Criminal Justice Act 2003

2003 CHAPTER 44

PART 9

PROSECUTION APPEALS

General right of appeal in respect of rulings

61   Determination of appeal by Court of Appeal

(1) On an appeal under section 58, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) Subsections (3) to (5) apply where the appeal relates to a single ruling.

(3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

(a)   order that proceedings for that offence may be resumed in the Crown Court,

(b)   order that a fresh trial may take place in the Crown Court for that offence,

(c)   order that the defendant in relation to that offence be acquitted of that offence.

[**F1**(5) But the Court of Appeal may not make an order under subsection (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under subsection (4)(a) or (b).]

(6) Subsections (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.

(7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in subsection (4)(a) to (c) (but subject to subsection (5)).

Textual Amendments

F1   S. 61(5) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 44**, 153 (with Sch. 27 para. 16); S.I. 2008/1586, **art. 2(1)**, Sch. 1 para. 23

Commencement Information

I1   S. 61 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

Changes to legislation:
Criminal Justice Act 2003, Section 61 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

– specified provision(s) amendment to earlier commencing SI 2012/2574, Sch. by S.I. 2012/2761 art. 2

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 150(aa) inserted by 2012 c. 10 Sch. 26 para. 19(2) (This amendment not applied to legislation.gov.uk. Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
– s. 150(ba) inserted by 2012 c. 10 Sch. 26 para. 19(3) (This amendment not applied to legislation.gov.uk. Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
– s. 151(A1) inserted by 2008 c. 4 s. 11(3)
– s. 151(1A) inserted by 2008 c. 4 s. 11(5)
– s. 151(1A)(b) word substituted by 2008 c. 4 Sch. 4 para. 76(3) (This amendment not applied to legislation.gov.uk. S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
– s. 151(1A)(c) substituted by 2009 c. 25 Sch. 17 para. 8(3) (This amendment not applied to legislation.gov.uk. S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
– s. 151(2A)(b) substituted by 2009 c. 25 Sch. 17 para. 8(4)
– s. 151(4A) inserted by 2009 c. 25 Sch. 17 para. 8(5)
– s. 151(8)(a) words substituted by 2009 c. 25 Sch. 17 para. 8(6)(a)
– s. 151(8)(b) words inserted by 2009 c. 25 Sch. 17 para. 8(6)(b)(i)
– s. 151(8)(b) words substituted by 2009 c. 25 Sch. 17 para. 8(6)(b)(ii)
– s. 151(8)(c)-(f) inserted by 2009 c. 25 Sch. 17 para. 8(6)(c)
– s. 165(5) inserted by 2014 c. 12 s. 179(3)
– s. 237(1A) inserted by 2006 c. 48 s. 34(3)
– s. 237(1B)(f)(g) inserted by 2021 c. 11 Sch. 13 para. 40(b)
– s. 239A inserted by 2015 c. 2 s. 8(1)
– s. 239A cross-heading inserted by 2015 c. 2 Sch. 3 para. 5
– s. 250(5C) inserted by 2015 c. 2 Sch. 3 para. 7(4)
– s. 255A(4A) inserted by 2015 c. 2 s. 9(2)
– s. 255B(3A) inserted by 2015 c. 2 s. 9(3)(b)
– s. 255B(4A)-(4C) inserted by 2015 c. 2 s. 9(3)(d)
– s. 255C(3A) inserted by 2015 c. 2 s. 9(4)(b)
– s. 255C(4A)-(4C) inserted by 2015 c. 2 s. 9(4)(d)
– s. 256A(1)-(1B) substituted for s. 256A(1) by 2015 c. 2 s. 9(6)(a)
– s. 256A(4A)(4B) inserted by 2015 c. 2 s. 9(6)(f)
– s. 256A(5)(6) substituted for s. 256A(5) by 2015 c. 2 s. 9(6)(g)
– s. 256AZA inserted by 2015 c. 2 s. 10(1)
– s. 257(3) inserted by 2006 c. 48 s. 34(4)
– s. 258(1A) inserted by 2006 c. 48 s. 34(5)
– s. 260(4)(aa) substituted for word by 2008 c. 4 s. 34(7)(b) (This amendment not applied to legislation.gov.uk. S. 34(2)(4)(b)(7)(10) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(b); S.I. 2012/2906, art. 2(d))

– Sch. 15B para. 49A omitted by S.I. 2019/780 reg. 26(4)(c) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
– Sch. 15B para. 49B omitted by S.I. 2019/780 reg. 26(4)(d) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
– Sch. 20B para. 34(6)(7) substituted for Sch. 20B para. 34(6) by 2015 c. 2 Sch. 3 para. 10