



# Criminal Appeal Act 1968

## 1968 CHAPTER 19

An Act to consolidate certain enactments relating to appeals in criminal cases to the criminal division of the Court of Appeal, and thence to the House of Lords. [8th May 1968]

### Extent Information

**E1** Act extends to England and Wales; for exceptions in Sch. 5 see [s. 55\(3\)](#)

### Modifications etc. (not altering text)

**C1** By [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), [S. 101\(1\)](#), [Sch. 12 para. 23](#); [S.I. 1991/2208, art. 2\(1\)](#), [Sch. 1](#) it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by [S.I. 1992/333, art. 2\(2\)](#), [Sch. 2](#)) references in any enactment amended by that 1991 Act to youth courts shall be construed as references to juvenile courts.

### Commencement Information

**I1** Act not in force at Royal Assent, Act wholly in force at 1.9.1968 see [s. 55\(2\)](#).

## PART I

### APPEAL TO COURT OF APPEAL IN CRIMINAL CASES

#### *Appeal against conviction on indictment*

#### **1 Right of appeal.**

(1) [<sup>F1</sup>Subject to subsection (3) below] a person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.

[<sup>F2</sup>(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.]

*Status: Point in time view as at 01/10/1997.*

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- [<sup>F3</sup>(3) Where a person is convicted before the Crown Court of a scheduled offence it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which committed him for trial as to the value involved was mistaken.
- (4) In subsection (3) above “scheduled offence” and “the value involved” have the same meanings as they have in section 22 of the Magistrates’ Courts Act 1980 (certain offences against property to be tried summarily if value of property or damage is small).]

#### Textual Amendments

- F1** Words inserted by [Magistrates' Courts Act 1980 \(c. 43\), Sch. 7 para. 71\(a\)](#)
- F2** S. 1(2) substituted (1.1.1996) by [1995 c. 35, s. 1\(1\)](#); [S.I. 1995/3061, art. 3\(a\)](#) (with art. 4)
- F3** S. 1(3)(4) inserted by the [Magistrates' Courts Act 1980 \(c. 43\), Sch. 7 para. 71\(b\)](#)

#### Modifications etc. (not altering text)

- C2** S. 1 extended (19.2.2001) by [2000 c. 11, s. 7\(4\)\(b\)](#); [S.I. 2001/421, art. 2\(a\)](#)

## 2 Grounds for allowing appeal under s. 1.

- [<sup>F4</sup>(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 the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.
- (3) An order of the Court of Appeal quashing a conviction shall, except when under section 7 below the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

#### Textual Amendments

- F4** [S. 2\(1\)](#) substituted (1.1.1996) by [1995 c. 35, s. 2\(1\)](#); [S.I. 1995/3061, art. 3\(a\)](#) (with art. 4)

#### Modifications etc. (not altering text)

- C3** [S. 2\(1\)](#) modified (24.7.2002) by [1999 c. 23, s. 56\(5\)](#) (with [s. 63\(2\)](#), [Sch. 7 paras. 3\(3\), 5\(2\)](#)); [S.I. 2002/1739, art. 2](#)

## 3 Power to substitute conviction of alternative offence.

- (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence.
- (2) The Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in

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substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

#### **4 Sentence when appeal allowed on part of an indictment.**

- (1) This section applies where, on an appeal against conviction on an indictment containing two or more counts, the Court of Appeal allow the appeal in respect of part of the indictment.
- (2) Except as provided by subsection (3) below, the Court may in respect of any count on which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as they think proper and is authorised by law for the offence of which he remains convicted on that count.
- (3) The Court shall not under this section pass any sentence such that the appellant's sentence on the indictment as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all offences of which he was convicted on the indictment.

#### **5 Disposal of appeal against conviction on special verdict.**

- (1) This section applies on an appeal against conviction [<sup>F5</sup>in a case where] the jury have found a special verdict.
- (2) If the Court of Appeal consider that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict they may, instead of allowing the appeal, order such conclusion to be recorded as appears to them to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

##### **Textual Amendments**

**F5** Words in s. 5(1) substituted (1.1.1996) by 1995 c. 35, s. 29(1), **Sch. 2 para. 4(2)**; S.I. 1995/3061, **art. 3(d)(h)** (with art. 4)

#### **[<sup>F6</sup> Substitution of finding of insanity or findings of unfitness to plead etc.**

- (1) This section applies where, on an appeal against conviction, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
  - (a) that the proper verdict would have been one of not guilty by reason of insanity; or
  - (b) that the case is not one where there should have been a verdict of acquittal, but there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.
- (2) Subject to subsection (3) below, the Court of Appeal shall either—
  - (a) make an order that the appellant be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or

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- (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the appellant such one of the following orders as they think most suitable in all the circumstances of the case, namely—
- (i) a guardianship order within the meaning of the Mental Health Act 1983;
  - (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
  - (iii) an order for his absolute discharge.
- (3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the appeal relates is an offence the sentence for which is fixed by law.]

**Textual Amendments**

**F6** S. 6 substituted (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), ss. [4\(1\)](#), [8](#); [S.I. 1991/2488](#), art. [2](#).

*Retrial*

**7 Power to order retrial.**

- (1) Where the Court of Appeal allow an appeal against conviction . . . <sup>F7</sup> 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 the jury were discharged from giving a verdict in consequence of convicting him of the first-mentioned offence.

**Textual Amendments**

**F7** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. [43\(1\)\(5\)](#), [170](#), Sch. [8 para. 16](#), Sch. [16](#)

**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, . . . <sup>F8</sup> <sup>F9</sup> 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.]
- <sup>F10</sup>(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

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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 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 [F11, subject to section 25 of the Criminal Justice and Public Order Act 1994,][F12release 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 M1Mental Health Act 1959 [F13or 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 [F12release on] bail shall have effect subject to the said order or direction.

[F14(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 [F15section 36 of the Mental Health Act 1983] or an interim hospital order under [F15section 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 [F15Part III of that Act] shall apply as if he had been ordered under this section to be kept in custody pending his retrial and were detained in pursuance of a transfer direction together with a restriction direction.]

(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

- F8** Words repealed by Courts Act 1971 (c. 23), Sch. 11 Pt. IV
- F9** Words added by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 43(3)(5)
- F10** S. 8(1A)(1B) inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 43(4)(5), Sch. 8 para. 16
- F11** 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
- F12** Words substituted by Bail Act 1976 (c. 63), Sch. 2 Para. 38
- F13** Words inserted by Mental Health Act 1983 (c. 20, SIF 85), Sch. 4 para. 23(b)
- F14** S. 8(3A) inserted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), Sch. 3 para. 36

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**F15** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 23\(c\)](#)

#### Marginal Citations

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

### *Appeal against sentence*

## 9 Appeal against sentence following conviction on indictment.

[<sup>F16</sup>(1)] A person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.

[<sup>F16</sup>(2)] A person who on conviction on indictment has also been convicted of a summary offence under section 41 of the Criminal Justice Act 1988 (power of Crown Court to deal with summary offence where person committed for either way offence) may appeal to the Court of Appeal against any sentence passed on him for the summary offence (whether on his conviction or in subsequent proceedings) under subsection (7) of that section.]

#### Textual Amendments

**F16** [S. 9](#) renumbered to become s. 9(1) and s. 9(2) added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para 16](#), [Sch. 15 para. 20](#),

## 10 Appeal against sentence in other cases dealt with at assizes or quarter sessions.

- (1) This section has effect for providing rights of appeal against sentence when a person is dealt with by [<sup>F17</sup>the Crown Court] (otherwise than on appeal from a magistrates' court) for an offence of which he was not convicted on indictment.
- (2) The proceedings from which an appeal against sentence lies under this section are those where an offender convicted of an offence by a magistrates' court—
  - (a) is committed by the court to be dealt with for his offence [<sup>F17</sup>before the Crown Court]; or
  - [<sup>F18</sup>(b) having been made the subject of an order for conditional discharge or a community order within the meaning of Part I of the Criminal Justice Act 1991 (other than a supervision order within the meaning of that Part) or given a suspended sentence, appears or is brought before the Crown Court to be further dealt with for his offence.]
- (3) An offender dealt with for an offence [<sup>F17</sup>before the Crown Court] in a proceeding to which subsection (2) of this section applies may appeal to the Court of Appeal against sentence in any of the following cases:—
  - (a) where either for that offence alone or for that offence and other offences for which sentence is passed in the same proceeding, he is sentenced to imprisonment [<sup>F19</sup>or to youth custody under section 6 of the Criminal Justice Act 1982] for a term of six months or more; or
  - (b) where the sentence is one which the court convicting him had not power to pass; or
  - (c) where the court in dealing with him for the offence makes in respect of him—

