



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 3

#### APPEALS

##### *Appeals by defendant*

#### **42 Power to dismiss certain appeals following references by the CCRC: England and Wales**

After section 16B of the Criminal Appeal Act 1968 (c. 19) insert—

*“Appeals following references by the CCRC*

##### **16C Power to dismiss certain appeals following references by the CCRC**

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 9(1)(a), (5) or (6) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.
- (2) Notwithstanding anything in section 2, 13 or 16 of this Act, the Court of Appeal may dismiss the appeal if—
  - (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
  - (b) the condition in subsection (3) is met.
- (3) The condition in this subsection is that if—
  - (a) the reference had not been made, but

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- (b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,  
the Court would not think it appropriate to grant the application by exercising the power conferred by section 18(3).”

**Commencement Information**

**II** S. 42 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 21

**43 Power to dismiss certain appeals following references by the CCRC: Northern Ireland**

After section 13A of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) insert—

*“Appeals following references by the CCRC*

**13B Power to dismiss certain appeals following references by the CCRC**

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 10(1)(a), (6) or (7) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.
- (2) Notwithstanding anything in section 2, 12 or 13A of this Act, the Court of Appeal may dismiss the appeal if—
- (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
- (b) the condition in subsection (3) is met.
- (3) The condition in this subsection is that if—
- (a) the reference had not been made, but
- (b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,  
the Court would not think it appropriate to grant the application by exercising the power conferred by section 16(2).”

**Commencement Information**

**I2** S. 43 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 22

*Appeals by prosecution*

**44 Determination of prosecution appeals: England and Wales**

In section 61 of the Criminal Justice Act 2003 (c. 44) (determination of prosecution appeal by Court of Appeal) for subsection (5) substitute—

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“(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).”

**Commencement Information**

**I3** S. 44 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 23

**45 Determination of prosecution appeals: Northern Ireland**

In Article 20 of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I.9)) (determination of prosecution appeal by Court of Appeal) for paragraph (5) substitute—

“(5) But the Court of Appeal may not make an order under paragraph (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 paragraph (4)(a) or (b).”

**Commencement Information**

**I4** S. 45 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 24

*Miscellaneous*

**46 Review of sentence on reference by Attorney General**

(1) Section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) is amended as follows.

[<sup>F1</sup>(2) In subsection (3A) (as amended by paragraph 89(3) of Schedule 24 to the Sentencing Act 2020) omit “in respect of an offence the sentence for which is fixed by law”]

(3) In subsection (9) after paragraph (b) insert “, and  
(c) the reference in subsection (3A) to an order specified in subsection (3B) shall be construed as a reference to an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001.”

**Textual Amendments**

**F1** S. 46(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 24 para. 267 (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

**Commencement Information**

**I5** S. 46(1)(3) in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 25

**47 Further amendments relating to appeals in criminal cases**

Schedule 8 amends the Criminal Appeal Act 1968 (c. 19), the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) and other Acts relating to appeals in criminal cases.

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#### **Commencement Information**

**I6** S. 47 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), **Sch. 1 para. 26**

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**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):

- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)