

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Appeals

Section 47 and Schedule 8: Further amendments relating to appeals in criminal cases

329. *Section 47* introduces Schedule 8. *Paragraphs 2 to 5* of Schedule 8 amend sections 1, 11, 12 and 15 of the 1968 Act to impose a time limit of 28 days on the trial judge's power to grant a certificate of fitness for appeal in England and Wales. This provides consistency between the time within which this power may be exercised and the 28 day limits on the Crown Court's power to grant bail when a certificate is granted (see section 81 of the Supreme Court Act 1981) and on the giving of notice of an application for leave to appeal (see section 18 of the 1968 Act). *Paragraphs 15 to 17* of Schedule 8 make similar provision for Northern Ireland.
330. *Paragraph 6* of Schedule 8 amends section 4 of the 1968 Act. It empowers the Court of Appeal in England and Wales, when they quash a conviction, to re-sentence the appellant for any other offence for which he was sentenced by the court below on the same day as he was sentenced for the conviction which has been quashed. This has general application, but is particularly likely to be of use in cases in which a defendant has received an indeterminate sentence of imprisonment for public protection for an offence that was subsequently successfully appealed and was also convicted of another offence, the seriousness of which was reflected in the tariff for the indeterminate sentence rather than in a separate determinate sentence. Provided that the two sentences were originally passed on the same day, the new provision enables the Court of Appeal to re-sentence the defendant in respect of the other offence, even if it was on a separate indictment, whereas at present it can only do so if both offences were on the same indictment. For the purposes of section 4, sentences which are passed on different days will, in effect, be treated as passed on the same day if the court in passing any one of them states that it is treating them as substantially one sentence. *Paragraph 18* of Schedule 8 makes similar provision for Northern Ireland.
331. *Paragraphs 7 to 8* rationalise powers relating to interim hospital orders imposed by the Court of Appeal in England and Wales. Currently, where the Court impose such an order under section 6, 11, 14 or 16B of the 1968 Act, the powers to renew or terminate the order, to deal with the offender on termination, and to deal with the offender if he absconds, all lie with the court below.
332. The amendments will mean that, in an appealed case, interim hospital orders imposed by the Court of Appeal will now usually be extended and terminated by the Court itself, and the Court itself will be able to deal with the offender on termination of the

order. There is an exception for offenders who abscond during an interim hospital order: absconders will be brought before and dealt with by the court below. These provisions will apply whatever section of the 1968 Act the Court originally used to impose the order. *Paragraphs 19 and 20* of Schedule 8 make similar provision for Northern Ireland.

333. *Paragraph 9* allows a single judge sitting in the Court of Appeal in England and Wales to exercise the power to renew (but not terminate) an interim hospital order which was imposed by the Court (section 31 of the 1968 Act is amended, as is the case with the provisions regarding single judges later in the schedule). This removes the need for a panel of Court of Appeal judges to decide what may be a routine unopposed extension. *Paragraph 21* of Schedule 8 makes similar provision for Northern Ireland.
334. *Paragraph 10* extends the powers of the Court of Appeal in England and Wales to compel the production of documents and the attendance of witnesses (under section 23 of the 1968 Act). It deals with three separate matters. *Paragraphs 22 and 23* of Schedule 8 make similar provision for Northern Ireland.
335. First, it clarifies that the powers to order the production of documents and the attendance of witnesses, and to receive evidence, can be used for the purposes of determining applications for leave to appeal as well as the appeal itself.
336. Secondly, it ensures that the Court can call and compel to attend persons, such as jurors or lawyers, who may be able to give relevant evidence to the Court of Appeal because of their presence at trial or other involvement in the proceedings below. The Court already, in appropriate cases, receives evidence from such persons; this change merely ensures that the Court is able, when they think it necessary or expedient in the interests of justice, to compel the attendance of such persons and order their examination. Rules of legal professional privilege, and the common law prohibition on the Court inquiring into events in the jury room, will continue to apply. This change is not intended to allow the Court to compel a person to give evidence on appeal if he would have been immune from being compelled to give that evidence at trial because of his or her status as, for example, the accused, a co-defendant, a spouse or a civil partner.
337. Thirdly, it clarifies that where the Court orders the production of a document, it can require production to the Court itself or to the appellant or the respondent.
338. *Paragraph 11* of Schedule 8 allows a single judge to exercise the power to give leave to appeal in certain interlocutory appeals in England and Wales. This removes an omission whereby a single judge could grant leave in the majority of appeals but could not do so in appeals against decisions made at preparatory hearings under section 9 of the Criminal Justice Act 1987 or under section 35 of the Criminal Procedure and Investigations Act 1996. *Paragraph 25* of Schedule 8 makes similar provision for Northern Ireland.
339. *Paragraph 12* allows a single judge to make directions that cannot be appealed to a full Court of Appeal in England and Wales. The intention is that this power should normally be exercised by the Lord Justice who will preside at the appeal hearing proper. This is intended to allow the Court of Appeal to deal quickly and efficiently with procedural issues.
340. *Paragraph 13* provides that, when the prosecution successfully appeals from the Court of Appeal in England and Wales to the Supreme Court (currently, the House of Lords), an offender can be compelled to serve out any remainder of his sentence unless the Court of Appeal have actively made an order to the contrary effect. It addresses a problem relating to cases where the Court of Appeal have determined in the appellant's favour but which are to be appealed to the Supreme Court. The provisions ensure that in such a case the Court can no longer simply release the applicant (with the effect, currently, that he is immune from further detention whatever the decision of the Supreme Court) but will be obliged to order either his continued detention, or that he not be released except on bail, or that he be released without bail. Only if the Court order release without bail will the appellant have no further liability to detention as a result of the decision of the

These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008

Supreme Court. This provision will ensure that an applicant will be liable to continue serving any remainder of his sentence if the Supreme Court find against him, unless the Court of Appeal have made an explicit decision that it is in the interests of justice that the defendant should not be liable to further detention. *Paragraph 24* of Schedule 8 makes similar provision for Northern Ireland.

341. *Paragraph 26* of Schedule 8 makes consequential amendments to section 5 of the Administration of Justice Act 1960 in connection with the detention or release on bail of defendants pending appeal to the Supreme Court in England and Wales (currently, the House of Lords), as outlined in paragraph 13. These consequential amendments will affect those who appeal to the Supreme Court from a decision of the High Court in a criminal cause or matter.
342. *Paragraphs 27 and 28* of Schedule 8 amend section 49 of the Judicature (Northern Ireland) Act 1978 and section 155 of the 2000 Act to increase from 28 to 56 days the time within which the Crown Court can vary or rescind a sentence. This will allow more time for correction of errors and is therefore intended to reduce the number of cases requiring the attention of the Court of Appeal. An example of a case in which this provision might be used is where deduction from sentence for time served in custody on remand has been made on the basis of inaccurate or incomplete information. There will no longer be a separate time limit applying to sentences imposed following a joint trial on an indictment; the 56-day limit will apply in all cases, beginning on the day on which the sentence was imposed.