



# Criminal Appeal Act 1995

## 1995 CHAPTER 35

### PART I **E+W+N.I.**

#### THE COURT OF APPEAL

#### 1 Leave to appeal etc. **E+W+N.I.**

(1) In the <sup>M1</sup>Criminal Appeal Act 1968 (“the 1968 Act”), in section 1 (appeal against conviction), for subsection (2) (requirement of leave to appeal or certificate of trial judge unless appeal involves question of law only) substitute—

“(2) An appeal under this section lies only—

- (a) with the leave of the Court of Appeal; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.”

(2) In the <sup>M2</sup>Criminal Appeal (Northern Ireland) Act 1980 (“the 1980 Act”), in section 1 (appeal against conviction subject to requirement of leave to appeal or certificate of trial judge unless appeal involves question of law only), for the words from “conviction” to the end substitute “conviction—

- (a) with the leave of the Court; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.”

(3) In section 12 of the 1968 Act (appeal against verdict of not guilty by reason of insanity subject to requirement of leave to appeal or certificate of trial judge unless appeal involves question of law only), for the words from “against the verdict” to the end substitute “against the verdict—

- (a) with the leave of the Court of Appeal; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.”

(4) In section 12(1) of the 1980 Act (appeal against finding of not guilty on ground of insanity subject to requirement of leave to appeal or certificate of trial judge unless

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appeal involves question of law only), for the words from “against that finding” to the end substitute “to the Court of Appeal against the finding—

- (a) with the leave of the Court; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.”

- (5) In section 15 of the 1968 Act (appeal against finding of disability), for subsection (2) (requirement of leave to appeal or certificate of trial judge unless appeal involves question of law only) substitute—

“(2) An appeal under this section lies only—

- (a) with the leave of the Court of Appeal; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.”

- (6) In section 13A of the 1980 Act (appeal against finding of unfitness to be tried), for subsection (2) (requirement of leave to appeal or certificate of trial judge unless appeal involves question of law only) substitute—

“(2) An appeal under this section lies only—

- (a) with the leave of the Court; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.”

#### Marginal Citations

**M1** 1968 c. 19.

**M2** 1980 c. 47.

## 2 Grounds for allowing and dismissing appeals. **E+W+N.I.**

- (1) In section 2 of the 1968 Act (disposal of appeal against conviction), for subsection (1) (grounds on which Court of Appeal are to allow or dismiss appeal), including the proviso, substitute—

“(1) Subject to the provisions of this Act, the Court of Appeal—

- (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
- (b) shall dismiss such an appeal in any other case.”

- (2) In section 2 of the 1980 Act (disposal of appeal against conviction), for subsection (1) (grounds on which Court of Appeal is to allow or dismiss appeal), including the proviso, substitute—

“(1) Subject to the provisions of this Act, the Court of Appeal—

- (a) shall allow an appeal against conviction if it thinks that the conviction is unsafe; and
- (b) shall dismiss such an appeal in any other case.”

- (3) In section 13 of the 1968 Act (disposal of appeal against verdict of not guilty by reason of insanity), for subsections (1) and (2) (grounds on which Court of Appeal are to allow or dismiss appeal) substitute—

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- “(1) Subject to the provisions of this section, the Court of Appeal—
- (a) shall allow an appeal under section 12 of this Act if they think that the verdict is unsafe; and
  - (b) shall dismiss such an appeal in any other case.”
- (4) In section 12 of the 1980 Act (appeal against finding of not guilty on ground of insanity), for subsections (2) and (3) (grounds on which Court of Appeal is to allow or dismiss appeal) substitute—
- “(2) Subject to subsection (4) below, the Court—
- (a) shall allow an appeal under this section if it thinks that the finding is unsafe; and
  - (b) shall dismiss such an appeal in any other case.”
- (5) In section 16 of the 1968 Act (disposal of appeal against finding of disability), for subsection (1) (grounds on which Court of Appeal are to allow or dismiss appeal) substitute—
- “(1) The Court of Appeal—
- (a) shall allow an appeal under section 15 of this Act against a finding if they think that the finding is unsafe; and
  - (b) shall dismiss such an appeal in any other case.”
- (6) In section 13A of the 1980 Act (appeal against finding of unfitness to be tried), for subsections (3) and (4) (grounds on which Court of Appeal is to allow or dismiss appeal) substitute—
- “(3) The Court—
- (a) shall allow an appeal under this section if it thinks that the finding is unsafe; and
  - (b) shall dismiss such an appeal in any other case (except one to which subsection (5) below applies).”
- 3 Abolition of references by Secretary of State. E+W+N.I.**
- Section 17 of the 1968 Act and section 14 of the 1980 Act (which provide for references by Secretary of State to Court of Appeal of cases tried on indictment) shall cease to have effect.
- 4 Evidence. E+W+N.I.**
- (1) In section 23 of the 1968 Act (evidence)—
- (a) in subsection (1) (power to receive evidence etc.), for paragraph (c) substitute—
    - “(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.”,
  - (b) for subsection (2) (duty to receive evidence in certain circumstances) substitute—
    - “(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—

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- (a) whether the evidence appears to the Court to be capable of belief;
  - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
  - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
  - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.”, and
- (c) in subsection (3), after “any” insert “evidence of a ”.
- (2) In section 25 of the 1980 Act (evidence)—
- (a) in subsection (1) (power to receive evidence etc.), for paragraph (c) substitute—
    - “(c) receive any evidence which was not adduced at the trial.”,
  - (b) for subsection (2) (duty to receive evidence in certain circumstances) substitute—
    - “(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
    - (a) whether the evidence appears to the Court to be capable of belief;
    - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
    - (c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and
    - (d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial.”, and
  - (c) in subsection (3), after “any” insert “evidence of a ”.

