



# 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]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### APPEAL TO COURT OF APPEAL IN CRIMINAL CASES

##### *Appeal against conviction on indictment*

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

- (1) A person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.
- (2) The appeal may be—
  - (a) on any ground which involves a question of law alone ; and
  - (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

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

(1) Except as provided by this Act, the Court of Appeal shall allow an appeal against conviction if they think—

- (a) that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory ; or
- (b) that the judgment of the court of trial should be set aside on the ground of a wrong decision of any question of law; or
- (c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(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.

## **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 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 by a person in whose case 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.

## **6 Substitution of finding of insanity or unfitness to plead**

- (1) Where, on an appeal against conviction, the Court of Appeal 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 that there should have been a finding that the accused was under disability,
- the Court shall make an order that the appellant be admitted to such hospital as may be specified by the Secretary of State.
- (2) Schedule 1 to this Act applies with respect to the consequences and effect of an order made by the Court of Appeal under this section.
- (3) On making an order under this section in the case of any person, the Court of Appeal may give such directions as they think fit for his conveyance to a place of safety and his detention there pending his admission to hospital within the relevant period specified by Schedule 1 to this Act.
- (4) In section 72 of the Mental Health Act 1959 (which relates to the removal to hospital of persons serving sentences of imprisonment and is applied by subsection (6) of the section to persons in other forms of detention) references to a person serving a sentence of imprisonment shall be construed as not including references to a person subject to an order of the Court of Appeal under this section.

### *Retrial*

## **7 Power to order retrial**

- (1) Where the Court of Appeal allow an appeal against conviction and do so only by reason of evidence received or available to be received by them under section 23 of this Act 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.

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## **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, and shall be tried before such court as the Court of Appeal may direct (being a court of assize or, if the offence is within the jurisdiction of a court of quarter sessions, a court of quarter sessions) or, if no such direction is given, before the court by which he was originally tried.
- (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 admission to 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 Mental Health Act 1959.—
  - (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 admission to bail shall have effect subject to the said order or 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.

### *Appeal against sentence*

## **9 Appeal against sentence following conviction on indictment**

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.

## **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 a court of assize or quarter sessions (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 at assizes or quarter sessions ; or
  - (b) having been made the subject of a probation order or an order for conditional discharge or given a suspended sentence, appears or is brought before a court of assize or quarter sessions to be further dealt with for his offence.

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- (3) An offender dealt with for an offence at assizes or quarter sessions 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 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—
    - (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 Road Traffic Act 1960; or
    - (iii) an order under section 40 of the Criminal Justice Act 1967 (orders as to existing suspended sentence when person subject to the sentence is again convicted).
- (4) For purposes of subsection (3)(a) of this section, 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.

## **11 Supplementary provisions as to appeal against sentence**

- (1) 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.
- (2) Where a court of assize or quarter sessions, 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 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.
- (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.
- (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

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the court below made no order under section 40(1) of the Criminal Justice Act 1967 (power of court on conviction of further offence to deal with suspended sentence) in respect of a suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that suspended sentence where the court below—

- (a) could have so dealt with him if it had not passed on him a sentence of borstal training quashed by the Court of Appeal under subsection (3)(a) of this section ; or
- (b) did so deal with him in accordance with paragraph (d) of the said section 40(1) (power of Court of Appeal to make no order with respect to suspended sentence).

*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 against the verdict—

- (a) on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

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

- (1) Subject to the provisions of this section, the Court of Appeal shall allow an appeal under section 12 of this Act if they are of opinion—
  - (a) that the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
  - (b) that the order of the court giving effect to the verdict should be set aside on the ground of a wrong decision of any question of law; or
  - (c) that there was a material irregularity in the course of the trial,
 and in any other case shall dismiss the appeal.
- (2) The Court of Appeal may dismiss an appeal under section 12 of this Act, if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.
- (3) Where apart from this subsection—
  - (a) an appeal under section 12 of this Act would fall to be allowed; and
  - (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.

