



# Criminal Appeal Act 1968

## 1968 CHAPTER 19

### PART I

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

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

### 1 Right of appeal.

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

[<sup>F2</sup>(2) An appeal under this section lies only—

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

[<sup>F3</sup>(3) Where a person is convicted before the Crown Court of a scheduled offence it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which [<sup>F4</sup>committed him][<sup>F4</sup>sent him to the Crown Court] for trial as to the value involved was mistaken.

(4) In subsection (3) above “scheduled offence” and “the value involved” have the same meanings as they have in section 22 of the Magistrates’ Courts Act 1980 (certain offences against property to be tried summarily if value of property or damage is small).]

#### Textual Amendments

- F1** Words inserted by [Magistrates' Courts Act 1980 \(c. 43\)](#), [Sch. 7 para. 71\(a\)](#)
- F2** S. 1(2) substituted (1.1.1996) by [1995 c. 35, s. 1\(1\)](#); [S.I. 1995/3061, art. 3\(a\)](#) (with art. 4)
- F3** S. 1(3)(4) inserted by the [Magistrates' Courts Act 1980 \(c. 43\)](#), [Sch. 7 para. 71\(b\)](#)
- F4** Words in s. 1(3) substituted (9.5.2005 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 3 para. 44\(2\)](#); [S.I. 2005/1267, art. 2\(1\)\(2\)\(a\)](#), [Sch. Pt. 1](#)

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

- C1** S. 1 extended (19.2.2001) by [2000 c. 11, s. 7\(4\)\(b\)](#); S.I. 2001/421, [art. 2\(a\)](#)  
**C2** S. 1 extended (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 12\(4\)\(c\)](#)

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

- [<sup>F5</sup>(1) Subject to the provisions of this Act, the Court of Appeal—
- (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
  - (b) shall dismiss such an appeal in any other case.]
- (2) In the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.
- (3) An order of the Court of Appeal quashing a conviction shall, except when under section 7 below the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

**Textual Amendments**

- F5** S. 2(1) substituted (1.1.1996) by [1995 c. 35, s. 2\(1\)](#); S.I. 1995/3061, [art. 3\(a\)](#) (with [art. 4](#))

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

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

**3 Power to substitute conviction of alternative offence.**

- (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence [<sup>F6</sup>to which he did not plead guilty] 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.

**Textual Amendments**

- F6** Words in s. 3(1) inserted (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\), ss. 316\(2\), 336\(3\)\(4\)](#); S.I. 2004/1629, [art. 3\(1\)\(2\)\(c\)](#)

**[<sup>F7</sup>3A Power to substitute conviction of alternative offence after guilty plea**

- (1) This section applies on an appeal against conviction where—
- (a) an appellant has been convicted of an offence to which he pleaded guilty,
  - (b) if he had not so pleaded, he could on the indictment have pleaded, or been found, guilty of some other offence, and

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- (c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.
- (2) The Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea 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.]

#### Textual Amendments

**F7** S. 3A inserted (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 316(3), 336(3)(4)**; S.I. 2004/1629, **art. 3(1)(2)(c)**

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

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

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

- (1) This section applies on an appeal against conviction [<sup>F8</sup>in a case where] the jury have found a special verdict.
- (2) If the Court of Appeal consider that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict they may, instead of allowing the appeal, order such conclusion to be recorded as appears to them to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

#### Textual Amendments

**F8** Words in s. 5(1) substituted (1.1.1996) by [1995 c. 35, s. 29\(1\)](#), **Sch. 2 para. 4(2)**; S.I. 1995/3061, **art. 3(d)(h)** (with [art. 4](#))

#### **[<sup>F96</sup> Substitution of finding of insanity or findings of unfitness to plead etc.**

- (1) This section applies where, on an appeal against conviction, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
- (a) that the proper verdict would have been one of not guilty by reason of insanity;
- or

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- (b) that the case is not one where there should have been a verdict of acquittal, but there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.
- [<sup>F10</sup>(2) The Court of Appeal shall make in respect of the accused—
- (a) a hospital order (with or without a restriction order);
  - (b) a supervision order; or
  - (c) an order for his absolute discharge.
- (3) Where—
- (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
  - (b) the court have power to make a hospital order,
- the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) Section 5A of the Criminal Procedure (Insanity) Act 1964 (“the 1964 Act”) applies in relation to this section as it applies in relation to section 5 of that Act.
- (5) Where the Court of Appeal make an interim hospital order by virtue of this section—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
  - (b) the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.
- (6) Where the Court of Appeal make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable as if the order had been made by the court below.
- (7) In this section—
- “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
- “interim hospital order” has the meaning given in section 38 of that Act;
- “restriction order” has the meaning given to it by section 41 of that Act;
- “supervision order” has the meaning given in Part 1 of Schedule 1A to the 1964 Act.]]

#### **Textual Amendments**

- F9** S. 6 substituted (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), [ss. 4\(1\), 8](#); [S.I. 1991/2488](#), [art. 2](#).
- F10** S. 6(2)-(7) substituted (31.3.2005) for s. 6(2)(3) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), [ss. 24\(3\), 60](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), [art. 3\(b\)](#)

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## Retrial

### 7 Power to order retrial.

- (1) Where the Court of Appeal allow an appeal against conviction . . . <sup>F11</sup>and it appears to the Court that the interests of justice so require, they may order the appellant to be retried.
- (2) A person shall not under this section be ordered to be retried for any offence other than—
  - (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1) above;
  - (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
  - (c) an offence charged in an alternative count of the indictment in respect of which [<sup>F12</sup>no verdict was given] in consequence of [<sup>F13</sup>his being convicted] of the first-mentioned offence.

