



Criminal Appeal Act 1968

1968 CHAPTER 19

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—
 - (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.

Status: This is the original version (as it was originally enacted).

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.