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- (i) a recommendation for deportation; or
  - (ii) an order disqualifying him for holding or obtaining a licence to drive a motor vehicle under Part II of the <sup>M2</sup>Road Traffic Act 1960; or
  - (iii) an order under [<sup>F20</sup>section 23 of the <sup>M3</sup>Powers of Criminal Courts Act 1973] (orders as to existing suspended sentence when person subject to the sentence is again convicted).
- [<sup>F21</sup>or
- (iv) a restriction order under section 15 of the Football Spectators Act 1989; or
  - (v) a declaration of relevance under the Football Spectators Act 1989;] or
- (d) .....<sup>F22</sup>
- (4) For purposes of subsection (3)(a) of this section [<sup>F23</sup>and section 11 of this Act], any two or more sentences are to be treated as passed in the same proceeding if—
- (a) they are passed on the same day; or
  - (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;

and consecutive terms of imprisonment and terms which are wholly or partly concurrent are to be treated as a single term

- [<sup>F24</sup>(5) If by virtue of an order made under section 14 of the Criminal Justice Act 1982, the term of 4 months specified in section 4 of that Act is increased to a term of 6 months or more, subsection (3)(a) above shall have effect, for so long as the term so specified is 6 months or more, as if after the word “more” there were inserted the words “or an order for his detention in a detention centre for a term of 6 months or more has been made under section 4 of the Criminal Justice Act 1982”].

#### Textual Amendments

- F17** Words substituted by [Courts Act 1971 \(c. 23\)](#), **Sch. 8 para. 57(1)**
- F18** [S. 10\(2\)\(b\)](#) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), s. 100, **Sch. 11 para.3**; [S.I. 1992/333](#), art. 2(2), **Sch.2**
- F19** Words inserted by [Criminal Justice Act 1982 \(c. 48\)](#), **Sch. 14 para. 23(b)**
- F20** Words substituted by [Powers of Criminal Courts Act 1973 \(c. 62\)](#), **Sch. 5 para. 28**
- F21** [S. 10\(3\)\(c\)\(iv\)\(v\)](#) inserted by [Football Spectators Act 1989 \(c. 37, SIF 45A\)](#), **ss. 15(7)**, 23(3)(a)
- F22** [S. 10\(3\)\(d\)](#) repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123, 170, [Sch. 8 para. 16](#), **Sch. 16**
- F23** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), **Sch. 15 para. 22(2)**
- F24** [S. 10\(5\)](#) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 14 para. 23(c)**

#### Marginal Citations

- M2** 1960 c. 16.
- M3** 1973 c. 62.

## 11 Supplementary provisions as to appeal against sentence.

- (1) [<sup>F25</sup>Subject to subsection (1A) below, an] appeal against sentence, whether under section 9 or under section 10 of this Act, lies only with the leave of the Court of Appeal.



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- [<sup>F26</sup>(1A) If the judge who passed the sentence grants a certificate that the case is fit for appeal under section 9 or 10 of this Act, an appeal lies under this section without the leave of the Court of Appeal.]
- (2) Where [<sup>F27</sup>the Crown Court], in dealing with an offender either on his conviction on indictment or in a proceeding to which section 10(2) of this Act applies, has passed on him two or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 10), being sentences against which an appeal lies under section 9 [<sup>F28</sup>(1)] or section 10, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.
- [<sup>F29</sup>(2A) Where following conviction on indictment a person has been convicted under section 41 of the Criminal Justice Act 1988 of a summary offence an appeal or application for leave to appeal against any sentence for the offence triable either way shall be treated also as an appeal or application in respect of any sentence for the summary offence and an appeal or application for leave to appeal against any sentence for the summary offence shall be treated also as an appeal or application in respect of the offence triable either way.
- (2B) If the appellant or applicant was convicted on indictment of two or more offences triable either way, the references to the offence triable either way in subsection (2A) above are to be construed, in relation to any summary offence of which he was convicted under section 41 of the Criminal Justice Act 1988 following the conviction on indictment, as references to the offence triable either way specified in the notice relating to that summary offence which was given under subsection (2) of that section.]
- (3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—
- (a) quash any sentence or order which is the subject of the appeal; and
  - (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;
- but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.
- [<sup>F30</sup>(4) The power of the Court of Appeal under subsection (3) of this section to pass a sentence which the court below had power to pass for an offence shall, notwithstanding that the court below made no order under section 23(1) of the Powers of Criminal Courts Act 1973 or section 47(4) of the Criminal Law Act 1977 in respect of a suspended or partly suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that sentence where the court below made no order in respect of it.]
- [<sup>F31</sup>(5) The fact that an appeal is pending against an interim hospital order under [<sup>F32</sup>the Mental Health Act 1983] shall not affect the power of the court below to renew or terminate the order or to deal with the appellant on its termination; and where the Court of Appeal quashes such an order but do not pass any sentence or make any other order in its place the Court may [<sup>F33</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.]



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- [<sup>F31</sup>(6) Where the Court of Appeal make an interim hospital order by virtue of subsection (3) of this section—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
  - (b) the court below shall be treated for the purposes of [<sup>F32</sup>section 38(7) of the said Act of 1983] (absconding offenders) as the court that made the order.]

#### Textual Amendments

- F25** Words substituted by Criminal Justice Act 1982 (c. 48), s. 29(2)(a)(i)
- F26** S. 11(1A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 29(2)(a)(ii)
- F27** Words substituted by Courts Act 1971 (c. 23), Sch. 8 para. 57(1)
- F28** Numeral “(1)” inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, Sch. 15 para. 23(1)
- F29** S. 11(2A)(2B) inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, Sch. 15 para. 23(2)
- F30** S. 11(4) substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, Sch. 15 para. 24
- F31** S. 11(5)(6) inserted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), Sch. 3 para. 37
- F32** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), Sch. 4 para. 23(d)
- F33** Words in s. 11(5) inserted (10.4.1995) by 1994 c. 33, s. 168(2), Sch. 10 para. 20; S.I. 1995/721, art. 1, Sch. Appendix A

#### *Appeal in cases of insanity*

### 12 Appeal against verdict of not guilty by reason of insanity.

A person in whose case there is returned a verdict of not guilty by reason of insanity may appeal to the Court of Appeal [<sup>F34</sup>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.]

#### Textual Amendments

- F34** Words in s. 12 substituted (1.1.1996) by 1995 c. 35, s. 1(3); S.I. 1995/3061, art. 3(a) (with art. 4)

#### Modifications etc. (not altering text)

- C4** S. 12 extended (27.7.1999) by 1999 c. 25, s. 2(1)

### 13 Disposal of appeal under s. 12.

[<sup>F35</sup>(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.]
- (3) Where apart from this subsection—
- (a) an appeal under section 12 of this Act would fall to be allowed; and

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- (b) none of the grounds for allowing it relates to the question of the insanity of the accused,
- the Court of Appeal may dismiss the appeal if they are of opinion that, but for the insanity of the accused, the proper verdict would have been that he was guilty of an offence other than the offence charged.
- (4) Where an appeal under section 12 of this Act is allowed, the following provisions apply:—
- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Appeal are of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court—
- (i) shall substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and
- (ii) shall, subject to subsection (5) below, have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if the jury had come to the substituted verdict; and
- (b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal.
- (5) The Court of Appeal shall not by virtue of subsection (4)(a) above sentence any person to death; but where under that paragraph they substitute a verdict of guilty of an offence for which apart from this subsection they would be required to sentence the appellant to death, their sentence shall (whatever the circumstances) be one of imprisonment for life.
- (6) An order of the Court of Appeal allowing an appeal in accordance with this section shall operate as a direction to the court of trial to amend the record to conform with the order.

#### Textual Amendments

**F35** S. 13(1) substituted for s. 13(1)(2) (1.1.1996) by 1995 c. 35, s. 2(3); S.I. 1995/3061, art. 3(a) (with art. 4)

#### Modifications etc. (not altering text)

**C5** S. 13 modified (27.7.1999) by 1999 c. 25, s. 2(2)

**C6** S. 13(1) modified (24.7.2002) by 1999 c. 23, s. 56(5) (with s. 63(2), Sch. 7 paras. 3(3), 5(2)); S.I. 2002/1739, art. 2

#### [<sup>F36</sup>14 Substitution of findings of unfitness to plead etc.

- (1) This section applies where, on an appeal under section 12 of this Act, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—
- (a) the case is not one where there should have been a verdict of acquittal; but
- (b) there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.
- (2) Subject to subsection (3) below, the Court of Appeal shall either—

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- (a) make an order that the appellant be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or
  - (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the appellant such one of the following orders as they think most suitable in all the circumstances of the case, namely—
    - (i) a guardianship order within the meaning of the Mental Health Act 1983;
    - (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
    - (iii) an order for his absolute discharge.
- (3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the appeal relates is an offence the sentence for which is fixed by law.]