#### Textual Amendments

- F11** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 43(1)(5), 170, Sch. 8 para. 16, **Sch. 16**
- F12** Words in s. 7(2)(c) substituted (24.7.2006 for E.W., 8.1.2007 in so far as not already in force) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 36 para. 44(a)**; S.I. 2006/1835, art. 2(h); S.I. 2006/3422, art. 2(c)(i)
- F13** Words in s. 7(2)(c) substituted (24.7.2006 for E.W., 8.1.2007 in so far as not already in force) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 36 para. 44(b)**; S.I. 2006/1835, art. 2(h); S.I. 2006/3422, art. 2(c)(i)

### 8 Supplementary provisions as to retrial.

- (1) A person who is to be retried for an offence in pursuance of an order under section 7 of this Act shall be tried on a fresh indictment preferred by direction of the Court of Appeal, . . . <sup>F14</sup>[<sup>F15</sup>but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.]
- [<sup>F16</sup>(1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.
- (1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—
  - (a) to grant leave to arraign; or
  - (b) to [<sup>F17</sup>set aside the order for retrial and]direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—
    - (i) that the prosecution has acted with all due expedition; and
    - (ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 7 of this Act was made.]

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- (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 <sup>F18</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994, <sup>F19</sup>release on] bail of the person ordered to be retried pending his retrial; or
  - (b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.
- (3) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order or direction under Part V of the <sup>M1</sup>Mental Health Act 1959 <sup>F20</sup>or under Part III of the Mental Health Act 1983 (other than under section 35, 36 or 38 of that Act)],—
- (a) that order or direction shall continue in force pending the retrial as if the appeal had not been allowed; and
  - (b) any order made by the Court of Appeal under this section for his custody or <sup>F19</sup>release on] bail shall have effect subject to the said order or direction.
- <sup>F21</sup>(3A) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of a remand under <sup>F22</sup>section 36 of the Mental Health Act 1983] or an interim hospital order under <sup>F22</sup>section 38 of that Act], the Court of Appeal may, if they think fit, order that he shall continue to be detained in a hospital or mental nursing home, and in that event <sup>F22</sup>Part III of that Act] shall apply as if he had been ordered under this section to be kept in custody pending his retrial and were detained in pursuance of a transfer direction together with a restriction direction.]
- (4) Schedule 2 to this Act has effect with respect to the procedure in the case of a person ordered to be retried, the sentence which may be passed if the retrial results in his conviction and the order for costs which may be made if he is acquitted.

#### Textual Amendments

- F14** Words repealed by [Courts Act 1971 \(c. 23\)](#), **Sch. 11 Pt. IV**
- F15** Words added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), **s. 43(3)(5)**
- F16** S. 8(1A)(1B) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), **s. 43(4)(5)**, **Sch. 8 para. 16**
- F17** Words in s. 8(1B)(b) inserted (27.9.1999) by [1999 c. 22, ss. 58\(2\), 108\(3\)](#)(with s. 107, Sch. 14 para. 7(2))
- F18** Words in s. 8(2)(a) inserted (10.4.1995) by [1994 c. 33, s. 168\(2\)](#), **Sch. 10 para. 19**; [S.I. 1995/721](#), art. 2, **Sch. Appendix A**
- F19** Words substituted by [Bail Act 1976 \(c. 63\)](#), **Sch. 2 Para. 38**
- F20** Words inserted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), **Sch. 4 para. 23(b)**
- F21** S. 8(3A) inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), **Sch. 3 para. 36**
- F22** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), **Sch. 4 para. 23(c)**

#### Marginal Citations

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

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### *Appeal against sentence*

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

[<sup>F23</sup>(1)] A person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.

[<sup>F24</sup>(1A)] In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.]

[<sup>F23</sup>(2)] A person who on conviction on indictment has also been convicted of a summary offence under section 41 of the Criminal Justice Act 1988 (power of Crown Court to deal with summary offence where person committed for either way offence) [<sup>F25</sup>or paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998 (power of Crown Court to deal with summary offence where person sent for trial for indictable-only offence)] may appeal to the Court of Appeal against any sentence passed on him for the summary offence (whether on his conviction or in subsequent proceedings) under subsection (7) of that section [<sup>F26</sup>or sub-paragraph (4) of that paragraph.]

#### **Textual Amendments**

- F23** S. 9 renumbered to become s. 9(1) and s. 9(2) added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para 16](#), [Sch. 15 para. 20](#),
- F24** S. 9(1A) inserted (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 271\(1\)](#), 336(2)
- F25** Words in s. 9(2) inserted (4.1.1999 for specified purposes and otherwise 15.1.2001) by [1998 c. 37](#), s. 119, [Sch. 8 para. 12](#); [S.I. 1998/2327](#), [art. 4\(2\)\(c\)](#), [Sch. 2](#); [S.I. 2000/3283](#), [art. 2\(e\)](#) (subject to [art. 3](#))
- F26** Words in s. 9(2) inserted (27.9.1999) by [1999 c. 22](#), [ss. 58\(3\)](#), 108(3) (with s. 107, [Sch. 14 para. 7\(2\)](#))

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

- C4** S. 9 modified (25.8.2000) by [2000 c. 6](#), [ss. 116\(9\)](#), 168(1)

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

(1) This section has effect for providing rights of appeal against sentence when a person is dealt with by [<sup>F27</sup>the Crown Court] (otherwise than on appeal from a magistrates' court) for an offence of which he was not convicted on indictment.

(2) The proceedings from which an appeal against sentence lies under this section are those where an offender convicted of an offence by a magistrates' court—

(a) is committed by the court to be dealt with for his offence [<sup>F27</sup>before the Crown Court]; or

[<sup>F28</sup>(b) having been made the subject of an order for conditional discharge [<sup>F29</sup>a youth community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 or a community order within the meaning of Part 12 of the Criminal Justice Act 2003]<sup>F30</sup>... or given a suspended sentence, appears or is brought before the Crown Court to be further dealt with for his offence;]<sup>F31</sup>...