#### **14 Hospital order on disposal of appeal**

- (1) Where, on an appeal under section 12 of this Act, the Court of Appeal are of opinion that the case is not one where there should have been a verdict of acquittal but that there should have been a finding that the accused was under disability, the Court shall make an order that the appellant be admitted to such hospital as may be specified by the Secretary of State.
- (2) Where in accordance with section 13(4)(b) of this Act the Court of Appeal substitute a verdict of acquittal, and they are of opinion—
- (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,
- the Court shall make an order that the appellant be admitted for observation to such hospital as may be specified by the Secretary of State.
- (3) Schedule 1 to this Act applies with respect to the consequences and effect of an order made by the Court of Appeal under this section.
- (4) On making an order under this section in the case of any person, the Court of Appeal may give such directions as they think fit for his conveyance to a place of safety and his detention there pending his admission to hospital within the relevant period specified in Schedule 1 to this Act.

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- (5) In section 72 of the Mental Health Act 1959 (which relates to the removal to hospital of persons serving sentences of imprisonment and is applied by subsection (6) of the section also to persons in other forms of detention) references to a person serving a sentence of imprisonment shall be construed as not including references to a person subject to an order of the Court of Appeal under subsection (1) of this section.

*Unfitness to stand trial*

**15 Right of appeal against finding of disability 16. Disposal of appeal under s. 15**

- (1) Where there has been a determination under section 4 of the Criminal Procedure (Insanity) Act 1964 of the question of a person's fitness to be tried, and the jury has returned a finding that he is under disability, the person may appeal to the Court of Appeal against the finding.
- (2) An appeal under this section may be—
- (a) on any ground of appeal which involves a question of law alone; and
  - (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

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

- (1) The Court of Appeal shall allow an appeal under section 15 of this Act if they are of opinion—
- (a) that the finding of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
  - (b) that the order of the court giving effect to the finding should be set aside on the ground of a wrong decision of any question of law ; or
  - (c) that there was a material irregularity in the course of the determination of the question of fitness to be tried ;

and in any other case (except one to which subsection (2) below applies) shall dismiss the appeal; but they may dismiss the appeal if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

- (2) An appeal under section 15 of this Act may, in a case where the question of fitness to be tried was determined later than on arraignment, be allowed by the Court of Appeal (notwithstanding that the finding was properly come to) if the Court are of opinion that the case is one in which the accused should have been acquitted before the question of fitness to be tried was considered; and, if an appeal is allowed under this subsection, the Court of Appeal 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).
- (3) Subject to subsection (2) above, where an appeal under section 15 of this Act is allowed, the appellant may be tried accordingly for the offence with which he was charged, and the Court of Appeal may make such orders as appear to them to be



necessary or expedient pending any such trial for his custody, admission to bail or continued detention under the Mental Health Act 1959; and Schedule 3 to this Act has effect for applying provisions in Part V of that Act to persons in whose case an order is made by the Court of Appeal under this subsection.

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

**17 Reference by Home Secretary**

- (1) Where a person has been convicted on indictment, or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability, the Secretary of State may, if he thinks fit, at any time either—
  - (a) refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to the Court by that person; or
  - (b) if he desires the assistance of the Court on any point arising in the case, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with their opinion thereon accordingly.
- (2) A reference by the Secretary of State under this section may be made by him either on an application by the person referred to in subsection (1), or without any such application.

*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.

**19 Bail**

The Court of Appeal may, if they think fit, on the application of an appellant, admit him to bail pending the determination of his appeal.

**20 Disposal of groundless appeal**

If it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as "the registrar") that a notice of an appeal purporting to be on a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination; and where

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the case is so referred the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal summarily, without calling on any one to attend the hearing or to appear for the Crown thereon.

## **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 purposes of 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;
  - (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
  - (c) subject to subsection (3) below, receive the evidence, if tendered, of any witness.