## 5 Power to order investigations. **E+W+N.I.**

- (1) After section 23 of the 1968 Act insert—

### “23A Power to order investigations.

- (1) On an appeal against conviction the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that—
  - (a) the matter is relevant to the determination of the case and ought, if possible, to be resolved before the case is determined;
  - (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
  - (c) the matter cannot be resolved by the Court without an investigation by the Commission.
- (2) A direction by the Court of Appeal under subsection (1) above shall be given in writing and shall specify the matter to be investigated.
- (3) Copies of such a direction shall be made available to the appellant and the respondent.

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- (4) Where the Commission have reported to the Court of Appeal on any matter which they have been directed under subsection (1) above to investigate, the Court—
- (a) shall notify the appellant and the respondent that the Commission have reported; and
  - (b) may make available to the appellant and the respondent the report of the Commission and any statements, opinions and reports which accompanied it.”

(2) After section 25 of the 1980 Act insert—

**“25A Power to order investigations.**

- (1) On an appeal against conviction the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that—
- (a) the matter is relevant to the determination of the case and ought, if possible, to be resolved before the case is determined;
  - (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
  - (c) the matter cannot be resolved by the Court without an investigation by the Commission.
- (2) A direction by the Court under subsection (1) above shall be given in writing and shall specify the matter to be investigated.
- (3) Copies of such a direction shall be made available to the appellant and the respondent.
- (4) Where the Commission have reported to the Court of Appeal on any matter which they have been directed under subsection (1) above to investigate, the Court—
- (a) shall notify the appellant and the respondent that the Commission have reported; and
  - (b) may make available to the appellant and the respondent the report of the Commission and any statements, opinions and reports which accompanied it.”

**6 Powers exercisable by registrar. E+W**

After section 31 of the 1968 Act insert—

**“31A Powers of Court under Part I which are exercisable by registrar.**

- (1) The powers of the Court of Appeal under this Part of this Act which are specified in subsection (2) below may be exercised by the registrar.
- (2) The powers mentioned in subsection (1) above are the following—
- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given;
  - (b) to order a witness to attend for examination; and

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(c) to vary the conditions of bail granted to an appellant by the Court of Appeal or the Crown Court.

(3) No variation of the conditions of bail granted to an appellant may be made by the registrar unless he is satisfied that the respondent does not object to the variation; but, subject to that, the powers specified in that subsection are to be exercised by the registrar in the same manner as by the Court of Appeal and subject to the same provisions.

(4) If the registrar refuses an application on the part of an appellant to exercise in his favour any of the powers specified in subsection (2) above, the appellant shall be entitled to have the application determined by a single judge.”

## 7 Appeals in cases of death. **E+W+N.I.**

(1) Immediately before section 45 of the 1968 Act insert—

### “44A Appeals in cases of death.

(1) Where a person has died—

- (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal; and
- (b) where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (a) above or by a reference by the Criminal Cases Review Commission, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.

(2) In this section “relevant appeal” means—

- (a) an appeal under section 1, 9, 12 or 15 of this Act; or
- (b) an appeal under section 33 of this Act from any decision of the Court of Appeal on an appeal under any of those sections.

(3) Approval for the purposes of this section may only be given to—

- (a) the widow or widower of the dead person;
- (b) a person who is the personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925) of the dead person; or
- (c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.

(4) Except in the case of an appeal begun by a reference by the Criminal Cases Review Commission, an application for such approval may not be made after the end of the period of one year beginning with the date of death.

(5) Where this section applies, any reference in this Act to the appellant shall, where appropriate, be construed as being or including a reference to the person approved under this section.

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(6) The power of the Court of Appeal to approve a person under this section may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions; but if the single judge refuses the application, the applicant shall be entitled to have the application determined by the Court of Appeal.”

(2) After section 47 of the 1980 Act insert—

**“47A Appeals in cases of death.**

(1) Where a person has died—

- (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal; and
- (b) where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (a) above or by a reference by the Criminal Cases Review Commission, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.

(2) In this section “relevant appeal” means—

- (a) an appeal under section 1, 8, 9, 12 or 13A of this Act; or
- (b) an appeal under section 31 of this Act from any decision of the Court of Appeal on an appeal under any of those sections.

(3) Approval for the purposes of this section may only be given to—

- (a) the widow or widower of the dead person;
- (b) a person who is the personal representative (within the meaning of the Wills and Administration Proceedings (Northern Ireland) Order 1994) of the dead person; or
- (c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.

(4) Except in the case of an appeal begun by a reference by the Criminal Cases Review Commission, an application for such approval may not be made after the end of the period of one year beginning with the date of death.

(5) Where this section applies, any reference in this Act to the appellant shall, where appropriate, be construed as being or including a reference to the person approved under this section.”

**Commencement Information**

- II** S. 7 wholly in force at 31.3.1997; s. 7 not in force at Royal Assent see s. 32(1); s. 7 in force for certain purposes at 1.1.1996 by S.I. 1995/3061, art. 3(b); S. 7 in force at 31.3.1997 to the extent not already in force by S.I. 1997/402, art. 3(b) (subject to transitional provisions in art. 4)

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Appeal Act 1995, Part I.