



Criminal Appeal Act 1968

1968 CHAPTER 19

PART I

APPEAL TO COURT OF APPEAL IN CRIMINAL CASES

Retrial

7 Power to order retrial.

- (1) Where the Court of Appeal allow an appeal against conviction . . . ^{F1}and it appears to the Court that the interests of justice so require, they may order the appellant to be retried.
- (2) A person shall not under this section be ordered to be retried for any offence other than—
 - (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1) above;
 - (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
 - (c) an offence charged in an alternative count of the indictment in respect of which [^{F2}no verdict was given] in consequence of [^{F3}his being convicted] of the first-mentioned offence.

Textual Amendments

- F1** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 43(1)(5), 170, Sch. 8 para. 16, [Sch. 16](#)
- F2** Words in s. 7(2)(c) substituted (24.7.2006 for E.W., 8.1.2007 in so far as not already in force) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 36 para. 44\(a\)](#); S.I. 2006/1835, art. 2(h); S.I. 2006/3422, art. 2(c)(i)

*Changes to legislation: There are currently no known outstanding effects for the
Criminal Appeal Act 1968, Cross Heading: Retrial. (See end of Document for details)*

F3 Words in s. 7(2)(c) substituted (24.7.2006 for E.W., 8.1.2007 in so far as not already in force) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 44(b)**; S.I. 2006/1835, art. 2(h); S.I. 2006/3422, art. 2(c)(i)

8 Supplementary provisions as to retrial.

- (1) A person who is to be retried for an offence in pursuance of an order under section 7 of this Act shall be tried on a fresh indictment preferred by direction of the Court of Appeal, . . . ^{F4}^{F5}but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.]
- ^{F6}(1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.
- (1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—
- (a) to grant leave to arraign; or
 - (b) to ^{F7}set aside the order for retrial and]direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—
 - (i) that the prosecution has acted with all due expedition; and
 - (ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 7 of this Act was made.]
- (2) The Court of Appeal may, on ordering a retrial, make such orders as appear to them to be necessary or expedient—
- (a) for the custody or ^{F8}, subject to section 25 of the Criminal Justice and Public Order Act 1994,]^{F9}release on] bail of the person ordered to be retried pending his retrial; or
 - (b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.
- (3) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order or direction under Part V of the ^{M1}Mental Health Act 1959 ^{F10}or under Part III of the Mental Health Act 1983 (other than under section 35, 36 or 38 of that Act)],—
- (a) that order or direction shall continue in force pending the retrial as if the appeal had not been allowed; and
 - (b) any order made by the Court of Appeal under this section for his custody or ^{F9}release on] bail shall have effect subject to the said order or direction.
- ^{F11}(3A) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of a remand under ^{F12}section 36 of the Mental Health Act 1983] or an interim hospital order under ^{F12}section 38 of that Act], the Court of Appeal may, if they think fit, order that he shall continue to be detained in a hospital or mental nursing home, and in that event ^{F12}Part III of that Act] shall apply as if he had been ordered under this section to be kept in custody pending his

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retrial and were detained in pursuance of a transfer direction together with a restriction direction.]

[^{F13}(3B) If the person ordered to be retried—

- (a) was liable to be detained in pursuance of an order or direction under Part 3 of the Mental Health Act 1983;
- (b) was then made subject to a community treatment order (within the meaning of that Act); and
- (c) was subject to that community treatment order immediately before the determination of his appeal,

the order or direction under Part 3 of that Act and the community treatment order shall continue in force pending the retrial as if the appeal had not been allowed, and any order made by the Court of Appeal under this section for his release on bail shall have effect subject to the community treatment order.]

- (4) Schedule 2 to this Act has effect with respect to the procedure in the case of a person ordered to be retried, the sentence which may be passed if the retrial results in his conviction and the order for costs which may be made if he is acquitted.

Textual Amendments

- F4** Words repealed by [Courts Act 1971 \(c. 23\)](#), **Sch. 11 Pt. IV**
- F5** Words added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), **s. 43(3)(5)**
- F6** S. 8(1A)(1B) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 43(4)(5), **Sch. 8 para. 16**
- F7** Words in s. 8(1B)(b) inserted (27.9.1999) by [1999 c. 22](#), **ss. 58(2)**, 108(3)(with s. 107, Sch. 14 para. 7(2))
- F8** Words in s. 8(2)(a) inserted (10.4.1995) by [1994 c. 33](#), s. 168(2), **Sch. 10 para. 19**; S.I. 1995/721, art. 2, **Sch. Appendix A**
- F9** Words substituted by [Bail Act 1976 \(c. 63\)](#), **Sch. 2 Para. 38**
- F10** Words inserted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), **Sch. 4 para. 23(b)**
- F11** S. 8(3A) inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), **Sch. 3 para. 36**
- F12** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), **Sch. 4 para. 23(c)**
- F13** **S. 8(3B)** inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), s. 56(1), **Sch. 4 para. 2(2)**; S.I. 2008/1900, art. 2(i) (with art. 3Sch.)

Marginal Citations

- M1** [1959 c. 72](#).

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