- (2) Without prejudice to subsection (1) above, where evidence is tendered to the Court of Appeal thereunder the Court shall, unless they are satisfied that the evidence, if received, would not afford any ground for allowing the appeal, exercise their power of receiving it if—
  - (a) it appears to them that the evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
  - (b) they are satisfied that it was not adduced in those proceedings but there is a reasonable explanation for the failure to adduce it.
- (3) Subsection (1)(c) above applies to any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's husband or wife where the appellant makes an application for that purpose and the evidence of the husband or wife could not have been given in the proceedings from which the appeal lies except on such an application.
- (4) For purposes of 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.

*Costs, etc.*

**24 Award of costs to successful appellant**

- (1) The Court of Appeal may, when they allow an appeal against conviction or against a verdict of not guilty by reason of insanity or against a finding of disability, make an order for costs in favour of the appellant.
- (2) An order for costs under this section is for the payment out of local funds of such sums as appear to the Court of Appeal reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the case, that is to say—
  - (a) in the prosecution of his appeal, including any proceedings preliminary or incidental thereto ; or
  - (b) in carrying on his defence at assizes or quarter sessions, or before the examining justices who committed him for trial;and the reference above to the appellant's defence at assizes or quarter sessions includes a reference to his defence before any court of assize or quarter sessions before which proceedings for the offence for which he was committed were begun but not concluded.

**25 Costs on dismissal of appeal**

- (1) The Court of Appeal may, when they dismiss an appeal or an application for leave to appeal, order the appellant to pay to such person as may be named in the order the whole or any part of the costs of the appeal or application.
- (2) Costs ordered to be paid under this section may include the cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of this Act.

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## **26 Witnesses' expenses**

The Court of Appeal may order the payment out of local funds of such sums as appear to the Court reasonably sufficient to compensate a person properly attending to give evidence on an appeal, or any proceedings preliminary or incidental thereto, whether or not he gives evidence, for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

## **27 Expenses of appellant's appearance**

Where an appellant who is not in custody appears before the Court of Appeal, either on the hearing of his appeal or in any proceedings preliminary or incidental thereto, the Court may direct that there be paid to him out of local funds the expenses of his appearance.

## **28 Provisions supplementary to ss. 24 to 27**

- (1) Except as provided by the foregoing sections, no costs shall be allowed on the hearing or determination of an appeal, or of any proceedings preliminary or incidental to an appeal.
- (2) Any amount ordered to be paid under section 24, 25 or 26 of this Act, except where it is a specific amount ordered under section 24 to be paid towards the appellant's expenses as a whole, or under section 25 to be paid towards the costs of an appeal or application as a whole, and any amount ordered to be paid to an appellant under section 27 of this Act, shall be ascertained as soon as practicable by the registrar.
- (3) References in sections 24, 26 and 27 of this Act to payment out of local funds shall be construed as if they were contained in the Costs in Criminal Cases Act 1952.

*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 under section 1 of this Act; or
  - (c) the case has been referred to them by the Secretary of State under section 17 of this Act.
- (3) When an appellant is admitted to bail under section 19 of this Act, the time during which he is at large after being so admitted 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.

### **30 Restitution of property on conviction**

- (1) The operation of an order for the restitution of property to a person made on a conviction on indictment and the operation in case of any such conviction of section 24(1) of the Sale of Goods Act 1893 as to the revesting of the property in stolen goods on conviction shall (unless the court of trial direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute) be suspended—
- (a) in any case until the expiration of twenty-eight days from the date of conviction ; and
  - (b) where notice of appeal or of application for leave to appeal is given within twenty-eight days from the date of conviction, until the determination of the appeal.
- (2) In cases where the operation of such an order, or of section 24(1) of the Sale of Goods Act 1893, is suspended until the determination of the appeal, the order or that subsection, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal.
- (3) Provision may be made by rules of court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said section 24(1).
- (4) 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.

### *Supplementary*

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

- (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 a single judge in the same manner as they may be exercised by the Court and subject to the same provisions.
- (2) The said powers are the following:—
- (a) to give leave to appeal;
  - (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 ;
  - (e) to admit an appellant to bail;
  - (f) to make orders under section 8(2) of this Act and discharge or vary such orders ;
  - (g) to make orders for the payment of costs under section 25 of this Act;
  - (h) to give directions under section 29(1) of this Act.