#### Textual Amendments

**F36** Ss. 14, 14A substituted (1.1.1992) for s. 14 by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), **ss. 4(2), 8**; S.I. 1991/2488, **art. 2**.

#### Modifications etc. (not altering text)

**C7** S. 14 modified (27.7.1999) by [1999 c. 25, s. 2\(2\)](#)

### [<sup>F37</sup> 14A Substitution of verdict of acquittal.

- (1) This section applies where, in accordance with section 13(4)(b) of this Act, the Court of Appeal substitute a verdict of acquittal and the Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
  - (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
  - (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.
- (2) The Court of Appeal shall make an order that the appellant be admitted for assessment, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State.]

#### Textual Amendments

**F37** Ss. 14, 14A substituted (1.1.1992) for s. 14 by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), **ss. 4(2), 8**; S.I. 1991/2488, **art. 2**

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### *Unfitness to stand trial*

## **15 Right of appeal against finding of disability.**

(1) Where there has been a determination under section 4 of the <sup>M4</sup>Criminal Procedure (Insanity) Act 1964 of the question of a person's fitness to be tried, and the jury has returned [<sup>F38</sup>findings that he is under a disability and that he did the act or made the omission charged against him, the person may appeal to the Court of Appeal against either or both of those findings].

[<sup>F39</sup>(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.]

#### **Textual Amendments**

**F38** Words in s. 15(1) substituted (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), ss. 7, 8, [Sch. 3 para. 2](#); S.I. 1991/2488, [art. 2](#)

**F39** S. 15(2) substituted (1.1.1996) by [1995 c. 35, s. 1\(5\)](#); S.I. 1995/3061, [art. 3\(a\)](#) (with [art. 4](#))

#### **Marginal Citations**

**M4** [1964 c. 84.](#)

## **16 Disposal of appeal under s. 15.**

[<sup>F40</sup>(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.]

[<sup>F41</sup>(2) .....

[<sup>F42</sup>(3) Where the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant is under a disability—

- (a) the appellant may be tried accordingly for the offence with which he was charged; and
- (b) the Court may [<sup>F43</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] make such orders as appear to them necessary or expedient pending any such trial for his custody, release on bail or continued detention under the Mental Health Act 1983;

and Schedule 3 to this Act has effect for applying provisions in Part III of that Act to persons in whose case an order is made by the Court under this subsection.

(4) Where, otherwise than in a case falling within subsection (3) above, the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).

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#### Textual Amendments

- F40** S. 16(1) substituted (1.1.1996) by 1995 c. 35, s. 2(5); S.I. 1995/3061, art. 3(a) (with art. 4)
- F41** S. 16(2) repealed (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3 para. 3(2), Sch. 4; S.I. 1991/2488, art. 2
- F42** S. 16(3)(4) substituted (1.1.1992) for s. 16(3) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3 para. 3(3); S.I. 1991/2488, art. 2
- F43** Words in s. 16(3)(b) inserted (10.4.1995) by 1994 c. 33, s. 168(2), Sch. 10 para. 21; S.I. 1995/721, art. 2, Sch. Appendix A

#### Modifications etc. (not altering text)

- C8** S. 16(1) modified (24.7.2002) by 1999 c. 23, s. 56(5) (with s. 63(2), Sch. 7 paras. 3(3), 5(2)); S.I. 2002/1739, art. 2

### *Review by Court of Appeal of cases tried on indictment*

<sup>F44</sup> 17 .....

#### Textual Amendments

- F44** S. 17 repealed (31.3.1997) by 1995 c. 35, ss. 3, 29(2), Sch. 3; S.I. 1997/402, art. 3(a)(d)(e) (with art. 4)

### *Procedure from notice of appeal to hearing*

## **18 Initiating procedure.**

- (1) A person who wishes to appeal under this Part of this Act to the Court of Appeal, or to obtain the leave of that court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as may be directed by rules of court.
- (2) Notice of appeal, or of application for leave to appeal, shall be given within twenty-eight days from the date of the conviction, verdict or finding appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.
- (3) The time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

#### Modifications etc. (not altering text)

- C9** S. 18 excluded (1.10.1997 for specified purposes and otherwise *prosp.*) by 1997 c. 43, ss. 5(2), 57(2); S.I. 1997/2200, art. 2(1)(d) (with art. 5)
- S. 18 excluded (25.8.2000) by 2000 c. 6, ss. 112(2), 168(1)
- C10** S. 18(2) modified by Supreme Court Act 1981 (c. 54, SIF 37), s. 47(5)
- S. 18(2) modified (25.8.2000) by 2000 c. 6, ss. 155(6)(a), 168(1) (with s. 155(8), Sch. 10 paras. 11, 19)

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### [<sup>F45</sup>18A Appeals in cases of contempt of court.

- (1) A person who wishes to appeal under section 13 of the Administration of Justice Act <sup>M5</sup>1960 from any order or decision of the Crown Court in the exercise of jurisdiction to punish for contempt of court shall give notice of appeal in such manner as may be directed by rules of court.
- (2) Notice of appeal shall be given within twenty-eight days from the date of the order or decision appealed against.
- (3) The time for giving notice under this section may be extended, either before or after its expiry, by the Court of Appeal.]

#### Textual Amendments

**F45** S. 18A inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 25**

#### Marginal Citations

**M5** 1960 c.65 (37, 39:1).

### [<sup>F46</sup>19 Bail.

- (1) The Court of Appeal may [<sup>F47</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] if they think fit,—
  - (a) grant an appellant bail pending the determination of his appeal; or
  - (b) revoke bail granted to an appellant by the Crown Court under paragraph (f) of section 81(1) of the Supreme Court Act 1981 [<sup>F48</sup>or paragraph (a) above]; or
  - (c) vary the conditions of bail granted to an appellant in the exercise of the power conferred by [<sup>F49</sup>either of those paragraphs]
- (2) The powers conferred by subsection (1) above may be exercised—
  - (a) on the application of an appellant; or
  - (b) if it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as “the registrar”) that any of them ought to be exercised, on a reference to the court by him]

#### Textual Amendments

**F46** S. 19 substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 29(2)(6)

**F47** Words in s. 19(1) inserted (10.4.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 22**; S.I. 1995/721, art. 2, **Sch. Appendix A**

**F48** Words inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 26(a)**

**F49** Words substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 26(b)**

### [<sup>F50</sup>20 Disposal of groundless appeal or application for leave to appeal.

If it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application

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for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.]

#### Textual Amendments

**F50** S. 20 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 157, [Sch. 8 para. 16](#)

## 21 Preparation of case for hearing.

- (1) The registrar shall—
  - (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to him and which is not referred and dismissed summarily under the foregoing section; and
  - (b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the appeal or application.
- (2) Rules of court may enable an appellant to obtain from the registrar any documents or things, including copies or reproductions of documents, required for his appeal and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.

### *The hearing*

## 22 Right of appellant to be present.

- (1) Except as provided by this section, an appellant shall be entitled to be present, if he wishes it, on the hearing of his appeal, although he may be in custody.
- (2) A person in custody shall not be entitled to be present—
  - (a) where his appeal is on some ground involving a question of law alone; or
  - (b) on an application by him for leave to appeal; or
  - (c) on any proceedings preliminary or incidental to an appeal; or
  - (d) where he is in custody in consequence of a verdict of not guilty by reason of insanity or of a finding of disability,unless the Court of Appeal give him leave to be present.
- (3) The power of the Court of Appeal to pass sentence on a person may be exercised although he is for any reason not present.

## 23 Evidence.

- (1) For [<sup>F51</sup>the purposes of an appeal under] this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—
  - (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;



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- (b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Court, whether or not he was called in those proceedings; and
- [<sup>F52</sup>(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.]
- [<sup>F53</sup>(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 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.]
- (3) Subsection (1)(c) above applies to any [<sup>F54</sup>evidence of a] witness (including the appellant) who is competent but not compellable <sup>F55</sup>. . . .
- (4) For [<sup>F51</sup>the purposes of an appeal under] this Part of this Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) above to be conducted, in manner provided by rules of court, before any judge or officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.