[<sup>F31</sup>(c) .....

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- [<sup>F32</sup>(3) An offender dealt with for an offence before the Crown Court in a proceeding to which subsection (2) of this section applies may appeal to the Court of Appeal against any sentence passed on him for the offence by the Crown Court.]
- (4) For purposes of subsection (3)(a) of this section [<sup>F33</sup>and section 11 of this Act], any two or more sentences are to be treated as passed in the same proceeding if—
- (a) they are passed on the same day; or
  - (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence;
- and consecutive terms of imprisonment [<sup>F34</sup>or detention] and terms which are wholly or partly concurrent are to be treated as a single term
- [<sup>F35</sup>(5) If by virtue of an order made under section 14 of the Criminal Justice Act 1982, the term of 4 months specified in section 4 of that Act is increased to a term of 6 months or more, subsection (3)(a) above shall have effect, for so long as the term so specified is 6 months or more, as if after the word “more” there were inserted the words “or an order for his detention in a detention centre for a term of 6 months or more has been made under section 4 of the Criminal Justice Act 1982”].

#### Textual Amendments

- F27** Words substituted by [Courts Act 1971 \(c. 23\)](#), **Sch. 8 para. 57(1)**
- F28** S. 10(2)(b) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), s. 100, **Sch. 11 para. 3**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F29** Words in s. 10(2)(b) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 32 para. 8(2)(a)**; S.I. 2005/950, art. 2(1), **Sch. 1 para. 42(6)** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))
- F30** Words in s. 10(2)(b) repealed (30.9.1999) by [Crime and Disorder Act 1998 \(c. 37\)](#), ss. 119, 120(2), **Sch. 8 para. 13(1)**, **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(f)(3)(j)**
- F31** S. 10(2)(c) and preceding word repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 32 para. 8(2)(b)**, **Sch. 37 Pt. 7**; S.I. 2005/950, art. 2(1), **Sch. 1 paras. 42(6), 44(4)(c)** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))
- F32** S. 10(3) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 319(2), 336(3)(4)**; S.I. 2005/950, art. 2(1), **Sch. 1 para. 25** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))
- F33** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, **Sch. 8 para. 16**, **Sch. 15 para. 22(2)**
- F34** Words in s. 10(4) inserted (27.9.1999) by [1999 c. 22](#), **ss. 58(7), 108(3)** (with s. 107, **Sch. 14 para. 7(2)**)
- F35** S. 10(5) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 14 para. 23(c)**

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

- C5** S. 10 modified (25.8.2000) by [2000 c. 6](#), **ss. 116(9), 168(1)**



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## 11 Supplementary provisions as to appeal against sentence.

- (1) [<sup>F36</sup>Subject to subsection (1A) below, an] appeal against sentence, whether under section 9 or under section 10 of this Act, lies only with the leave of the Court of Appeal.
- [<sup>F37</sup>(1A) If the judge who passed the sentence grants a certificate that the case is fit for appeal under section 9 or 10 of this Act, an appeal lies under this section without the leave of the Court of Appeal.]
- (2) Where [<sup>F38</sup>the Crown Court], in dealing with an offender either on his conviction on indictment or in a proceeding to which section 10(2) of this Act applies, has passed on him two or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 10), being sentences against which an appeal lies under section 9 [<sup>F39</sup>(1)] or section 10, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.
- [<sup>F40</sup>(2A) Where following conviction on indictment a person has been convicted under section 41 of the Criminal Justice Act 1988 of a summary offence an appeal or application for leave to appeal against any sentence for the offence triable either way shall be treated also as an appeal or application in respect of any sentence for the summary offence and an appeal or application for leave to appeal against any sentence for the summary offence shall be treated also as an appeal or application in respect of the offence triable either way.
- (2B) If the appellant or applicant was convicted on indictment of two or more offences triable either way, the references to the offence triable either way in subsection (2A) above are to be construed, in relation to any summary offence of which he was convicted under section 41 of the Criminal Justice Act 1988 following the conviction on indictment, as references to the offence triable either way specified in the notice relating to that summary offence which was given under subsection (2) of that section.]
- (3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—
  - (a) quash any sentence or order which is the subject of the appeal; and
  - (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.
- [<sup>F41</sup>(4) .....
- [<sup>F42</sup>(5) The fact that an appeal is pending against an interim hospital order under [<sup>F43</sup>the Mental Health Act 1983] shall not affect the power of the court below to renew or terminate the order or to deal with the appellant on its termination; and where the Court of Appeal quashes such an order but do not pass any sentence or make any other order in its place the Court may [<sup>F44</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.]
- [<sup>F42</sup>(6) Where the Court of Appeal make an interim hospital order by virtue of subsection (3) of this section—

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- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
- (b) the court below shall be treated for the purposes of [F43 section 38(7) of the said Act of 1983] (absconding offenders) as the court that made the order.]

[F45(7) For the purposes 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.]