- (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.

## **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.
- (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.

### **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 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.

#### *Matters preliminary to hearing*

### **36 Bail on appeal by defendant**

The Court of Appeal may, if it seems fit, on the application of a person appealing or applying for leave to appeal to the House of Lords, admit him to bail pending the determination of his appeal.

### **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 Part V of the Mental Health Act 1959 (admission to hospital of persons convicted by criminal courts); or
  - (b) an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 (admission to hospital following verdict of insanity or unfitness to stand trial),
- 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 the Mental Health Act 1959 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.
- (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 subsection (3) or (4) 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.

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

A defendant who 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.

#### *Costs*

### **39 Award of costs to defendant (whether appellant or respondent)**

- (1) The following provisions apply where—
- (a) an application for leave to appeal to the House of Lords is made by the prosecutor and is dismissed by the Court of Appeal or that House; or
  - (b) an appeal to the House of Lords (whether by the prosecutor or the defendant) is determined in favour of the defendant.
- (2) The Court of Appeal in the case of an application for leave to appeal being dismissed by them, and the House of Lords in any other case may, if they think fit, order the payment to the defendant out of local funds (within the meaning of the Costs in Criminal Cases Act 1952) of such sums as appear to them reasonably sufficient to compensate him for his expenses.
- (3) The expenses which may be taken into account for purposes of subsection (2) above are, in a case to which subsection (1)(a) applies, those which the defendant has properly incurred in resisting the prosecutor's application for leave to appeal; and in a case to which subsection (1)(b) applies they are those which he has properly incurred—
- (a) in the appeal to the House of Lords, including any application for leave to appeal; or
  - (b) in the prosecution of his appeal to the Court of Appeal; or



(c) in carrying on his defence at assizes or quarter sessions or before the examining justices who committed him for trial;

and the reference above to his defence at assizes or quarter sessions includes a reference to his defence before any court of assize or quarter sessions before which proceedings for the offence for which he was committed were begun but not concluded.

#### **40 Costs against defendant**

Where the Court of Appeal or the House of Lords dismiss an application by the defendant for leave to appeal to that House, the Court or the House of Lords may, if they think fit, order him to pay to such person as may be named in the order the whole or any part of the costs of the application.

#### **41 General provision as to costs and expenses**

- (1) Except as provided by sections 39 and 40 of this Act, no costs shall be allowed on the hearing or determination of an appeal to the House of Lords or of any proceedings preliminary or incidental to such an appeal.
- (2) Any amount ordered to be paid under section 39 or 40 above shall, except where it is a specific amount ordered to be paid towards the defendant's expenses as a whole or, as the case may be, towards the costs of his application as a whole, be ascertained as soon as practicable—
  - (a) where the order is made by the Court of Appeal, by the registrar; and
  - (b) where it is made by the House of Lords, by such officer or officers, and in such manner, as may be prescribed by order of the House.

#### *Supplementary*

#### **42 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 under Part I of this Act 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 to the House of Lords may be made (disregarding any extension of time which may be granted under section 34 of this Act);
  - (b) if any such application is made within that time, so long as the appeal to the House of Lords 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 ;
  - (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 by rules of court.
- (3) Where by reason of the quashing by the Court of Appeal of a person's conviction any such order does not take effect, and on an appeal to the House of Lords the conviction

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is restored by that House, the House may make any order for the restitution of property which could be made on his conviction by the court which convicted him.

- (4) This section applies in relation to section 24(1) of the Sale of Goods Act 1893 (revesting of stolen property on conviction of thief) as it applies in relation to an order for the restitution of property; and without prejudice to the powers of the House of Lords under subsection (3) of this section, the said section 24 shall apply in any case where a conviction on indictment is restored by that House as it applies on the conviction of an offender.

#### **43 Effect of appeal on sentence**

- (1) Where a person subject to a sentence is admitted to bail under section 36 or 37 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 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.