#### Textual Amendments

- F51** Words in s. 23(1)(4) substituted (1.1.1996) by 1995 c. 35, s. 29(1), **Sch. 2 para. 4(3)**; S.I. 1995/3061, **art. 3(d)(h)** (with **art. 4**)
- F52** S. 23(1)(c) substituted (1.1.1996) by 1995 c. 35, s. 4(1)(a); S.I. 1995/3061, **art. 3(a)** (with **art. 4**)
- F53** S. 23(2) substituted (1.1.1996) by 1995 c. 35, s. 4(1)(b); S.I. 1995/3061, **art. 3(a)** (with **art. 4**)
- F54** Words in s. 23(3) inserted (1.1.1996) by 1995 c. 35, s. 4(1)(c); S.I. 1995/3061, **art. 3(a)** (with **art. 4**)
- F55** Words in s. 23(3) repealed (1.1.1996) by 1995 c. 35, s. 29(2), **Sch. 3**; S.I. 1995/3061, **art. 3(d)(i)** (with **art. 4**)

#### [<sup>F56</sup>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.

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- (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.]

**Textual Amendments**

**F56** S. 23A inserted (31.3.1997) by 1995 c. 35, s. 5(1); S.I. 1997/402, art. 3(a) (with art. 4)

24— ..... F57  
28.

**Textual Amendments**

**F57** Ss. 24–28, 39–41 repealed by Costs in Criminal Cases Act 1973 (c. 14), Sch. 2

*Other matters depending on result of appeal*

**29 Effect of appeal on sentence.**

- (1) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.
- (2) Where the Court of Appeal give a contrary direction under subsection (1) above, they shall state their reasons for doing so; and they shall not give any such direction where—
  - (a) leave to appeal has been granted; or
  - (b) a certificate has been given by the judge of the court of trial [F58] under—
    - (i) section 1 or 11(1A) of this Act; or
    - (ii) section 81(1B) of the Supreme Court Act 1981]; or
    - (c) the case has been referred to them [F59] under section 9 of the Criminal Appeal Act 1995].
- (3) When an appellant is [F60] granted] bail under section 19 of this Act, the time during which he is [F60] released on bail] shall be disregarded in computing the term of any sentence to which he is for the time being subject.
- (4) The term of any sentence passed by the Court of Appeal under section 3, 4, 5, 11 or 13(4) of this Act shall, unless the Court otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

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#### Textual Amendments

- F58** S. 29(2)(b)(i)(ii) and word substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, [Sch. 15 para. 27](#)
- F59** Words in s. 29(2)(c) substituted (31.3.1997) by [1995 c. 35, s. 29\(1\)](#), [Sch. 2 para. 4\(4\)](#); S.I. 1997/402, [art. 3\(d\)\(e\)](#) (with [art. 4](#))
- F60** Words substituted by [Bail Act 1976 \(c. 63\)](#), [Sch. 2 para. 41](#)

### [<sup>F61</sup>30 Restitution of property.

- (1) The operation of an order for the restitution of property to a person made by the Crown Court shall, unless the Court direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute, be suspended until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside, and provision may be made by rules of court for the custody of any property in the meantime.
- (2) The Court of Appeal may by order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.
- (3) Where the House of Lords restores a conviction, it may make any order for the restitution of property which the court of trial could have made.]

#### Textual Amendments

- F61** S. 30 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, [Sch. 15 para. 28](#)

#### Modifications etc. (not altering text)

- C11** S. 30 extended by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), [s. 31\(2\)](#)
- C12** S. 30 modified (30.10.1994) by [S.I. 1994/2716, reg. 26\(2\)](#)  
 S. 30 modified (25.8.2000) by [2000 c. 6, ss. 148\(7\)](#), [168\(1\)](#)

### *Supplementary*

### 31 Powers of Court under Part I which are exercisable by single judge.

- [<sup>F62</sup>(1) There may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—
- (a) the powers of the Court of Appeal under this Part of this Act specified in subsection (2) below;
  - (b) the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976; and
  - (c) the powers to make orders for the payment of costs under sections 16 to 18 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act.
- (2) The powers mentioned in subsection (1)(a) above] are the following:—
- (a) to give leave to appeal;

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- (b) to extend the time within which notice of appeal or of application for leave to appeal may be given;
  - (c) to allow an appellant to be present at any proceedings;
  - (d) to order a witness to attend for examination;
  - [<sup>F63</sup>(e) to exercise the powers conferred by section 19 of this Act;]
  - (f) to make orders under section 8(2) of this Act and discharge or vary such orders;
  - (g) .....<sup>F64</sup>;
  - (h) to give directions under section 29(1) of this Act.
- [<sup>F65</sup>(2A) The power of the Court of Appeal to suspend a person’s disqualification under [<sup>F66</sup>section 40(2) of the Road Traffic Offenders Act 1988] may be exercised by a single judge in the same manner as it may be exercised by the Court.]
- [<sup>F67</sup>(2B) The power of the Court of Appeal to grant leave of appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court]
- (3) If the single judge refuses an application on the part of an appellant to exercise in his favour any of the powers above specified, the appellant shall be entitled to have the application determined by the Court of Appeal.

#### Textual Amendments

- F62** S. 31(1)(2) substituted for s. 31(1)(2) (to and including the word “powers” in s. 31(2)) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 15 para. 29**
- F63** S. 31(2)(e) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 29(2)(c)**
- F64** S. 31(2)(g) repealed by Costs in [Criminal Cases Act 1973 \(c. 14\)](#), **Sch. 2**
- F65** S. 31(2A) inserted by [Road Traffic Act 1974 \(c. 50\)](#), **Sch. 6 para. 10**
- F66** Words substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, **Sch. 3 para. 4(1)**
- F67** S. 31(2B) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, **Sch. 15 para. 30** (with Sch. 8 para. 16)

#### Modifications etc. (not altering text)

- C13** S. 31 restricted (11.1.1995) by [1981 c. 54, s. 9\(6A\)](#) (as inserted (11.1.1995) by [1994 c. 33, s. 52\(5\)](#); [S.I. 1994/3258, art. 2](#))

#### [<sup>F68</sup>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
  - (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;

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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.]

#### Textual Amendments

**F68** S. 31A inserted (1.1.1996) by 1995 c. 35, s. 6; S.I. 1995/3061, art. 3(a) (with art. 4)

### 32 Transcripts.

- (1) Rules of court may provide—
- (a) for the making of a record (whether by means of shorthand notes, by mechanical means or otherwise) of any proceedings in respect of which an appeal lies (with or without leave) to the Court of Appeal; and
  - (b) for the making and verification of a transcript of any such record and for supplying the transcript (on payment of such charge, if any, as may be fixed for the time being by the Treasury) to the registrar for the use of the Court of Appeal or any judge exercising the powers of a judge of the Court, and to such other persons and in such circumstances as may be prescribed by the rules.
- (2) Without prejudice to subsection (1) above, the Secretary of State may, if he thinks fit, in any case direct that a transcript shall be made of any such record made in pursuance of the rules and be supplied to him.
- (3) The cost—
- (a) of making any such record in pursuance of the rules; and
  - (b) of making and supplying in pursuance of this section any transcript ordered to be supplied to the registrar or the Secretary of State,
- shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament; and the cost of providing and installing at a court any equipment required for the purpose of making such a record or transcript shall also be defrayed out of moneys so provided.

## PART II

### APPEAL TO HOUSE OF LORDS FROM COURT OF APPEAL (CRIMINAL DIVISION)

#### *The appeal*

### 33 Right of appeal to House of Lords.

- (1) An appeal lies to the House of Lords, at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under Part I of this Act [<sup>F69</sup>or section 9 (preparatory hearings) of the Criminal Justice Act 1987][<sup>F70</sup>or section 35 of the Criminal Procedure and Investigations Act 1996].

*Status: Point in time view as at 01/10/1997.*

*Changes to legislation: Criminal Appeal Act 1968 is up to date with all changes known to be in force on or before 11 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The appeal lies only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.

[<sup>F71</sup>(3) Except as provided by this Part of this Act and section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), no appeal shall lie from any decision of the criminal division of the Court of Appeal.]

