



Criminal Appeal (Northern Ireland) Act 1980

1980 CHAPTER 47

PART II

APPEAL TO HOUSE OF LORDS [^{F1}FROM COURT OF APPEAL]

Matters preliminary to hearing

35 Bail.

The Court of Appeal may, if it thinks fit, on the application of an appellant under this Part of this Act or a person applying for leave to appeal thereunder, [^{F1}other than a person appealing or applying for leave to appeal from a decision on an appeal under Article 8(11) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (appeals against orders or rulings at preparatory hearings) [^{F2}or Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals)],] admit him to bail pending an appeal from the Court.

Textual Amendments

F1 Words inserted by S.I. 1988/1846 (N.I. 16), art. 12, **Sch. para. 5(3)**

F2 Words in s. 35 inserted (N.I.) (18.4.2005) by The Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I. 9)), **art. 27(4)**; S.R. 2005/243, **art. 2**

36 Detention of defendant pending appeal by Crown.

- (1) Where the defendant in any proceedings from which an appeal lies to the [^{F3}Supreme Court] under this Part of this Act would, but for the decision of the Court of Appeal, be liable to be detained and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the Court [^{F4} shall make—

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- (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.]

[^{F5}(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.]

(2) An order under [^{F6}subsection (1)(a)] above shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the Court.

(3) When an order is made under [^{F7}subsection (1)(a)] in the case of a defendant who, but for the decision of the Court, would be liable to be detained in pursuance of an order or direction under the Mental Health [^{F8}Order (otherwise than under Article 42, 43 or 45 of that Order)], the order under [^{F7}subsection (1)(a)] shall be one authorising his continued detention in pursuance of the order or direction, and the provisions of [^{F8}that Order] with respect to persons so liable (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

[^{F9}(3A) Where an order is made under [^{F10}subsection (1)(a)] in the case of a defendant who, but for the decision of the Court, would be liable to be detained in pursuance of a remand under Article 43 of the Mental Health Order or an interim hospital order under Article 45 of that Order, the order may, if the Court thinks fit, be one authorising his continued detention in a hospital and in that event—

- (a) subsection (2) of this section shall not apply to the order;
- (b) Part III of the Mental Health Order shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the [^{F3}Supreme Court] is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
- (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, paragraph (2) of the said Article 45 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.]

[^{F11}(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).]

Textual Amendments

- F3** Words in s. 36 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 33\(6\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)
- F4** Words in s. 36(1) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 47, 153(7)(8), [Sch. 8 para. 24\(2\)](#); [S.I. 2008/1586](#), [art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)
- F5** S. 36(1A) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 47, 153(7)(8), [Sch. 8 para. 24\(3\)](#); [S.I. 2008/1586](#), [art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)

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- F6** Words in s. 36(2) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 47, 153(7)(8), [Sch. 8 para. 24\(4\)](#); S.I. 2008/1586, [art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)
- F7** Words in s. 36(3) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 47, 153(7)(8), [Sch. 8 para. 24\(5\)](#); S.I. 2008/1586, [art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)
- F8** Words substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), [Sch. 5 Pt. I](#)
- F9** S. 36(3A) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), [Sch. 5 Pt. I](#)
- F10** Words in s. 36(3A) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 47, 153(7)(8), [Sch. 8 para. 24\(6\)](#); S.I. 2008/1586, [art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)
- F11** S. 36(4) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 47, 153(7)(8), [Sch. 8 para. 24\(7\)](#); S.I. 2008/1586, [art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)

^{F12}**37 Legal aid.**

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Textual Amendments

- F12** S. 37 repealed (N.I.) (1.4.2015) by [Access to Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/435 \(N.I. 10\)\)](#), [art. 1\(2\)](#), [Sch. 4 para. 5\(4\)](#), [Sch. 5](#) (with [art. 45](#)); S.R. 2015/194, [art. 2](#), [Sch. \(with art. 3\)](#); S.R. 2015/237, [art. 2](#), [Sch. 1](#)

38 Presence of defendant at hearing.

A defendant who [^{F13}has been convicted of an offence and] is detained pending an appeal under this Part of this Act shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto, except where [^{F14}Supreme Court Rules] or rules of court, as the case may be, authorise him to be present or where [^{F15}the Supreme Court] or the Court of Appeal, as the case may be, gives him leave to be present.

Textual Amendments

- F13** Words inserted by S.I. 1988/1846 (N.I. 16), [art. 12](#), [Sch. para. 5\(4\)](#)
- F14** Words in s. 38 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 33\(8\)\(a\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F15** Words in s. 38 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 33\(8\)\(b\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

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

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

- s. 7(3A) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 3\(3\)\(a\)](#)
- s. 7(3A) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 3\(3\)\(b\)](#)
- s. 7(3A) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 3\(3\)\(c\)](#)
- s. 36(3)(b) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 11\(3\)\(b\)\(i\)](#)
- s. 36(3)(b) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 11\(3\)\(b\)\(ii\)](#)
- s. 36(3)(c) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 11\(3\)\(c\)\(i\)](#)
- s. 36(3)(c) words substituted by [2016 c. 18 \(N.I.\) Sch. 10 para. 11\(3\)\(c\)\(ii\)](#)