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

The following powers of the Court of Appeal under this Part of this Act, that is to say the power—

- (a) to extend the time for making an application for leave to appeal;
- (b) to make an order for or in relation to bail; or
- (c) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal,

may be exercised by a single judge, 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.

### **PART III**

#### **MISCELLANEOUS AND GENERAL**

#### **45 Jurisdiction of Court of Appeal under this Act**

- (1) Subject to rules of court made under section 1(5) of the Criminal Appeal Act 1966 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), all jurisdiction of the Court of Appeal under Part I or Part II of this Act shall be exercised by the criminal division of the Court; and references in those Parts to the Court of Appeal shall be construed accordingly as references to that division of the Court.
- (2) The references in sections 31 and 44 of this Act to a single judge are to any judge of the Court of Appeal or of the Queen's Bench Division of the High Court.

## **46 Rules of court**

- (1) Rules made under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 may make provision with respect to any matter for which provision by rules of court is to be made under Part I or Part II of this Act, and may regulate generally the practice and procedure of the criminal division of the Court of Appeal; and, without prejudice to the generality of the foregoing, rules so made may require courts from which an appeal lies to that division to furnish it with any assistance or information which it may require for the purpose of exercising its jurisdiction.
- (2) The Lord Chancellor may appoint two persons appearing to him to have special experience in criminal procedure, one being a practising barrister and one a practising solicitor, to be members of the Rule Committee of the Supreme Court (that is to say, the authority for the time being empowered to make rules under section 99 of the said Act of 1925) for the purpose of the Committee's power to make rules by virtue of subsection (1) of this section.

## **47 Legal aid**

- (1) The criminal division of the Court of Appeal may at any time assign to an appellant under Part I or Part II of this Act a solicitor and counsel, or counsel only, in his appeal or in proceedings preliminary or incidental thereto, where it appears desirable in the interests of justice that he should have legal aid and that he has not sufficient means to enable him to obtain it.
- (2) The registrar shall report to the criminal division of the Court of Appeal, or a judge of the Court of Appeal or of the Queen's Bench Division of the High Court, any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel or counsel only ought to be assigned to an appellant under Part I of this Act.
- (3) The power of the criminal division of the Court of Appeal to assign legal aid may be exercised by a judge of the Court of Appeal or of the Queen's Bench Division of the High Court in the same manner as it may be exercised by the criminal division and subject to the same provisions; but if the judge refuses an application to exercise the power in an appellant's favour, the appellant shall be entitled to have the application determined by the Court.
- (4) Where an appellant is to be retried by virtue of an order under section 7 of this Act, section 1 of the Poor Prisoners Defence Act 1930 (entitlement to free legal aid) shall apply in his case as if he had been committed for trial for the offence or offences in question and as if references in section 1(2) of that Act to the committing justices included references to the Court of Appeal.
- (5) Sections 18 and 23 of the Legal Aid and Advice Act 1949 (extension of right to free legal aid and provision as to payment for it out of local funds) shall have effect as if for references therein to section 10 of the Criminal Appeal Act 1907 there were substituted references to subsection (1) of this section; and in section 21(a) of that Act (remuneration of solicitors and counsel) for the reference to the said Act of 1907 there shall be substituted a reference to Part I of this Act.
- (6) The fees of any counsel, and the expenses and fees of any solicitor, assigned to an appellant under this section shall be defrayed out of local funds within the meaning of the Costs in Criminal Cases Act 1952 up to an amount allowed—

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- (a) in the case of an appeal under Part I of this Act by the criminal division of the Court of Appeal; and
- (b) in the case of an appeal under Part II of this Act by the House of Lords or by such officer or officers of that House as may be prescribed by order of the House ;

and references in section 12 of the said Act of 1952 (regulations) to the associated provisions of this Act shall be construed as including references to this subsection.

- (7) This section is hereby repealed as from the day appointed under section 106(5) of the Criminal Justice Act 1967 for the coming into force of Part IV of that Act (new provisions as to legal aid in criminal cases); and section 38(2) of the Interpretation Act 1889 shall apply to this repeal as if this section had been repealed by another Act.