#### Textual Amendments

- F36** Words substituted by [Criminal Justice Act 1982 \(c. 48\)](#), [s. 29\(2\)\(a\)\(i\)](#)
- F37** S. 11(1A) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 29\(2\)\(a\)\(ii\)](#)
- F38** Words substituted by [Courts Act 1971 \(c. 23\)](#), [Sch. 8 para. 57\(1\)](#)
- F39** Numeral “(1)” inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), [Sch. 15 para. 23\(1\)](#)
- F40** S. 11(2A)(2B) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), [Sch. 15 para. 23\(2\)](#)
- F41** S. 11(4) repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 32 para. 9](#), [Sch. 37 Pt. 7](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 paras. 42\(6\), 44\(4\)\(c\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1 paras. 48\(s\), 50\(2\)\(d\)](#); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))
- F42** S. 11(5)(6) inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), [Sch. 3 para. 37](#)
- F43** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 23\(d\)](#)
- F44** Words in s. 11(5) inserted (10.4.1995) by [1994 c. 33](#), s. 168(2), [Sch. 10 para. 20](#); [S.I. 1995/721](#), art. 1, [Sch. Appendix A](#)
- F45** S. 11(7) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 319\(3\), 336\(3\)\(4\)](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 25](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1 paras. 48\(s\), 50\(2\)\(d\)](#); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))

#### *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 [F46 against the verdict—

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

#### Textual Amendments

- F46** Words in s. 12 substituted (1.1.1996) by [1995 c. 35](#), [s. 1\(3\)](#); [S.I. 1995/3061](#), [art. 3\(a\)](#) (with [art. 4](#))

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

C6 S. 12 extended (27.7.1999) by 1999 c. 25, s. 2(1)

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

- [<sup>F47</sup>(1) Subject to the provisions of this section, the Court of Appeal—
- (a) shall allow an appeal under section 12 of this Act if they think that the verdict is unsafe; and
  - (b) shall dismiss such an appeal in any other case.]
- (3) Where apart from this subsection—
- (a) an appeal under section 12 of this Act would fall to be allowed; and
  - (b) none of the grounds for allowing it relates to the question of the insanity of the accused,
- the Court of Appeal may dismiss the appeal if they are of opinion that, but for the insanity of the accused, the proper verdict would have been that he was guilty of an offence other than the offence charged.
- (4) Where an appeal under section 12 of this Act is allowed, the following provisions apply:—
- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Appeal are of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court—
    - (i) shall substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and
    - (ii) shall, subject to subsection (5) below, have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if the jury had come to the substituted verdict; and
  - (b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal.
- (5) The Court of Appeal shall not by virtue of subsection (4)(a) above sentence any person to death; but where under that paragraph they substitute a verdict of guilty of an offence for which apart from this subsection they would be required to sentence the appellant to death, their sentence shall (whatever the circumstances) be one of imprisonment for life.
- (6) An order of the Court of Appeal allowing an appeal in accordance with this section shall operate as a direction to the court of trial to amend the record to conform with the order.

**Textual Amendments**

F47 S. 13(1) substituted for s. 13(1)(2) (1.1.1996) by 1995 c. 35, s. 2(3); S.I. 1995/3061, art. 3(a) (with art. 4)

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

C7 S. 13 modified (27.7.1999) by 1999 c. 25, s. 2(2)

*Status: Point in time view as at 15/01/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Appeal Act 1968, Part I. (See end of Document for details)*

**C8** S. 13(1) modified (24.7.2002) by 1999 c. 23, s. 56(5) (with s. 63(2), Sch. 7 paras. 3(3), 5(2)); S.I. 2002/1739, **art. 2**

**[<sup>F48</sup>14 Substitution of findings of unfitness to plead etc.**

(1) This section applies where, on an appeal under section 12 of this Act, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—

- (a) the case is not one where there should have been a verdict of acquittal; but
- (b) there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.

[<sup>F49</sup>(2) The Court of Appeal shall make in respect of the accused—

- (a) a hospital order (with or without a restriction order);
- (b) a supervision order; or
- (c) an order for his absolute discharge.

(3) Where—

- (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
- (b) the court have power to make a hospital order,

the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).

(4) Section 5A of the Criminal Procedure (Insanity) Act 1964 (“the 1964 Act”) applies in relation to this section as it applies in relation to section 5 of that Act.

(5) Where the Court of Appeal make an interim hospital order by virtue of this section—

- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
- (b) the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.

(6) Where the Court of Appeal make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable as if the order had been made by the court below.

(7) In this section—

“hospital order” has the meaning given in section 37 of the Mental Health Act 1983;

“interim hospital order” has the meaning given in section 38 of that Act;

“restriction order” has the meaning given to it by section 41 of that Act;

“supervision order” has the meaning given in Part 1 of Schedule 1A to the 1964 Act.]]

**Textual Amendments**

**F48** Ss. 14, 14A substituted (1.1.1992) for s. 14 by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), **ss. 4(2)**, 8; S.I. 1991/2488, **art. 2**.

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**F49** S. 14(2)-(7) substituted (31.3.2005) for s. 14(2)(3) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 24(3), 60 (with Sch. 12 para. 8); S.I. 2005/579, art. 3(b)

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

**C9** S. 14 modified (27.7.1999) by 1999 c. 25, s. 2(2)

<sup>F50</sup>**14A Substitution of verdict of acquittal.**

.....

**Textual Amendments**

**F50** S. 14A repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 24(4), 60, Sch. 11; S.I. 2005/579, art. 3(i)

*Unfitness to stand trial*

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

(1) Where there has been a determination under section 4 of the <sup>M2</sup>Criminal Procedure (Insanity) Act 1964 of the question of a person's fitness to be tried, and [<sup>F51</sup>there have been][<sup>F52</sup>findings that he is under a disability and that he did the act or made the omission charged against him, the person may appeal to the Court of Appeal against either or both of those findings].

[<sup>F53</sup>(2) An appeal under this section lies only—

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

**Textual Amendments**

**F51** Words in s. 15(1) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 60, Sch. 10 para. 4; S.I. 2005/579, art. 3(g)

**F52** Words in s. 15(1) substituted (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3 para. 2; S.I. 1991/2488, art. 2

**F53** S. 15(2) substituted (1.1.1996) by 1995 c. 35, s. 1(5); S.I. 1995/3061, art. 3(a) (with art. 4)

**Marginal Citations**

**M2** 1964 c. 84.

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

[<sup>F54</sup>(1) The Court of Appeal—

- (a) shall allow an appeal under section 15 of this Act against a finding if they think that the finding is unsafe; and
- (b) shall dismiss such an appeal in any other case.]

