



# Criminal Appeal Act 1968

## 1968 CHAPTER 19

### PART II

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

##### *Matters preliminary to hearing*

#### 36 Bail on appeal by defendant.

The Court of Appeal may<sup>[F1]</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] if it seems fit, on the application of a person appealing or applying for leave to appeal to the <sup>[F2]</sup>Supreme Court], <sup>[F3]</sup>other than a person appealing or applying for leave to appeal from a decision on an appeal under <sup>[F4]</sup>Part 9 of the Criminal Justice Act 2003 or] section 9(11) of the Criminal Justice Act 1987 <sup>[F5]</sup>or section 35 of the Criminal Procedure and Investigations Act 1996] (appeals against orders or rulings at preparatory hearings),]<sup>[F6]</sup>or section 47 of the Criminal Justice Act 2003 <sup>[F7]</sup>grant him] bail pending the determination of his appeal.

#### Textual Amendments

- F1** Words in s. 36 inserted (10.4.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 23**; S.I. 1995/721, art. 2, **Sch.**
- F2** Words in s. 36 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 16(6)**; S.I. 2009/1604, art. 2(d)
- F3** Words inserted by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, **Sch. 2 para. 4**
- F4** Words in s. 36 inserted (4.4.2005) by Criminal Justice Act 2003 (c. 44), **ss. 68(2)**, 336(3)(4); S.I. 2005/950, art. 2(1), **Sch. 1 para. 4** (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))
- F5** Words in s. 36 inserted (4.7.1996 but with effect on 15.4.1997 as mentioned in s. 28) by 1996 c. 25, **ss. 28**, 36 (with s. 78(1)); S.I. 1997/1019, **art. 4**

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- F6** Words in s. 36 inserted (24.7.2006) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 47(7), 336(3), (4)** (with s. 48(4)); [S.I. 2006/1835](#), art. 2(e)
- F7** Words substituted by [Bail Act 1976 \(c. 63\)](#), **Sch. 2 para. 43**

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

- (1) The following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the [<sup>F8</sup>Supreme Court], 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 [<sup>F9</sup>shall make—
  - (a) 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 the appeal is pending, or
  - (b) an order that he be released without bail.]
- [<sup>F10</sup>(2A) The Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.]
- (3) An order under [<sup>F11</sup>subsection (2)(a)] 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 [<sup>F12</sup>subsection (2)(a)] in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—
  - (a) an order or direction under [<sup>F13</sup>Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act)] (admission to hospital of persons convicted by criminal courts); or
  - [<sup>F14</sup>(b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc),]

the order under [<sup>F12</sup>subsection (2)(a)] 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 [<sup>F13</sup>the Mental Health Act 1983] with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- [<sup>F15</sup>(4A) Where an order is made under [<sup>F16</sup>subsection (2)(a)] in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under [<sup>F17</sup>section 36 of the Mental Health Act 1983] or an interim hospital order under [<sup>F17</sup>section 38] of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—
  - (a) subsection (3) of this section shall not apply to the order;
  - (b) [<sup>F17</sup>Part III of the said Act of 1983] shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the House of Lords is pending and were detained in pursuance of a transfer direction together with a restriction direction; and

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- (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.]

[<sup>F18</sup>(5) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—

- (a) the Court of Appeal have made an order under subsection (2)(b), or  
(b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).]

#### Textual Amendments

- F8** Words in s. 37 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 16\(6\)](#); S.I. 2009/1604, art. 2(d)  
**F9** Words in s. 37(2) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 8 para. 13\(2\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 26 (with Sch. 2 paras. 714)  
**F10** S. 37(2A) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 8 para. 13\(3\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 26 (with Sch. 2 paras. 714)  
**F11** Words in s. 37(3) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 8 para. 13\(4\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 26 (with Sch. 2 paras. 714)  
**F12** Words in s. 37(4) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 8 para. 13\(5\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 26 (with Sch. 2 paras. 714)  
**F13** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\), Sch. 4 para. 23\(g\)](#)  
**F14** S. 37(4)(b) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 10 para. 5](#) (with Sch. 12 para. 8); S.I. 2005/579, art. 3(g)  
**F15** S. 37(4A) inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\), Sch. 3 para. 39\(a\)](#)  
**F16** Words in s. 37(4A) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 8 para. 13\(6\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 26 (with Sch. 2 paras. 714)  
**F17** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\), Sch. 4 para. 23\(h\)](#)  
**F18** S. 37(5) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 8 para. 13\(7\)](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 26 (with Sch. 2 paras. 714)

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

- C1** S. 37 modified (14.7.2008) by [The Criminal Justice and Immigration Act 2008 \(Transitory Provisions\) Order 2008 \(S.I. 2008/1587\), arts. 1\(1\), 5](#)

#### [<sup>F19</sup>37A Continuation of community treatment order 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 Supreme Court, 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 recall, the Court of Appeal may make an order under this section.
- (3) For the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.

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- (4) An order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as an appeal to the Supreme Court is pending.
- (5) Where an order is made under this section the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- (6) 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, but for the decision of the Court of Appeal, have been—
  - (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- (7) 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 discharged, by virtue of subsection (5) or (6) 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 Supreme Court on the appeal.]

#### Textual Amendments

- F19** S. 37A inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), s. 56(1), [Sch. 4 para. 2\(3\)](#); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3Sch.](#))

### 38 Presence of defendant at hearing.

A defendant who [<sup>F20</sup>has been convicted of an offence, or in whose case an order under section 77 of the Criminal Justice Act 2003 or a declaration under section 77(4) of that Act has been made, and who] is detained pending an appeal to the [<sup>F21</sup>Supreme Court] 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 [<sup>F21</sup>Supreme Court] authorises him to be present, or where the [<sup>F21</sup>Supreme Court] or the Court of Appeal, as the case may be, give him leave to be present.

#### Textual Amendments

- F20** Words in s. 38 substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 81\(5\)](#), 336(3)(4); [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 5](#) (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))
- F21** Words in s. 38 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 9 para. 16\(7\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)

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**Textual Amendments**

**F22** Ss. 24–28, 39–41 repealed by Costs in [Criminal Cases Act 1973 \(c. 14\)](#), [Sch. 2](#)

**Changes to legislation:**

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