



# Criminal Appeal (Northern Ireland) Act 1980

1980 CHAPTER 47

## PART II

APPEAL TO HOUSE OF LORDS FROM DECISION UNDER PART I

### *The appeal*

#### **31 Right of appeal to House of Lords**

- (1) Subject to the provisions of this Part of this Act, 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.
- (2) No appeal lies under this Part of this Act except with the leave of the Court or of the House of Lords; and such leave shall not be granted unless it is certified by the Court that a point of law of general public importance is involved in the decision and it appears to the Court or to the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (3) In this Part of this Act " the defendant " means, in relation to an appeal, the person who was the appellant before the Court, and references to the prosecutor shall be construed accordingly.

#### **32 Application for leave to appeal**

- (1) Subject to subsection (2) below, an application to the Court of Appeal for leave to appeal under this Part of this Act 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 such leave shall be made within the period of fourteen days beginning with the date on which the application is refused by the Court.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The House of Lords or the Court 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 under this Part of this Act 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 the 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.

### **33 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 Appellate Jurisdiction Act 1876.
- (2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal under this Part of this Act 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 under this Part of this Act, the House of Lords may exercise any powers of the Court or may remit the case to the Court.

#### *Reference of point of law*

### **34 Further reference to House of Lords of point of law following acquittal on indictment**

- (1) Where the Court of Appeal has given its opinion on a point referred to the Court under section 15 of this Act the Court may, of its own motion or in pursuance of an application in that behalf, refer the point to the House of Lords if it appears to the Court that the point ought to be considered by that House.
- (2) If a point is referred to the House of Lords under subsection (1) of this section, the House shall consider the point and give the House's opinion on it accordingly ; and section 33(1) of this Act shall apply also in relation to any proceedings of the House under this section.
- (3) Where on a point being referred to the House of Lords under this section the acquitted person appears by counsel for the purpose of presenting any argument to the House, he shall be entitled to his costs, that is to say to the payment out of money provided by Parliament of such sums as are reasonably sufficient to compensate him for his expenses properly incurred for the purpose of being represented on the reference; and any amount recoverable under this subsection shall be ascertained as soon as practicable by such officer as may be prescribed by order of the House of Lords.
- (4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

*Matters preliminary to hearing*

**35 Bail**

The Court of Appeal may, if it thinks fit, on the application of an appellant under this Part of this Act or a person applying for leave to appeal thereunder, admit him to bail pending an appeal from the Court.

**36 Detention of defendant pending appeal by Crown**

- (1) Where the defendant in any proceedings from which an appeal lies to the House of Lords under this Part of this Act would, but for the decision of the Court of Appeal, be liable to be detained and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the Court 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 35 above) so long as an appeal under this Part of this Act is pending.
- (2) An order under subsection (1) above shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the Court.
- (3) When an order is made under this section in the case of a defendant who, but for the decision of the Court, would be liable to be detained in pursuance of an order or direction under the Mental Health (Northern Ireland) Act 1961, the order under this section shall be one authorising his continued detention in pursuance of the order or direction, and the provisions of the said Act of 1961 with respect to persons so liable (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- (4) Where the Court has 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 subsection (2) or subsection (3) above, 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.

**37 Legal aid**

- (1) The Court of Appeal may at any time when it appears to the Court, in the case of an appeal from the Court under this Part of this Act or of proceedings preliminary or incidental to such an appeal, that it is desirable in the interests of justice that the defendant should have legal aid, and that he has not sufficient means to enable him to obtain that aid, assign to him (whether he is appellant or respondent in the appeal) a solicitor and counsel, or counsel only, in the appeal or proceedings.
- (2) If on a question of granting a person free legal aid under this section there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.
- (3) The fees of any counsel, and the expenses and fees of any solicitor, assigned to a defendant by virtue of this section, in either case up to an amount allowed by the House of Lords or by such officer or officers of that House as may be prescribed by order of that House, shall be paid by the Secretary of State.