<sup>F55</sup>(2) .....

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- <sup>F56</sup>[(3) Where the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant is under a disability—
- (a) the appellant may be tried accordingly for the offence with which he was charged; and
  - (b) the Court may [<sup>F57</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] make such orders as appear to them necessary or expedient pending any such trial for his custody, release on bail or continued detention under the Mental Health Act 1983;
- and Schedule 3 to this Act has effect for applying provisions in Part III of that Act to persons in whose case an order is made by the Court under this subsection.
- (4) Where, otherwise than in a case falling within subsection (3) above, the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).

#### Textual Amendments

- F54** S. 16(1) substituted (1.1.1996) by 1995 c. 35, s. 2(5); S.I. 1995/3061, art. 3(a) (with art. 4)
- F55** S. 16(2) repealed (1.1.1992) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3 para. 3(2), Sch. 4; S.I. 1991/2488, art. 2
- F56** S. 16(3)(4) substituted (1.1.1992) for s. 16(3) by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25, SIF 39:1), ss. 7, 8, Sch. 3 para. 3(3); S.I. 1991/2488, art. 2
- F57** Words in s. 16(3)(b) inserted (10.4.1995) by 1994 c. 33, s. 168(2), Sch. 10 para. 21; S.I. 1995/721, art. 2, Sch. Appendix A

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

- C10** S. 16(1) modified (24.7.2002) by 1999 c. 23, s. 56(5) (with s. 63(2), Sch. 7 paras. 3(3), 5(2)); S.I. 2002/1739, art. 2

<sup>F58</sup>*Appeal against order made in cases of insanity or unfitness to plead*

#### Textual Amendments

- F58** Ss. 16A, 16B and cross-heading inserted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 25, 60; S.I. 2005/579, art. 3(b)

### 16A Right of appeal against hospital order etc.

- (1) A person in whose case the Crown Court—
  - (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
  - (b) makes a supervision order under section 5 of that Act,
 may appeal to the Court of Appeal against the order.
- (2) An appeal under this section lies only—
  - (a) with the leave of the Court of Appeal; or
  - (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

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## **16B Disposal of appeal under s. 16A**

- (1) If on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
  - (a) they may quash any order which is the subject of the appeal; and
  - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- (2) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- (3) Where the Court of Appeal make an interim hospital order by virtue of this section—
  - (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
  - (b) the court below shall be treated for the purposes of section 38(7) of the said Act of 1983 (absconding offenders) as the court that made the order.
- (4) The fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.
- (5) Where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.]

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

F59 17 .....

#### **Textual Amendments**

**F59** S. 17 repealed (31.3.1997) by 1995 c. 35, ss. 3, 29(2), **Sch. 3**; S.I. 1997/402, **art. 3(a)(d)(e)** (with art. 4)

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

## **18 Initiating procedure.**

- (1) A person who wishes to appeal under this Part of this Act to the Court of Appeal, or to obtain the leave of that court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as may be directed by rules of court.
- (2) Notice of appeal, or of application for leave to appeal, shall be given within twenty-eight days from the date of the conviction, verdict or finding appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or,

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in the case of an order made or treated as made on conviction, from the date of the making of the order.

- (3) The time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

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

- C11** S. 18 excluded (1.10.1997 for specified purposes and otherwise *prosp.*) by 1997 c. 43, **ss. 5(2), 57(2)**; S.I. 1997/2200, **art. 2(1)(d)** (with art. 5)  
S. 18 excluded (25.8.2000) by 2000 c. 6, **ss. 112(2), 168(1)**
- C12** S. 18 excluded (4.4.2005) by Criminal Justice Act 2003 (c. 44), **ss. 231(2), 336(3)(4)**; S.I. 2005/950, **art. 2(1), Sch. 1 para. 18** (with Sch. 2)
- C13** S. 18(2) modified by Supreme Court Act 1981 (c. 54, SIF 37), **s. 47(5)**  
S. 18(2) modified (25.8.2000) by 2000 c. 6, **ss. 155(6)(a), 168(1)** (with s. 155(8), Sch. 10 paras. 11, 19)
- C14** S. 18(2) modified (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 15(5)(a), 458(1)**; S.I. 2003/333, **art. 2, Sch.**
- C15** S. 18(2) modified (24.7.2006 for specified purposes) by Criminal Justice Act 2003 (c. 44), **ss. 48(5)(b), 336(3)(4)** (with s. 48(4)); S.I. 2006/1835, **art. 2(f)**
- C16** S. 18(2) modified (8.1.2007) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 19(4)(b)(5), 60** (with **ss. 19(7), 21(2)**); S.I. 2006/3423, **art. 2(a)** (with art. 3)

#### [<sup>F60</sup>18A Appeals in cases of contempt of court.

- (1) A person who wishes to appeal under section 13 of the Administration of Justice Act <sup>M3</sup>1960 from any order or decision of the Crown Court in the exercise of jurisdiction to punish for contempt of court shall give notice of appeal in such manner as may be directed by rules of court.
- (2) Notice of appeal shall be given within twenty-eight days from the date of the order or decision appealed against.
- (3) The time for giving notice under this section may be extended, either before or after its expiry, by the Court of Appeal.]

#### Textual Amendments

- F60** S. 18A inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 25**

#### Marginal Citations

- M3** 1960 c.65 (37, 39:1).