#### Textual Amendments

**F69** Words added by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, **Sch. 2 para. 3**

**F70** Words in s. 33(1) inserted (4.7.1996 but with effect on 15.4.1997 as mentioned in s. 28) by [1996 c. 25, ss. 28, 36 \(with s. 76\(1\)\)](#); [S.I. 1997/1019, art. 4](#)

**F71** S. 33(3) inserted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **Sch. 5 para. 1**

#### Modifications etc. (not altering text)

**C14** S. 33(3) restricted (30.12.2002 for certain purposes and otherwise prosp.) by [Proceeds of Crime Act 2002 \(c. 29\), s. 90\(1\)](#); [S.I. 2002/3015, {art. 2}](#), Sch.

### 34 Application for leave to appeal.

- (1) An application to the Court of Appeal for leave to appeal to the House of Lords shall be made within the period of fourteen days beginning with the date of the decision of the Court; and an application to the House of Lords for leave shall be made within the period of fourteen days beginning with the date on which the application for leave is refused by the Court of Appeal.
- (2) The House of Lords or the Court of Appeal may, upon application made at any time by the defendant, extend the time within which an application may be made by him to that House or the Court under subsection (1) above.
- (3) An appeal to the House of Lords shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for purposes of this Part of this Act an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

### 35 Hearing and disposal of appeal.

- (1) An appeal under this Part of this Act shall not be heard and determined by the House of Lords unless there are present at least three of the persons designated Lords of Appeal by section 5 of the <sup>M6</sup>Appellate Jurisdiction Act 1876.
- (2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of the said Act of 1876 may direct that the decision of that committee shall be taken on behalf of the House.
- (3) For the purpose of disposing of an appeal, the House of Lords may exercise any powers of the Court of Appeal or may remit the case to the Court.



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**Modifications etc. (not altering text)**

**C15** S. 35(1) applied by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. **36(5)**

**C16** S. 35(1) extended by [Criminal Justice Act 1972 \(c. 71\)](#), s. **36(4)**

**Marginal Citations**

**M6** 1876 c. 59.

*Matters preliminary to hearing*

**36 Bail on appeal by defendant.**

The Court of Appeal may [<sup>F72</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] if it seems fit, on the application of a person appealing or applying for leave to appeal to the House of Lords, [<sup>F73</sup> other than a person appealing or applying for leave to appeal from a decision on an appeal under section 9(11) of the Criminal Justice Act 1987 [<sup>F74</sup> or section 35 of the Criminal Procedure and Investigations Act 1996] (appeals against orders or rulings at preparatory hearings),][<sup>F75</sup> grant him] bail pending the determination of his appeal.

**Textual Amendments**

**F72** Words in s. 36 inserted (10.4.1995) by [1994 c. 33, s. 168\(2\)](#), [Sch. 10 para. 23](#); S.I. 1995/721, art. 2, [Sch.](#)

**F73** Words inserted by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, [Sch. 2 para. 4](#)

**F74** Words in s. 36 inserted (4.7.1996 but with effect on 15.4.1997 as mentioned in s. 28) by [1996 c. 25, ss. 28, 36](#) (with s. 78(1)); S.I. 1997/1019, art. 4

**F75** Words substituted by [Bail Act 1976 \(c. 63\)](#), [Sch. 2 para. 43](#)

**37 Detention of defendant on appeal by the Crown.**

- (1) The following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the House of Lords, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.
- (2) If, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal may make 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 an appeal to the House of Lords is pending.
- (3) An order under this section 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 of Appeal.
- (4) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—
  - (a) an order or direction under [<sup>F76</sup>Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act)] (admission to hospital of persons convicted by criminal courts); or
  - (b) an order under section 5(1) of the <sup>M7</sup>Criminal Procedure (Insanity) Act 1964 (admission to hospital following verdict of insanity or unfitness to stand trial),



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the order under this section shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) or (b) of this subsection; and the provisions of [F76the Mental Health Act 1983] with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

[F77(4A) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under [F78section 36 of the Mental Health Act 1983] or an interim hospital order under [F78section 38] of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

- (a) subsection (3) of this section shall not apply to the order;
- (b) [F78Part III of the said Act of 1983] 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 House of Lords 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, subsection (2) of the said section 31 (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.]

(5) Where the Court of Appeal have power to make an order under this section, and either no such order is made or the defendant is released or discharged, by virtue of [F79subsection (3), (4) or (4A)] of this section, before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the House of Lords on the appeal.

#### Textual Amendments

- F76 Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 23\(g\)](#)
- F77 S. 37(4A) inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), [Sch. 3 para. 39\(a\)](#)
- F78 Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 23\(h\)](#)
- F79 Words substituted by [Mental Health Act 1982 \(c. 51\)](#), [Sch. 3 para. 38\(b\)](#)

#### Marginal Citations

- M7 [1964 c. 84](#).

### 38 Presence of defendant at hearing.

A defendant who [F80has been convicted of an offence and] is detained pending an appeal to the House of Lords shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto, except where an order of the House of Lords authorises him to be present, or where the House or the Court of Appeal, as the case may be, give him leave to be present.

#### Textual Amendments

- F80 Words inserted by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, [Sch. 2 para. 5](#)

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**39**— ..... <sup>F81</sup>  
**41.**

**Textual Amendments**

**F81** Ss. 24–28, 39–41 repealed by Costs in Criminal Cases Act 1973 (c. 14), **Sch. 2**

*Supplementary*

**42** ..... <sup>F82</sup>

**Textual Amendments**

**F82** S. 42 repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, Sch. 8 para. 16, **Sch. 16**

**43 Effect of appeal on sentence.**

- (1) Where a person subject to a sentence is [<sup>F83</sup>granted] bail under section 36 or 37 of this Act, the time during which he is [<sup>F83</sup>released on bail] shall be disregarded in computing the term of his sentence.
- (2) Subject to the foregoing subsection, any sentence passed on an appeal to the House of Lords in substitution for another sentence shall, unless that House or the Court of Appeal otherwise direct, begin to run from the time when the other sentence would have begun to run.

**Textual Amendments**

**F83** Word substituted by Bail Act 1976 (c. 63), **Sch. 2 para. 44**

**44 Powers of Court of Appeal under Part II which are exercisable by single judge.**

- [<sup>F84</sup>(1) There may be exercised by a single judge—
- (a) the powers of the Court of Appeal under this Part of the Act—
    - (i) to extend the time for making an application for leave to appeal;
    - (ii) to make an order for or in relation to bail; and
    - (iii) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal; and
  - (b) their powers to make orders for the payment of costs under sections 16 and 17 of the <sup>M8</sup>Prosecution of Offences Act 1985 in proceedings under this Part of this Act.]
- , but where the judge refuses an application to exercise any of the said powers the applicant shall be entitled to have the application determined by the Court of Appeal.

- [<sup>F85</sup>(2) The power of the Court of Appeal to suspend a person's disqualification under [<sup>F86</sup>section 40(3) of the Road Traffic Offenders Act 1988] may be exercised by a single

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judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.]

#### Textual Amendments

- F84** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), [Sch. 15 para. 31](#)
- F85** S. 44(2) added by [Road Traffic Act 1974 \(c. 50\)](#), [Sch. 6 para. 11](#)
- F86** Words substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, [Sch. 3 para. 4\(2\)](#)

#### Modifications etc. (not altering text)

- C17** S. 44 restricted (11.1.1995) by [1981 c. 54, s. 9\(6A\)](#) (as inserted (11.1.1995) by [1994 c. 33, s. 52\(5\)](#); [S.I. 1994/3258, art. 2](#))

#### Marginal Citations

- M8** [1985 c.23 \(39:1\)](#).

### [<sup>F87</sup>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.]

**Textual Amendments**

**F87** S. 44A inserted (1.1.1996 for specified purposes and otherwise 31.3.1997) by 1995 c. 35, s. 7(1); S.I. 1995/3061, art. 3(b) (with art. 4); S.I. 1997/402, art. 3(a) (with art. 4)

**PART III**

MISCELLANEOUS AND GENERAL

**45** [<sup>F88</sup>Construction of references in Parts I and II to Court of Appeal and a single judge.]

[<sup>F88</sup>(1) References in Parts I and II [<sup>F89</sup>and section 44A] of this Act to the Court of Appeal shall be construed as references to the criminal division of the Court.]

(2) The references in sections 31 [<sup>F90</sup>, 31A, 44 and 44A] of this Act to a single judge are to any judge of the Court of Appeal or . . . <sup>F91</sup> the High Court.