#### **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 "**

- (1) In this Act, " sentence ", in relation to an offence, includes any order made by a court when dealing with an offender (including a hospital order under Part V of the Mental Health Act 1959, with or without an order restricting discharge) and also includes a recommendation for deportation.
- (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.

#### **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;

" the judge of the court of trial " means the person who was the judge of that court, whether a judge of assize, chairman of quarter sessions, recorder or otherwise ;

" under disability " has the meaning assigned to it by section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and

" recommendation for deportation " means a recommendation under Part II of the Commonwealth Immigrants Act 1962 or under an order made under the Aliens Restriction Act 1914.

- (2) Any expression used in this Act which is defined in section 147(1) of the Mental Health Act 1959 has the same meaning in this Act as in that Act.
- (3) Part I of this Act applies in relation to proceedings on a coroner's inquisition, and to matters arising out of such proceedings, as it applies in relation to proceedings on indictment and matters arising out of them.

## **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) If under section 4 of the Murder (Abolition of Death Penalty) Act 1965 (which provides for the Act to expire on the 31st July 1970, unless Parliament otherwise determines, and for enactments repealed by it to be thereupon revived) the Homicide Act 1957 again operates as though the said Act of 1965 had not been passed, Schedule 1 to the said Act of 1957 shall then operate with the amendments shown in Part II of Schedule 5 to this Act.

## **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.

## **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 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 Geneva Conventions Act 1957 shall extend to Scotland and Northern Ireland and the repeal by this Act of section 2(2) of the Administration of Justice Act 1960 shall extend to Northern Ireland; but except as aforesaid this Act shall not extend to Scotland or Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 6.

#### CONSEQUENCES AND EFFECT OF ORDER FOR ADMISSION TO HOSPITAL UNDER S.6 OR S.14

- 1     (1) An order for admission to hospital under section 6 or section 14 of this Act shall be sufficient authority for any person acting under the authority of the Secretary of State to take the person to whom the order relates and convey him at any time within the relevant period to the hospital specified by the Secretary of State.
- (2) The relevant period for the purposes of this paragraph is—
- (a) in relation to an order under section 6 or 14(1), two months ;
- (b) in relation to an order under section 14(2), seven days ;
- the said period to begin in either case with the date on which the order was made.
- (3) Where a person is admitted within the relevant period to the hospital specified by the Secretary of State, the order under section 6 or, as the case may be, section 14 shall be sufficient authority for the managers to detain him in accordance with the provisions of the Mental Health Act 1959 referred to in the following paragraphs, as those provisions apply by virtue of those paragraphs.
- 2     A person who is admitted to hospital in pursuance of an order under section 6 or 14(1) of this Act shall be treated for the purposes of the Mental Health Act 1959 as if he had been so admitted in pursuance of a hospital order made (on the date of the order made under section 6 or 14(1)) under section 60 of that Act together with an order restricting discharge made under section 65 of that Act without limitation of time.
- 3     A person who is admitted to a hospital in pursuance of an order under section 14(2) of this Act shall be treated for the purposes of Part IV of the Mental Health Act 1959 as if he had been admitted (on the date of the order made under section 14(2)) in pursuance of an application for admission for observation duly made under the said Part IV.

### SCHEDULE 2

Section 8.

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

##### *Depositions*

- 1     On a retrial, section 13(3) of the Criminal Justice Act 1925 (reading of depositions) shall not apply to the depositions of any person who gave evidence at the original trial or to any written statement by such a person tendered under section 2 of the Criminal Justice Act 1967 in the committal proceedings before 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—

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- (a) by agreement between the prosecution and the defence ; or
  - (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.

*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 at large after being admitted to bail under section 8(2) of this Act.
  - (4) Section 17(2) of the Criminal Justice Administration Act 1962 (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.