#### [<sup>F61</sup>19 Bail.

- (1) The Court of Appeal may [<sup>F62</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] if they think fit,—
- (a) grant an appellant bail pending the determination of his appeal; or
  - (b) revoke bail granted to an appellant by the Crown Court under paragraph (f) of section 81(1) of the Supreme Court Act 1981 [<sup>F63</sup> or paragraph (a) above]; or



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- (c) vary the conditions of bail granted to an appellant in the exercise of the power conferred by [<sup>F64</sup>either of those paragraphs]
- (2) The powers conferred by subsection (1) above may be exercised—
  - (a) on the application of an appellant; or
  - (b) if it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as “the registrar”) that any of them ought to be exercised, on a reference to the court by him]

#### Textual Amendments

- F61** S. 19 substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 29\(2\)\(6\)](#)
- F62** Words in s. 19(1) inserted (10.4.1995) by [1994 c. 33, s. 168\(2\), Sch. 10 para. 22](#); [S.I. 1995/721, art. 2, Sch. Appendix A](#)
- F63** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 170, Sch. 8 para. 16, Sch. 15 para. 26\(a\)](#)
- F64** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 170, Sch. 8 para. 16, Sch. 15 para. 26\(b\)](#)

#### [<sup>F65</sup>20] Disposal of groundless appeal or application for leave to appeal.

If it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.]

#### Textual Amendments

- F65** S. 20 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 157, Sch. 8 para. 16](#)

#### 21 Preparation of case for hearing.

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

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### *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.
- [<sup>F66</sup>(4) The Court of Appeal may give a live link direction in relation to a hearing at which the appellant is expected to be in custody but is entitled to be present (by virtue of subsection (1) or leave given under subsection (2)) at any time before the beginning of that hearing.
- (5) For this purpose—
  - (a) a “live link direction” is a direction that the appellant (if he is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which he is held; and
  - (b) “live link” means an arrangement by which the appellant is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded).
- (6) The Court of Appeal—
  - (a) must not give a live link direction unless the parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
  - (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a party).]

#### **Textual Amendments**

**F66** S. 22(4)-(6) inserted (15.1.2007) by [Police and Justice Act 2006 \(c. 48\)](#), [ss. 48\(1\), 53\(1\)](#); S.I. [2006/3364](#), [art. 2\(i\)](#)

## 23 Evidence.

- (1) For [<sup>F67</sup>the purposes of an appeal under] this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—
  - (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
  - (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

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- examined before the Court, whether or not he was called in those proceedings; and
- [<sup>F68</sup>(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.]
- [<sup>F69</sup>(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
- (a) whether the evidence appears to the Court to be capable of belief;
  - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
  - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
  - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.]
- (3) Subsection (1)(c) above applies to any [<sup>F70</sup>evidence of a] witness (including the appellant) who is competent but not compellable <sup>F71</sup> . . . .
- (4) For [<sup>F67</sup>the purposes of an appeal under] this Part of this Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) above to be conducted, in manner provided by rules of court, before any judge or officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.
- [<sup>F72</sup>(5) A live link direction under section 22(4) does not apply to the giving of oral evidence by the appellant at any hearing unless that direction, or any subsequent direction of the court, provides expressly for the giving of such evidence through a live link.]

#### Textual Amendments

- F67** Words in s. 23(1)(4) substituted (1.1.1996) by 1995 c. 35, s. 29(1), **Sch. 2 para. 4(3)**; S.I. 1995/3061, **art. 3(d)(h)** (with **art. 4**)
- F68** S. 23(1)(c) substituted (1.1.1996) by 1995 c. 35, s. 4(1)(a); S.I. 1995/3061, **art. 3(a)** (with **art. 4**)
- F69** S. 23(2) substituted (1.1.1996) by 1995 c. 35, s. 4(1)(b); S.I. 1995/3061, **art. 3(a)** (with **art. 4**)
- F70** Words in s. 23(3) inserted (1.1.1996) by 1995 c. 35, s. 4(1)(c); S.I. 1995/3061, **art. 3(a)** (with **art. 4**)
- F71** Words in s. 23(3) repealed (1.1.1996) by 1995 c. 35, s. 29(2), **Sch. 3**; S.I. 1995/3061, **art. 3(d)(i)(i)** (with **art. 4**)
- F72** S. 23(5) inserted (15.1.2007) by **Police and Justice Act 2006 (c. 48), ss. 48(2), 53(1)**; S.I. 2006/3364, **art. 2(i)**

#### [<sup>F73</sup>23A Power to order investigations.

- (1) On an appeal against conviction [<sup>F74</sup>or an application for leave to appeal against conviction,] the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that—
- (a) [<sup>F75</sup>in the case of an appeal,] the matter is relevant to the determination of the [<sup>F76</sup>appeal] and ought, if possible, to be resolved before the [<sup>F76</sup>appeal] is determined;
- [<sup>F77</sup>(aa) in the case of an application for leave to appeal, the matter is relevant to the determination of the application and ought, if possible, to be resolved before the application is determined;]

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Appeal Act 1968, Part I. (See end of Document for details)*

- (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
- (c) the matter cannot be resolved by the Court without an investigation by the Commission.

<sup>F78</sup> [ A direction under subsection (1) above may not be given by a single judge, (1A) notwithstanding that, in the case of an application for leave to appeal, the application may be determined by a single judge as provided for by section 31 of this Act.]

- (2) A direction by the Court of Appeal under subsection (1) above shall be given in writing and shall specify the matter to be investigated.
- (3) Copies of such a direction shall be made available to the appellant and the respondent.
- (4) Where the Commission have reported to the Court of Appeal on any matter which they have been directed under subsection (1) above to investigate, the Court—
  - (a) shall notify the appellant and the respondent that the Commission have reported; and
  - (b) may make available to the appellant and the respondent the report of the Commission and any statements, opinions and reports which accompanied it.