**Textual Amendments**

- F88** S. 45(1) and sidenote substituted by Supreme Court Act 1981 (c. 54), Sch. 5 para. 2
- F89** Words in s. 45(1) inserted (1.1.1996) by 1995 c. 35, s. 29(1), Sch. 2 para. 4(5)(a); S.I. 1995/3061, art. 3(d)(h) (with art. 4)
- F90** Words in s. 45(2) substituted (1.1.1996) by 1995 c. 35, s. 29(1), Sch. 2 para. 4(5)(b); S.I. 1995/3061, art. 3(d)(h) (with art. 4)
- F91** Words repealed by Administration of Justice Act 1970 (c. 31), Sch. 11

**46** ..... <sup>F92</sup>

**Textual Amendments**

**F92** S. 46 repealed by Supreme Court Act 1981 (c. 54, SIF 37), Sch. 7

**47** ..... <sup>F93</sup>

**Textual Amendments**

**F93** S. 47 repealed by s. 47(7) of this Act and S.I. 1967/1234, Sch. 5

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#### **48 Appeal in capital cases.**

Schedule 4 to this Act shall have effect so as to modify and supplement certain provisions in Parts I and II of this Act in relation to cases involving sentence of death.

#### **49 Saving for prerogative of mercy.**

Nothing in this Act is to be taken as affecting Her Majesty's prerogative of mercy.

#### **50 Meaning of "sentence".**

[<sup>F94</sup>(1) In this Act "sentence", in relation to an offence, includes any order made by a court when dealing with an offender including, in particular—

- (a) a hospital order under Part III of the <sup>M9</sup>Mental Health Act 1983, with or without a restriction order;
- (b) an interim hospital order under that Part;  
[ a hospital direction and a limitation direction under that Part;]
- <sup>F95</sup>(bb) (c) a recommendation for deportation;
- (d) a confiscation order under the [<sup>F96</sup>Drug Trafficking Act 1994] other than one made by the High Court;
- (e) a confiscation order under Part VI of the <sup>M10</sup>Criminal Justice Act 1988;
- (f) an order varying a confiscation order of a kind which is included by virtue of paragraph (d) or (e) above;
- (g) an order made by the Crown Court varying a confiscation order which was made by the High Court by virtue of [<sup>F97</sup>section 19 of the Act of 1994]; and
- (h) a declaration of relevance under the <sup>M11</sup>Football Spectators Act 1989.]

[<sup>F98</sup>(1A) [<sup>F99</sup>Section 1C] of the Powers of Criminal Courts Act 1973 (under which a conviction of an offence for which <sup>F100</sup> . . . an order for a conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Act, whether against conviction or otherwise.]

(2) Any power of the criminal division of the Court of Appeal to pass a sentence includes a power to make a recommendation for deportation in cases where the court from which the appeal lies had power to make such a recommendation.

#### **Textual Amendments**

**F94** S. 50(1) substituted (14.8.1995) by 1993 c. 36, s. 78(3), **Sch. 5 Pt. I para. 1**; S.I. 1995/1958, **art. 2**

**F95** S. 50(1)(bb) inserted (1.10.1997) by 1997 c. 43, s. 55(1), **Sch. 4 para. 6(1)(a)**; S.I. 1997/2200, **art. 2(1)(l)(2)(c)**

**F96** Words in s. 50(1)(d) substituted (3.2.1995) by 1994 c. 37, ss. 65(1), 69(2), **Sch. 1 para. 2**

**F97** Words in s. 50(1)(g) substituted (3.2.1995) by 1994 c. 37, ss. 65(1), 69(2), **Sch. 1 para. 2(b)**

**F98** S. 50(1A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 66(1)**

**F99** Words in s. 50(1A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, **Sch. 11 para. 4**; S.I. 1992/333, art. 2(2), **Sch. 2**

**F100** Words in s. 50(1A) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 100, 101(2), Sch. 11 para. 4, **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**

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**Modifications etc. (not altering text)**

**C18** S. 50(1) modified (1.10.1997 for specified purposes otherwise *prosp.*) by 1997 c. 43, ss. 55(2), 57(2), Sch. 4 para. 6(1); S.I. 1997/2200, art. 2(1)(m)

**Marginal Citations**

- M9** 1983 c. 20.
- M10** 1988 c. 33.
- M11** 1989 c. 37.

**51 Interpretation.**

(1) In this Act, except where the context otherwise requires—

“appeal”, where used in Part I or II of this Act, means appeal under that Part, and “appellant” has a corresponding meaning and in Part I includes a person who has given notice of application for leave to appeal;

“the court of trial”, in relation to an appeal, means the court from which the appeal lies;

“the defendant”, in Part II of this Act, means, in relation to an appeal, the person who was the appellant before the criminal division of the Court of Appeal, and references to the prosecutor shall be construed accordingly;

[<sup>F101</sup>“duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;]

[<sup>F102</sup>“the judge of the court of trial” means, where the Crown Court comprises justices of the peace, the judge presiding;]

[<sup>F103</sup>“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;]

“under disability” has the meaning assigned to it by section 4 of the <sup>M12</sup>Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and

<sup>F104</sup>  
 .....

(2) Any expression used in this Act which is defined in [<sup>F105</sup>section 145(1) of the Mental Health Act 1983] has the same meaning in this Act as in that Act.

[<sup>F106</sup>(2A) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof of the appellant’s mental condition for the purposes of section 6, 14 or 14A of this Act as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.]

(3) ..... <sup>F107</sup>

**Textual Amendments**

**F101** Definition in s. 51(1) inserted (01.01.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3, para. 5(1)(a); S.I. 1991/2488, art. 2.

**F102** Definition substituted by Courts Act 1971 (c. 23), Sch. 8 para. 57(3)

**F103** Definition in s. 51(1) inserted (01.01.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3, para. 5(1)(b); S.I. 1991/2488, art. 2.

**F104** Definition of “recommendation for deportation” repealed by Immigration Act 1971 (c. 77), Sch. 6

**F105** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), Sch. 4 para. 23(j)

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**F106** S. 51(2A) inserted (01.01.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, **Sch. 3**, para.5(2); S.I. 1991/2488, **art. 2**.

**F107** S. 51(3) repealed by Supreme Court Act 1981 (c. 54, SIF 37), **Sch. 7**

**Marginal Citations**

**M12** 1964 c. 84.

**52 Consequential amendment of enactments.**

(1) The enactments specified in Part I of Schedule 5 to this Act shall be amended as shown in that Schedule.

(2) ..... **F108**

**Textual Amendments**

**F108** S. 52(2) repealed by Statute Law (Repeals) Act 1973 (c. 39), **Sch. 1 Pt. V**

**Modifications etc. (not altering text)**

**C19** The text of s. 52, Sch. 5, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**53 Transitional provisions.**

The transitional provisions contained in Schedule 6 to this Act shall have effect.

**54 Repeals.**

The enactments specified in the second column of Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

**Modifications etc. (not altering text)**

**C20** The text of s. 54, Sch. 7 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**55 Short title, commencement and extent.**

(1) This Act may be cited as the Criminal Appeal Act 1968.

(2) This Act shall come into force on the day appointed under section 106(5) of the <sup>M13</sup>Criminal Justice Act 1967 for the coming into force of section 98 of that Act.

(3) So much of Schedule 5 to this Act as amends the <sup>M14</sup>Geneva Conventions Act 1957 shall extend to Scotland and Northern Ireland and the repeal by this Act of section 2(2) of the <sup>M15</sup>Administration of Justice Act 1960 shall extend to Northern Ireland; but except as aforesaid this Act shall not extend to Scotland or Northern Ireland.



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**Modifications etc. (not altering text)**

**C21** 1.9.1968 appointed by [S.I. 1968/325](#), [art. 1](#)

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**Marginal Citations**

**M13** [1967 c. 80](#).

**M14** [1957 c. 52](#).

**M15** [1960 c. 65](#).

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## SCHEDULES

### <sup>F109</sup>SCHEDULE 1

#### Textual Amendments

**F109** Sch. 1 repealed (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 8(2)(3), **Sch. 4**; S.I. 1991/2488, **art. 2**

**F110**<sub>1</sub> .....

#### Textual Amendments

**F110** Sch. 1, para. 1 repealed (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), s. 8(2)(3), **Sch.4**; S.I. 1991/2488, **art.2**

**F111**<sub>2</sub> .....

#### Textual Amendments

**F111** Sch. 1, para. 2 repealed (01.01.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 8(2)(3), 9(2), **Sch.4**; S.I. 1991/2488, **art.2**..

**F112**<sub>3</sub> .....

#### Textual Amendments

**F112** Sch. 1, para. 3 repealed (01.01.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), **s. 8(2)(3) Sch.4**; S.I. 1991/2488, **art. 2**.

