defendant on appeal by Crown) is amended as follows.
- (2) In subsection (2) for the words from “may make” to the end substitute “shall make—
- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 36 above), so long as the appeal is pending, or
 - (b) an order that he be released without bail.”
- (3) After subsection (2) insert—
- “(2A) The Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.”
- (4) In subsection (3) for “this section” substitute “subsection (2)(a)”.
- (5) In subsection (4) for “this section” (in each place where it occurs) substitute “subsection (2)(a)”.
- (6) In subsection (4A) for “this section” (in the first place where it occurs) substitute “subsection (2)(a)”.
- (7) For subsection (5) substitute—
- “(5) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
- (a) the Court of Appeal have made an order under subsection (2)(b), or
 - (b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).”

PART 2

AMENDMENTS OF CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1980

- 14 The Criminal Appeal (Northern Ireland) Act 1980 (c. 47) has effect subject to the following amendments.

Time limit on grant of certificates of fitness for appeal

- 15 In section 1 (appeal against conviction), in paragraph (b) after “if” insert “, within 28 days from the date of the conviction,”.
- 16 In section 12 (appeal against finding of not guilty on ground of insanity), in subsection (1)(b) after “if” insert “, within 28 days from the date of the finding,”.
- 17 In section 13A (appeal against finding of unfitness to be tried), in subsection (2)(b) after “if” insert “, within 28 days from the date of the finding that the person did the act or made the omission charged,”.

Powers of Court to substitute different sentence

- 18 (1) Section 4 (alteration of sentence on appeal against conviction) is amended as follows.

(2) For subsection (1) substitute—

“(1) Subsection (1A) applies where—

- (a) two or more related sentences are passed,
- (b) the Court of Appeal allows an appeal against conviction in respect of one or more of the offences for which the sentences were passed (“the related offences”), but
- (c) the appellant remains convicted of one or more of those offences.

(1A) The Court may, in respect of any related offence of which the appellant remains convicted, pass such sentence, in substitution for the sentence passed thereon at the trial, as it thinks proper and is authorised by law.”

(3) After subsection (2) insert—

“(3) For the purposes of subsection (1)(a), two or more sentences are related if—

- (a) they are passed on the same day,
- (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence, or
- (c) they are passed on different days but in respect of counts on the same indictment.

(4) Where—

- (a) two or more sentences are related to each other by virtue of subsection (3)(a) or (b), and
- (b) any one or more of those sentences is related to one or more other sentences by virtue of subsection (3)(c),

all the sentences are to be treated as related for the purposes of subsection (1)(a).”

Interim hospital orders

19 Section 10(6) (effect of interim hospital orders made by Court of Appeal) is omitted.

20 (1) For the cross-heading preceding section 30 substitute—

“Supplementary”.

(2) Before section 30 (but after the cross-heading preceding it) insert—

“29A Effect of interim hospital orders

(1) This section applies where the Court of Appeal—

- (a) makes an interim hospital order by virtue of any provision of this Part, or
- (b) renews an interim hospital order so made.

(2) The Crown Court shall be treated for the purposes of Article 45(6) of the Mental Health Order (absconding offenders) as the court that made the order.”

Status: This is the original version (as it was originally enacted).

21 In section 45 (powers of Court which are exercisable by single judge) after subsection (3) insert—

“(3ZA) The power of the Court of Appeal to renew an interim hospital order made by it by virtue of any provision of this Act may be exercised by a single judge in the same manner as it may be exercised by the Court.”

Evidence

22 (1) Section 25 (evidence) is amended as follows.

(2) In subsection (1) after “an appeal” insert “, or an application for leave to appeal,”.

(3) In that subsection, for paragraph (b) substitute—

“(b) order any witness to attend and be examined before the Court (whether or not he was called at the trial); and”.

(4) After subsection (1) insert—

“(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—

- (a) the Court;
- (b) the appellant;
- (c) the respondent.”

(5) After subsection (3) insert—

“(4) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.”

23 In section 26 (additional powers of Court), in subsection (1) after “an appeal” insert “, or an application for leave to appeal,”.

Detention of defendant pending appeal to Supreme Court

24 (1) Section 36 (detention of defendant on appeal by Crown) is amended as follows.

(2) In subsection (1) for the words from “may make” to the end substitute “shall make—

- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 35 above), so long as the appeal is pending, or
- (b) an order that he be released without bail.”

(3) After subsection (1) insert—

“(1A) The Court may make an order under subsection (1)(b) only if it thinks that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.”

(4) In subsection (2) for “subsection (1)” substitute “subsection (1)(a)”.

(5) In subsection (3) for “this section” (in each place where it occurs) substitute “subsection (1)(a)”.

(6) In subsection (3A) for “this section” (in the first place where it occurs) substitute “subsection (1)(a)”.

(7) For subsection (4) substitute—

“(4) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—

- (a) the Court of Appeal has made an order under subsection (1)(b), or
- (b) the Court has made an order under subsection (1)(a) but the order has ceased to have effect by virtue of subsection (2) or the defendant has been released or discharged by virtue of subsection (3) or (3A).”

Powers of single judge

25 (1) Section 45 (powers of Court of Appeal which are exercisable by single judge) is amended as follows.

(2) After subsection (3C) insert—

“(3D) The power of the Court of Appeal to grant leave to appeal under Article 8(11) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.”

PART 3

AMENDMENTS OF OTHER ACTS

Detention of defendant pending appeal from High Court to Supreme Court

26 (1) Section 5 of the Administration of Justice Act 1960 (c. 65) (power to order detention or admission to bail of defendant) is amended as follows.

(2) In subsection (1) for the words from “may make” to the end substitute “shall make—

- (a) an order providing for the detention of the defendant, or directing that he shall not be released except on bail (which may be granted by the court as under section 4 above), so long as the appeal is pending, or
- (b) an order that the defendant be released without bail.”

(3) After subsection (1) insert—

“(1A) The court may make an order under subsection (1)(b) only if it thinks that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.”

(4) In subsection (3) for “subsection (1)” substitute “subsection (1)(a)”.

(5) In subsection (4) for “the said subsection (1)” substitute “the said subsection (1)(a)”.

(6) In subsection (4A) for “the said subsection (1)” substitute “the said subsection (1)(a)”.

(7) For subsection (5) substitute—

“(5) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—

Status: This is the original version (as it was originally enacted).

- (a) the court has made an order under subsection (1)(b), or
- (b) the court has made an order under subsection (1)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).”

Variation of sentences by Crown Court

- 27 (1) Section 49 of the Judicature (Northern Ireland) Act 1978 (c. 23) (sentences imposed and other decisions made by Crown Court) is amended as follows.
- (2) In subsection (2)—
- (a) for “28 days” substitute “56 days”, and
 - (b) omit the words from “or, where subsection (3) applies,” to the end.
- (3) After subsection (2) insert—
- “(2A) The power conferred by subsection (1) may not be exercised in relation to any sentence or order if an appeal, or an application for leave to appeal, against that sentence or order has been determined.”
- (4) Subsection (3) is omitted.
- 28 (1) Section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (alteration of Crown Court sentence) is amended as follows.
- (2) In subsection (1)—
- (a) for “28 days” substitute “56 days”, and
 - (b) omit the words from “or, where subsection (2) below applies,” to the end.
- (3) After subsection (1) insert—
- “(1A) The power conferred by subsection (1) may not be exercised in relation to any sentence or order if an appeal, or an application for leave to appeal, against that sentence or order has been determined.”
- (4) Subsections (2) and (3) are omitted.