<sup>F79</sup> [ In this section “respondent” includes a person who will be a respondent if leave to (5) appeal is granted.]]

**Textual Amendments**

- F73** S. 23A inserted (31.3.1997) by 1995 c. 35, s. 5(1); S.I. 1997/402, art. 3(a) (with art. 4)
- F74** Words in s. 23A(1) inserted (1.9.2004) by Criminal Justice Act 2003 (c. 44), ss. 313(2), 336(3)(4); S.I. 2004/1629, art. 3(1)(2)(a) (with art. 3(3))
- F75** Words in s. 23A(1)(a) inserted (1.9.2004) by Criminal Justice Act 2003 (c. 44), ss. 313(3)(a), 336(3)(4); S.I. 2004/1629, art. 3(1)(2)(a) (with art. 3(3))
- F76** Words in s. 23A(1)(a) substituted (1.9.2004) by Criminal Justice Act 2003 (c. 44), ss. 313(3)(b), 336(3)(4); S.I. 2004/1629, art. 3(1)(2)(a) (with art. 3(3))
- F77** S. 23A(1)(aa) inserted (1.9.2004) by Criminal Justice Act 2003 (c. 44), ss. 313(4), 336(3)(4); S.I. 2004/1629, art. 3(1)(2)(a) (with art. 3(3))
- F78** S. 23A(1A) inserted (1.9.2004) by Criminal Justice Act 2003 (c. 44), ss. 313(5), 336(3)(4); S.I. 2004/1629, art. 3(1)(2)(a) (with art. 3(3))
- F79** S. 23A(5) inserted (1.9.2004) by Criminal Justice Act 2003 (c. 44), ss. 313(6), 336(3)(4); S.I. 2004/1629, art. 3(1)(2)(a) (with art. 3(3))

24— ..... <sup>F80</sup>  
28.

**Textual Amendments**

- F80** Ss. 24–28, 39–41 repealed by Costs in Criminal Cases Act 1973 (c. 14), Sch. 2

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*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 [<sup>F81</sup>under—
    - (i) section 1 or 11(1A) of this Act; or
    - (ii) section 81(1B) of the Supreme Court Act 1981]; or
  - (c) the case has been referred to them [<sup>F82</sup>under section 9 of the Criminal Appeal Act 1995].
- (3) When an appellant is [<sup>F83</sup>granted] bail under section 19 of this Act, the time during which he is [<sup>F83</sup>released on bail] shall be disregarded in computing the term of any sentence to which he is for the time being subject.
- (4) The term of any sentence passed by the Court of Appeal under section 3, 4, 5, 11 or 13(4) of this Act shall, unless the Court otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

**Textual Amendments**

- F81** S. 29(2)(b)(i)(ii) and word substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, [Sch. 15 para. 27](#)
- F82** Words in s. 29(2)(c) substituted (31.3.1997) by [1995 c. 35, s. 29\(1\)](#), [Sch. 2 para. 4\(4\)](#); [S.I. 1997/402, art. 3\(d\)\(e\)](#) (with [art. 4](#))
- F83** Words substituted by [Bail Act 1976 \(c. 63\)](#), [Sch. 2 para. 41](#)

**[<sup>F84</sup>30 Restitution of property.**

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

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Appeal Act 1968, Part I. (See end of Document for details)*

#### Textual Amendments

**F84** S. 30 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 15 para. 28**

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

**C17** S. 30 extended by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), s. 31(2)

**C18** S. 30 modified (30.10.1994) by [S.I. 1994/2716](#), **reg. 26(2)**

S. 30 modified (25.8.2000) by [2000 c. 6](#), **ss. 148(7)**, 168(1)

### Supplementary

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

[<sup>F85</sup>(1) There may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

(a) the powers of the Court of Appeal under this Part of this Act specified in subsection (2) below;

[<sup>F86</sup>(aa) the power to give leave under section 14(4B) of the Criminal Appeal Act 1995;]

(b) the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976; and

(c) the powers to make orders for the payment of costs under sections 16 to 18 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act.

(2) The powers mentioned in subsection (1)(a) above] are the following:—

(a) to give leave to appeal;

(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;

[<sup>F87</sup>(ca) to give a live link direction under section 22(4);]

(d) to order a witness to attend for examination;

[<sup>F88</sup>(e) to exercise the powers conferred by section 19 of this Act;]

(f) to make orders under section 8(2) of this Act and discharge or vary such orders;

<sup>F89</sup>(g) .....

(h) to give directions under section 29(1) of this Act;

[<sup>F90</sup>(i) to make orders under section 23(1)(a).]

[<sup>F91</sup>(2A) The power of the Court of Appeal to suspend a person's disqualification under [<sup>F92</sup>section 40(2) of the Road Traffic Offenders Act 1988] may be exercised by a single judge in the same manner as it may be exercised by the Court.]

[<sup>F93</sup>(2B) The power of the Court of Appeal to grant leave of appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court]

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[<sup>F94</sup>(2C) The power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge in the same manner as it may be exercised by the Court.]

- (3) If the single judge refuses an application on the part of an appellant to exercise in his favour any of the powers above specified, the appellant shall be entitled to have the application determined by the Court of Appeal.