### SCHEDULE 2

Section 8.

#### PROCEDURAL AND OTHER PROVISIONS APPLICABLE ON ORDER FOR RETRIAL

##### *Depositions*

- 1 On a retrial, [<sup>F113</sup>paragraphs 1 and 2 of Schedule 2 to the Criminal Procedure and Investigations Act 1996 (use of written statements and depositions) shall not apply to any written statement or deposition read as evidence at the original trial]; but a transcript of the record of the evidence given by any witness at the original trial may, with the leave of the judge, be read as evidence—
- (a) by agreement between the prosecution and the defence; or

*Status: Point in time view as at 01/10/1997.*

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- (b) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success, and in either case may be so read without further proof, if verified in accordance with rules of court.

#### Textual Amendments

**F113** Words in [Sch. 2 para. 1](#) substituted (4.7.1996 but with effect as mentioned in [Sch. 2 para. 7](#) of the amending Act) by [1996 c. 25, s. 68, Sch. 2 paras. 5, 7; S.I. 1997/683, art. 1\(2\)](#)

[<sup>F114</sup>1A Subject to paragraph 1 above, evidence given orally at the original trial must be given orally at the retrial.]

#### Textual Amendments

**F114** [Sch. 2 para. 1A](#) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 170, Sch. 8 para. 16, Sch. 15 para. 32](#)

#### *Sentence on conviction at retrial*

- 2 (1) Where a person ordered to be retried is again convicted on retrial, the court before which he is convicted may pass in respect of the offence any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction.
- (2) Without prejudice to its power to impose any other sentence, the court before which an offender is convicted on retrial may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.
- (3) Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded—
- (a) any time before his conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed; and
- (b) any time during which he was [<sup>F115</sup>released on bail] under section 8(2) of this Act.
- (4) [<sup>F116</sup>Section 67 of the Criminal Justice Act 1967] (deduction from certain sentences of time spent in custody before sentence) shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

#### Textual Amendments

**F115** Words substituted by [Bail Act 1976 \(c. 63\), Sch. 2 para. 45](#)

**F116** Words substituted (*retrospectively*) by [Supreme Court Act 1981 \(c. 54, SIF 37\), Sch. 5 para. 3](#)

*Status: Point in time view as at 01/10/1997.*

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**Modifications etc. (not altering text)**

**C22** Sch. 2 para. 2(4) modified (1.10.1997 for specified purposes, otherwise 1.12.1999) by 1997 c. 43, ss. 55(2), 57(2), **Sch. 4 para. 6(2)**; S.I. 1997/2200, **art. 2(1)(m)** and S.I. 1999/3096, **art. 2(d)**

**F1173** .....

**Textual Amendments**

**F117** Sch. 2 para. 3 repealed by **Prosecution of Offences Act 1985 (c. 23, SIF 39:1)**, s. 31(6), **Sch. 2**

SCHEDULE 3

Section 16.

<sup>M16</sup>APPLICATION OF PROVISIONS IN [<sup>F118</sup>PART III OF MENTAL HEALTH ACT 1983] WHERE ORDER MADE UNDER SECTION 16(3) OF THIS ACT

**Textual Amendments**

**F118** Words substituted by **Mental Health Act 1983 (c. 20, SIF 85)**, **Sch. 4 para. 23(n)(i)**

**Marginal Citations**

**M16** 1959 c. 72.

**1** ..... **F119**

**Textual Amendments**

**F119** Sch. 3 para. 1 repealed by **Mental Health (Amendment) Act 1982 (c. 51, SIF 85)**, **Sch. 4**

<sup>F120</sup> *Order for continued detention under Act of 1983*

**Textual Amendments**

**F120** Sch. 3 para. 2 substituted by **Mental Health Act 1983 (c. 20, SIF 85)**, **Sch. 4 para. 23(n)(ii)**

**2** Where an order is made by the Court of Appeal under section 16(3) of this Act for a person’s continued detention under the Mental Health Act 1983, Part III of that Act (patients concerned in criminal proceedings or under sentence) shall apply to him as if he had been ordered under the said section 16(3) to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a restriction direction.]

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## SCHEDULE 4

Section 48.

### PROCEDURAL AND OTHER MODIFICATIONS FOR CAPITAL CASES

#### *Appeal to Court of Appeal*

- 1 In the case of a conviction involving sentence of death the power of the criminal division of the Court of Appeal under section 18(3) of this Act to extend the time for giving notice of appeal, or notice of application for leave to appeal, shall not be exercisable.
- 2 In the case of a conviction involving sentence of death—
- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of application for leave to appeal under Part I of this Act may be given; and
  - (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as is practicable, and the sentence shall not be executed until after the determination of the appeal or, in cases where an application for leave to appeal is finally refused, of the application.

#### *Appeal to House of Lords*

- 3 In a case involving sentence of death, the power of the criminal division of the Court of Appeal or the House of Lords under section 34(2) of this Act to extend the time within which an application by the defendant may be made to that division or the House for leave to appeal under Part II of this Act shall not be exercisable.
- 4 (1) Any application for leave to appeal under Part II of this Act in a case involving sentence of death, and any appeal for which leave is granted on such an application, shall be heard and determined with as much expedition as practicable.
- (2) Where an appeal to the criminal division of the Court of Appeal is dismissed in a case involving sentence of death, the sentence shall not in any case be executed until after the expiration of the time within which an application for leave to appeal to the House of Lords may be made; and if such an application is duly made the sentence shall not be executed while that application, and any appeal for which leave is granted thereon, is pending.
- (3) Section 34(3) of this Act applies for the construction of this paragraph.

## SCHEDULE 5

Section 52.

### AMENDMENT OF ENACTMENTS

#### **Modifications etc. (not altering text)**

- C23** The text of s. 52, Sch. 5, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*Status: Point in time view as at 01/10/1997.*

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## PART I

### MISCELLANEOUS CONSEQUENTIAL AMENDMENTS

... F121

#### Textual Amendments

**F121** Sch. 5 Pt. I: entries relating to [Prosecution of Offences Act 1879 \(c. 22\)](#), repealed by [Prosecution of Offences Act 1979 \(c. 31\)](#), **Sch. 2 Pt. II**

... F122

#### Textual Amendments

**F122** Sch. 5 Pt. I: entries relating to [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **Sch. 7**

#### *The Sentence of Death (Expectant Mothers) Act 1931 (c. 24)*

##### Section 2(4)

For the words “under the Criminal Appeal Act 1907 to the Court of Criminal Appeal” there shall be substituted the words “under Part I of the Criminal Appeal Act 1968 to the criminal division of the Court of Appeal”.

#### *The Children and Young Persons Act (c. 12)*

##### Section 55(5)

In paragraph (b), for the words “to the Court of Criminal Appeal in accordance with the Criminal Appeal Act 1907” there shall be substituted the words “to the criminal division of the Court of Appeal in accordance with Part I of the Criminal Appeal Act 1968”.

#### *The Costs in Criminal Cases Act 1952 (c. 48)*

##### Section 7

After the word “Act” there shall be inserted the words “or the Criminal Appeal Act 1968”.

##### Section 8

In subsection (1) (as amended by paragraph 22 of Schedule 4 to the <sup>M17</sup>Criminal Justice Act 1967), for the words “under section 3(2) of this Act” there shall be substituted the words “under section 24 of the Criminal Appeal Act 1968”.

#### Marginal Citations

**M17** 1967 c. 80.

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## Section 10

For subsection (2) there shall be substituted the following subsection:—

“(2) Where the criminal division of the Court of Appeal order the payment of costs by the appellant under section 25 of the Criminal Appeal Act 1968, or that division or the House of Lords order the payment of costs by the defendant under section 40 of that Act, the payment shall be enforceable in the same manner as an order for payment of costs made by the High Court in a civil case.”

In subsection (5), after the word “Act” there shall be inserted the words “or the Criminal Appeal Act 1968”.

## Section 11(1)

After the word “Act” there shall be inserted the words “or the Criminal Appeal Act 1968”.

## Section 12

For this section there shall be substituted the following:—

### Regulations.

“12 (1) The Secretary of State may by statutory instrument make regulations generally for carrying this Act and the associated provisions of the Criminal Appeal Act 1968 into effect and in particular may by regulations so made prescribe—

- (a) rates or scales of payment of any costs payable out of local funds under this Act or the said associated provisions and the conditions under which such costs may be allowed;
- (b) the manner in which an officer of the court making a payment to any person in respect of his attendance to give evidence is to be repaid out of local funds;
- (c) the form of orders, certificates and notices under the Act or the said associated provisions, and the giving of information when certificates are sent under this Act by the officer of any magistrates’ court;

and any provision of this Act or the said Act of 1968 enabling any sum to be paid out of local funds shall have effect subject to the regulations.