*Costs where retrial results in acquittal*

- 3
- If the person ordered to be retried is acquitted on retrial, the costs of the defence which may be ordered to be paid out of local funds under section 1 of the Costs in Criminal Cases Act 1952 shall include—
- (a) any costs which could have been ordered to be so paid under that section by the court by which he was originally tried if he had been acquitted at the original trial; and
  - (b) if no order was made under section 24 or 39(2) of this Act in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.

### SCHEDULE 3

Section 16.

#### APPLICATION OF PROVISIONS IN PART V OF MENTAL HEALTH ACT 1959 WHERE ORDER MADE UNDER SECTION 16(3) OF THIS ACT

##### *Order for custody pending trial*

1 Where an order is made by the Court of Appeal under section 16(3) of this Act for a person to be kept in custody pending trial, the following sections of the Mental Health Act 1959, that is to say—

section 73 (transfer of persons in custody to hospital for treatment) ;

section 74 (special restrictions on discharge) ; and

section 76 (cases in which a direction for a person's transfer to hospital may lapse),

shall apply to him as they apply to the persons listed in paragraphs (a) to (c) of section 73(2) of the said Act of 1959.

##### *Order for continued detention under Act of 1959*

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 1959, Part V of that Act (admission to hospital of patients concerned in criminal proceedings and transfer of patients in custody) 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 direction restricting discharge.

### 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

#### PART I

##### MISCELLANEOUS CONSEQUENTIAL AMENDMENTS

##### *THE PROSECUTION OF OFFENCES ACT 1879 (c. 22)*

###### *Section 2*

For the words " under section 1 of the Administration of Justice Act 1960" there shall be substituted the words " under Part II of the Criminal Appeal Act 1968 " ; and after the section there shall be added the following section:—

###### **“2A Duty to appear, when so directed, on criminal appeals.**

- (1) Without prejudice to the foregoing section, it shall be the duty of the Director of Public Prosecutions to appear for the Crown or the prosecutor, when directed by the court to do so, on any appeal under section 1 of the Administration of Justice Act 1960 (appeal from High Court in criminal cases) or Part I or Part II of the Criminal Appeal Act 1968 (appeals from assizes and quarter sessions to criminal division of the Court of Appeal and thence to House of Lords).
- (2) In subsection (1) of this section " the court" means, in the case of an appeal to or from the criminal division of the Court of Appeal, that division and, in the case of an appeal from a divisional court of the Queen's Bench Division, the divisional court”.

##### *THE SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT 1925 (c. 49)*

###### *Section 31(1)*

For paragraph (a) there shall be substituted the following paragraph:—

- “(a) except as provided by this Act, the Administration of Justice Act 1960 or the Criminal Appeal Act 1968, from any judgment of the High Court in any criminal cause or matter”.

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*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 1933 (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 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 ".

*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 :—

**“12 Regulations.**

- (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 ;

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(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 ".

#### *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 ".

*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 a 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

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from which the appeal lies, or of the refusal of that court of the application for leave to appeal, as the case may be.

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)”

*THE MENTAL HEALTH ACT 1959 (c. 72)*

*Section 73(2)*

In paragraph (a), for the words " under section 1 of the Criminal Appeal Act 1964" there shall be substituted the words " under section 7 of the Criminal Appeal Act 1968

*THE ADMINISTRATION OF JUSTICE ACT 1960 (c. 65)*

*Section 13(6)*

For the words " the Criminal Appeal Act 1907, or to a decision of the Court of Criminal Appeal under that Act; and for the purposes of that Act" there shall be substituted the words " Part I of the Criminal Appeal Act 1968, or to a decision of the criminal division of the Court of Appeal under that Part of that Act; and for the purposes of the said Part I ".

*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 "

*THE CRIMINAL PROCEDURE (INSANITY) ACT 1964 (c. 84)*

For Schedule 1 to the Act there shall be substituted the following Schedule:—

“SCHEDULE 1

EFFECT OF ORDERS FOR ADMISSION TO HOSPITAL

- 1 (1) An order for admission to hospital under section 5(1) of this Act shall be sufficient authority for any person acting under the authority of the Secretary of State to take the person to whom the order relates and convey him at any time within the period of two months (beginning with the date on which the order was made) to the hospital specified by the Secretary of State.
- (2) The court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of a person to whom the order relates to a place of safety and his detention therein pending his admission to the hospital within the said period of two months.