#### Textual Amendments

- F85** S. 31(1)(2) substituted for s. 31(1)(2) (to and including the word “powers” in s. 31(2)) by **Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, Sch. 15 para. 29**
- F86** S. 31(1)(aa) inserted (4.4.2005) by **Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 36 para. 87; S.I. 2005/950, art. 2(1), Sch. 1 para. 43(c)** (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, **Sch. 28 Pt. 2**; S.I. 2008/1586, Sch. 1 paras. 48(s), **50(2)(d)**); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, **Sch. 14 para. 17**; S.I. 2012/2906, art. 2(I))
- F87** S. 31(2)(ca) inserted (15.1.2007) by **Police and Justice Act 2006 (c. 48), ss. 48(3), 53(1)**; S.I. 2006/3364, art. 2(i)
- F88** S. 31(2)(e) substituted by **Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 29(2)(c)**
- F89** S. 31(2)(g) repealed by **Costs in Criminal Cases Act 1973 (c. 14), Sch. 2**
- F90** S. 31(2)(i) inserted (1.5.2004) by **Courts Act 2003 (c. 39), ss. 87(1), 110(1)**; S.I. 2004/1104, art. 3(b)
- F91** S. 31(2A) inserted by **Road Traffic Act 1974 (c. 50), Sch. 6 para. 10**
- F92** Words substituted by **Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, Sch. 3 para. 4(1)**
- F93** S. 31(2B) inserted by **Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 15 para. 30** (with Sch. 8 para. 16)
- F94** S. 31(2C) inserted (24.11.2005) by **Licensing Act 2003 (c. 17), s. 201(2), Sch. 6 para. 40** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2)

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

- C19** S. 31 restricted (11.1.1995) by **1981 c. 54, s. 9(6A)** (as inserted (11.1.1995) by **1994 c. 33, s. 52(5)**; S.I. 1994/3258, art. 2)

#### [<sup>F95</sup>31A Powers of Court under Part I which are exercisable by registrar.

- (1) The powers of the Court of Appeal under this Part of this Act which are specified in subsection (2) below may be exercised by the registrar.
- (2) The powers mentioned in subsection (1) above are the following—
- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given;
- (b) to order a witness to attend for examination; <sup>F96</sup>...
- (c) to vary the conditions of bail granted to an appellant by the Court of Appeal or the Crown Court;
- [<sup>F97</sup>(d) to make orders under section 23(1)(a).]
- (3) No variation of the conditions of bail granted to an appellant may be made by the registrar unless he is satisfied that the respondent does not object to the variation; but, subject to that, the powers specified in that subsection are to be exercised by

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the registrar in the same manner as by the Court of Appeal and subject to the same provisions.

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

[ In this section “respondent” includes a person who will be a respondent if leave to <sup>F98</sup>(5) appeal is granted.]]

#### Textual Amendments

- F95** S. 31A inserted (1.1.1996) by 1995 c. 35, s. 6; S.I. 1995/3061, art. 3(a) (with art. 4)
- F96** Word in s. 31A(2) repealed (1.5.2004) by Courts Act 2003 (c. 39), ss. 87(2), 110(1), Sch. 10; S.I. 2004/1104, art. 3(b)
- F97** S. 31A(2)(d) inserted (1.5.2004) by Courts Act 2003 (c. 39), ss. 87(2), 110(1); S.I. 2004/1104, art. 3(b)
- F98** S. 31A(5) inserted (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 36 para. 88; S.I. 2005/950, art. 2(1), Sch. 1 para. 43(c) (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))

#### [<sup>F99</sup>31B Procedural directions: powers of single judge and registrar

- (1) The power of the Court of Appeal to determine an application for procedural directions may be exercised by—
- a single judge, or
  - the registrar.
- (2) “Procedural directions” means directions for the efficient and effective preparation of—
- an application for leave to appeal, or
  - an appeal,
- to which this section applies.
- (3) A single judge may give such procedural directions as he thinks fit—
- when acting under subsection (1);
  - on a reference from the registrar;
  - of his own motion, when he is exercising, or considering whether to exercise, any power of his in relation to the application or appeal.
- (4) The registrar may give such procedural directions as he thinks fit—
- when acting under subsection (1);
  - of his own motion.
- (5) This section applies to an appeal, and an application to the Court of Appeal for leave to appeal, under—
- this Part,
  - section 9 of the Criminal Justice Act 1987, or
  - section 35 of the Criminal Procedure and Investigations Act 1996.



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#### Textual Amendments

**F99** Ss. 31B, 31C inserted (1.5.2004) by [Courts Act 2003 \(c. 39\)](#), **ss. 87(3)(4)**, 110(1); S.I. 2004/1104, art. 3(b)

### 31C Appeals against procedural directions

- (1) Subsection (2) applies if a single judge gives, or refuses to give, procedural directions.
- (2) The Court of Appeal may, on an application to it under subsection (5)—
  - (a) confirm, set aside or vary any procedural directions given by the single judge, and
  - (b) give such procedural directions as it thinks fit.
- (3) Subsection (4) applies if the registrar gives, or refuses to give, procedural directions.
- (4) A single judge may, on an application to him under subsection (5)—
  - (a) confirm, set aside or vary any procedural directions given by the registrar, and
  - (b) give such procedural directions as he thinks fit.
- (5) An application under this subsection may be made by—
  - (a) an appellant;
  - (b) a respondent, if the directions—
    - (i) relate to an application for leave to appeal and appear to need the respondent’s assistance to give effect to them,
    - (ii) relate to an application for leave to appeal which is to be determined by the Court of Appeal, or
    - (iii) relate to an appeal.
- (6) In this section—

“appellant” includes a person who has given notice of application for leave to appeal under any of the provisions mentioned in section 31B(5);

“respondent” includes a person who will be a respondent if leave to appeal is granted.]

#### Textual Amendments

**F99** Ss. 31B, 31C inserted (1.5.2004) by [Courts Act 2003 \(c. 39\)](#), **ss. 87(3)(4)**, 110(1); S.I. 2004/1104, art. 3(b)

### 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

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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.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Appeal Act 1968, Part I.