(2) In subsection (1) of this section “the associated provisions of the Criminal Appeal Act 1968” means the following provisions of that Act, namely, sections 24 to 28 and 39 to 41.”

## Section 17(2)

After the words “the Act” there shall be inserted the words “or the Criminal Appeal Act 1968”.

### Marginal Citations

M17 1967 c. 80.

*The Prison Act 1952 (c. 52)*

## Section 22(1)

For the words “the Criminal Appeal Act 1907” there shall be substituted the words “Part I of the Criminal Appeal Act 1968”.



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## Section 47(4)

In paragraph (c), for the words “the Criminal Appeal Act 1907” there shall be substituted the words “Part I of the Criminal Appeal Act 1968”.

### *The Geneva Conventions Act 1957 (c. 52)*

#### Section 4

For subsection (1) there shall be substituted the following subsections —

“(1) Where a protected prisoner of war or protected internee has been sentenced to death or to imprisonment for a term of two years or more, the time within which he must give notice of appeal or notice of his application for leave to appeal to the criminal division of the Court of Appeal, the High Court of Justiciary or the Court of Criminal Appeal in Northern Ireland, as the case may be, shall, notwithstanding anything in the enactment relating to such appeals, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of twenty-eight days after the date on which he received notice given—

- (a) in the case of a protected prisoner of war, by an officer of Her Majesty’s forces;
- (b) in the case of a protected internee, by or on behalf of the governor of the prison in which he is confined,

that the protecting power has been notified of his conviction and sentence; and, in a case to which the foregoing provisions of this subsection apply, a reference to the period aforesaid shall be substituted for the reference in section 30(1)(a) of the Criminal Appeal Act 1968 and section 31(1)(a) of the Criminal Appeal (Northern Ireland) Act 1968 (revesting and restitution of property) to the period of twenty-eight days from the date of conviction.

(1A) In the case of an appeal to the House of Lords under any of the Acts specified in the left-hand column of the following Table by a protected prisoner of war or protected internee, the period specified in the provision of that Act specified in relation thereto in the right-hand column (the provisions there listed being those which lay down the time for applying for leave to appeal) shall be extended until fourteen days after the date on which the applicant receives notice, given as mentioned in subsection (1)(a) or (b) of this section, that the protecting power has been notified of the decision of the court from which the appeal lies, or of the refusal of that court of the application for leave to appeal, as the case may be.

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#### **Table**

The Administration of Justice Act 1960	Section 2(1)
The Criminal Appeal Act 1968	Section 34(1)
The Criminal Appeal (Northern Ireland) Act 1968	Section 37(1)
The Courts-Martial (Appeals) Act 1968	Section 40(1)”

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... F123

**Textual Amendments**

**F123** Sch. 5 Pt. I: entries relating to [Mental Health Act 1959 \(c. 72\)](#), repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **Sch. 7**

... F124

**Textual Amendments**

**F124** Sch. 5 Pt. I: entries relating to [Administration of Justice Act 1960 \(c. 65\)](#), repealed in part by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **Sch. 7**

*The Criminal Justice Administration Act 1962 (c. 15)*

**Section 18(1)**

For the words “section 2(1) of the Criminal Appeal Act 1964” there shall be substituted the words “section 8(1) of the Criminal Appeal Act 1968”.

..... F125

**Textual Amendments**

**F125** Entry in Sch. 5, Pt. I repealed (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), ss. 8(2)(3), **Sch.4**; S.I. 1991/2488, **art. 2**

... F126

**Textual Amendments**

**F126** Sch. 5 Pt. I: entries relating to [Criminal Appeal Act 1966 \(c. 31\)](#), repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **Sch. 7**

**PART II**

... F127

**Textual Amendments**

**F127** Sch. 5. Pt. II repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. V**

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## SCHEDULE 6

Section 53.

### TRANSITIONAL PROVISIONS

- 1 (1) Any right of appeal subsisting immediately before the commencement of this Act by virtue of an enactment repealed thereby shall after that commencement be treated as subsisting by virtue of the corresponding enactment in this Act.  
(2) Any appeal or application pending before the said commencement under an enactment so repealed may be prosecuted and disposed of in accordance with the provisions of this Act corresponding to those in force immediately before the said commencement and applicable to the appeal or application.
- 2 (1) In so far as any order made, direction given or other thing done under an enactment repealed by this Act could have been made, given or done under a corresponding provision of this Act, it shall not be invalidated by the repeal of that enactment but shall have effect as if made, given or done under that corresponding provision.  
(2) Any document referring to an enactment repealed by this Act shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding enactment in this Act.
- 3 (1) The mention of particular matters in this Schedule shall not be taken to affect the general application of section 38 of the <sup>M18</sup>Interpretation Act 1889 with regard to the effect of repeals.  
(2) References in this Schedule to enactments repealed by this Act shall be construed as including references to enactments which are reproduced in this Act in relation to matters for which provision is made by this Act while remaining unrepealed in relation to matters for which provision is made by another Act; and section 38 of the <sup>M19</sup>Interpretation Act 1889 shall apply with respect to any such enactment as if it had been repealed by this Act in relation to matters for which provision is made by this Act.

#### Marginal Citations

**M18** 1889 c. 63.

**M19** 1889 c. 63.

## SCHEDULE 7

Section 54.

### REPEALS

#### Modifications etc. (not altering text)

**C24** The text of s. 54, Sch. 7 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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Chapter	Short Title	Extent of Repeal
7 Edw. 7. c. 23. 11 & 12 Geo. 6. c. 58. 15 & 16 Geo. 6. & 1 Eliz. 2. c. 48.	The Criminal Appeal Act 1907. The Criminal Justice Act 1948. The Costs in Criminal Cases Act 1952.	The whole Act. Section 38(1). Section 3. In section 4(1), the words " or in the prosecution of his appeal to the Court of Criminal Appeal ". In section 17(3), the words " subsection (2) of section three ". In section 1, subsection (1)(b). Section 2(2). Section 3(2). Section 4(1). Sections 7 and 8. Section 8(4). Schedule 3, so far as it amends the Criminal Appeal Act 1907, the Supreme Court of Judicature (Consolidation) Act 1925 and section 19 of the Costs in Criminal Cases Act 1952.
8 & 9 Eliz. 2. c. 65.	The Administration of Justice Act 1960.	Sections 1 to 3 and 6(2). Schedule 2, so far as it amends the Criminal Appeal Act 1907 and the Criminal Justice Administration Act 1962.
1964 c. 43.	The Criminal Appeal Act 1964.	Sections 2 and 3. In section 4, subsection (6) and in subsection (7) the words from the beginning to " restricting discharge; and ". In section 5, subsection (1)(i) and (j) and subsections (2) and (5). In section 1, subsections (1) and (8). Sections 4 to 8. In section 12, the definitions in subsection (1) of " the 1907 Act " and " the 1952 Act ", and subsection (3). In Schedule 2, paragraphs 1 to 3 and 6 to 8.
1964 c. 84.	The Criminal Procedure (Insanity) Act 1964.	Section 32(3). Section 97. Section 98(1) to (5) and (7). In section 106(2)(f), the words " the Geneva Conventions Act 1957 ", and in section 106(3)(c), the words " the Geneva Conventions Act 1957 and ". Section 32(3). Section 97. Section 98(1) to (5) and (7). In section 106(2)(f), the words " the Geneva Conventions Act 1957 ", and in section 106(3)(c), the words " the Geneva Conventions Act 1957 and ".
1966 c. 31.	The Criminal Appeal Act 1966.	Sections 1 to 3 and 6(2). Schedule 2, so far as it amends the Criminal Appeal Act 1907 and the Criminal Justice Administration Act 1962.
1967 c. 80.	The Criminal Justice Act 1967.	Sections 1 to 3 and 6(2). Schedule 2, so far as it amends the Criminal Appeal Act 1907 and the Criminal Justice Administration Act 1962.

Chapter	Short Title	Extent of Repeal
1967 c. 80 —cont.	The Criminal Justice Act 1967—cont.	In Schedule 4, paragraphs 1 to 8, 20, 23, 24(e), 28, and 33 to 40. In Schedule 6, paragraphs 4, 22 and 27.

**Status:**

Point in time view as at 01/10/1997.

**Changes to legislation:**

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