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- (3) Where a person is admitted within the said period to the hospital specified by the Secretary of State, an order under section 5(1) of this Act shall be sufficient authority for the managers to detain him in the hospital in accordance with sections 60 and 65 of the Mental Health Act 1959 as applied by the next following paragraph.
- 2 (1) A person who is admitted to a hospital in pursuance of an order under section 5(1) of this Act shall be treated for the purposes of the Mental Health Act 1959 as if he had been so admitted in pursuance of a hospital order made (on the date of the order under section 5(1) of this Act) under section 60 of that Act, together with an order restricting discharge made under section 65 of that Act without limitation of time.
- (2) For the purposes of section 5(4) of this Act, a person shall not be treated as detained in pursuance of an order at any time after the Secretary of State has directed (under section 66 of the said Act of 1959) that the said person shall cease to be subject to the special restrictions set out in section 65 of that Act.
- (3) In the application of section 63(5) of the Mental Health Act 1959 to orders under section 5(1) of this Act, the proviso to section 63(5) shall have effect as if the reference to a conviction included a reference to a special verdict and to a finding that the accused was under disability.”

### *THE CRIMINAL APPEAL ACT 1966 (c. 31)*

#### *Section 1(2)*

For paragraph (b), there shall be substituted the following paragraph:—

- “(b) the criminal division which shall, subject to any such rules, exercise—
- (i) all jurisdiction of the Court of Appeal under Parts I and II of the Criminal Appeal Act 1968 ; and
  - (ii) all other jurisdiction which was that of the Court of Criminal Appeal immediately before it ceased to exist (including the jurisdiction to order the issue of writs of venire de novo).”

## **PART II**

### AMENDMENTS (PROSPECTIVE) OF HOMICIDE ACT 1957, SCHEDULE 1

#### *Paragraph 2(3)*

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

#### *Paragraph 5*

For the words " section 18 of the Criminal Appeal Act 1907" there shall be substituted the words " section 46 of the Criminal Appeal Act 1968 " .

## 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.

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- (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 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 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.

## SCHEDULE 7

Section 54.

## REPEALS

Chapter	Short Title	Extent of Repeal
7 Edw. 7. c. 23.	The Criminal Appeal Act 1907.	The whole Act.
11 & 12 Geo. 6. c. 58.	The Criminal Justice Act 1948.	Section 38(1).
15 & 16 Geo. 6. & 1 Eliz. 2. c. 48.	The Costs in Criminal Cases Act 1952.	Section 3. In section 4(1), the words " or in the prosecution of his appeal to the Court of Criminal Appeal". In section 17(5), the words " subsection (2) of section three ".
8 & 9 Eliz. 2. c. 65.	The Administration of Justice Act 1960.	In section 1, subsection (1) (b). Section 2(2). Section 3(2).

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Chapter	Short Title	Extent of Repeal
1964 c. 43.	The Criminal Appeal Act 1964.	Section 4(1). Sections 7 and 8. Section 9(4). Schedule 3, so far as it amends the Criminal Appeal Act 1907, the Supreme Court of Judicature (Consolidation) Act 1925 and section 10 of the Costs in Criminal Cases Act 1952.
1964 c. 84.	The Criminal Procedure (Insanity) Act 1964.	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.
1966 c. 31.	The Criminal Appeal Act 1966.	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)(b) and (d) and subsections (2) and (5).
1967 c. 80.	The Criminal Justice Act 1967.	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. Section 32(5). 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)(e), the words "the Geneva Conventions Act 1957 and ".

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Chapter	Short Title	Extent of Repeal
		In Schedule 4, paragraphs 1 to 8, 20, 23, 24(a), 28, and 33 to 40. In Schedule 6, paragraphs 4, 22 and 27.