### **38 Presence of defendant at hearing**

A defendant who is detained pending an appeal under this Part of this Act shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto, except where an order of the House of Lords or rules of court, as the case may be, authorise him to be present or where that House or the Court of Appeal, as the case may be, gives him leave to be present.

#### *Matters depending on result of appeal*

### **39 Computation of sentence**

- (1) If a person subject to a sentence is admitted to bail pending an appeal under this Part of this Act, the time during which he is at large after being so admitted shall be disregarded in computing the term of his sentence.
- (2) Subject to the foregoing subsection, any sentence passed on such an appeal in substitution for another sentence shall, unless the House of Lords or the Court of Appeal otherwise directs, begin to run from the time when the other sentence would have begun to run.

### **40 Restitution of property**

- (1) Where the operation of an order for the restitution of property made on conviction on indictment is suspended until the determination of an appeal to the Court of Appeal, then, if the conviction is not quashed on that appeal, the operation of the order shall continue to be suspended—
  - (a) in any case until the expiration of the time within which an application for leave to appeal under this Part of this Act may be made (disregarding any extension of time which may be granted under section 32(2) of this Act); and
  - (b) if any such application is made within that time, so long as the appeal under this Part of this Act is pending.
- (2) Where the operation of any such order is suspended under this section—
  - (a) the order shall not take effect if the conviction is quashed on appeal to the House of Lords ; and
  - (b) such steps shall be taken for the safe custody of the property in question during the period during which the operation of the order is suspended as may be prescribed.
- (3) Where by reason of the quashing by the Court of a person's conviction such an order does not take effect and on an appeal under this Part of this Act the conviction is restored by the House of Lords, that House may make any order for the restitution of property which could be made on his conviction by the court which convicted him.
- (4) References in this section to an order for the restitution of property include references to—
  - (a) an order made under section 27 of the Theft Act (Northern Ireland) 1969 ; and
  - (b) a compensation order made under Article 3 of the Criminal Justice (Northern Ireland) Order 1980.

## **41 Costs**

- (1) Where the Court of Appeal or the House of Lords dismisses an application for leave to appeal under this Part of this Act, the Court or the House may, if it thinks fit.—
  - (a) where the application was made by the prosecutor, order the payment by the Secretary of State to the defendant of such sums as appear to the Court or the House reasonably sufficient to compensate the defendant for any expenses properly incurred by him in resisting the application; or
  - (b) where the application was made by the defendant, order him to pay the whole or any part of the costs of the application.
- (2) Where an appeal to the House of Lords from the Court under this Part of this Act is determined in favour of the defendant, the House of Lords may, if it thinks fit, order the payment by the Secretary of State of such sums as appear to the House reasonably sufficient to compensate the defendant for any expenses properly incurred by him—
  - (a) in the appeal to the House of Lords or in the proceedings before the Court, as the case may be (including the cost of any application for leave to appeal); or
  - (b) in carrying on his defence before the Crown Court, at the preliminary investigation or preliminary enquiry and before any other court before which proceedings for the offence in respect of which he was committed for trial were begun but not concluded.
- (3) Where in any proceedings on an appeal or application for leave to appeal to the House of Lords under this Part of this Act, an interpreter is required because of a defendant's lack of English, the expenses properly incurred on his employment shall be defrayed by the Secretary of State up to an amount allowed by the House of Lords.
- (4) Except as provided by this section, no costs shall be allowed on the hearing or determination of an appeal under this Part of this Act or of any proceedings preliminary or incidental to such an appeal.

## **42 Taxation of costs**

- (1) Any amount which the Court of Appeal orders to be paid under section 41(1) of this Act shall, except where it is a specific amount ordered to be paid towards the costs of the application as a whole, be ascertained as soon as practicable by the Court.
- (2) Any amount which the House of Lords orders to be paid under section 41(1) or (2) of this Act shall, except as aforesaid, be ascertained as soon as practicable by such officer or officers, and in such manner, as may be prescribed by order of the House of Lords.
- (3) Where the Court or the House of Lords orders the payment of costs by the defendant under section 41 of this Act, the order shall be enforceable in the same manner as an order for payment of costs made by the High Court in a civil case.