



Administration of Justice Act 1960

1960 CHAPTER 65

Appeal to House of Lords in Criminal Cases

1 Right of appeal

- (1) Subject to the provisions of this section, an appeal shall lie to the House of Lords, at the instance of the defendant or the prosecutor.—
 - (a) from any decision of a Divisional Court of the Queen's Bench Division in a criminal cause or matter;
 - (b) from any decision of the Court of Criminal Appeal on an appeal to that court.
- (2) No appeal shall lie under this section except with the leave of the court below or of the House of Lords; and such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the House of Lords, as the case may be, that the point is one which ought to be considered by that House.
- (3) Section five of the Appellate Jurisdiction Act, 1876 (which regulates the composition of the House of Lords for the hearing and determination of appeals) shall apply to the hearing and determination of an appeal or application for leave to appeal under this section as it applies to the hearing and determination of an appeal under that Act; and any order of that House which provides for the hearing of such applications by a committee constituted in accordance with the said section five may direct that the decision of that committee shall be taken on behalf of the House.
- (4) For the purpose of disposing of an appeal under this section the House of Lords may exercise any powers of the court below or may remit the case to that court.
- (5) In this Act, unless the context otherwise requires, "leave to appeal" means leave to appeal to the House of Lords under this section.

2 Application for leave to appeal

- (1) Subject to the provisions of this section, an application to the court below for leave to appeal shall be made within the period of fourteen days beginning with the date

of the decision of that court; and an application to the House of Lords for such leave shall be made within the period of fourteen days beginning with the date on which the application is refused by the court below.

- (2) In the case of an appeal by a protected prisoner of war or protected internee within the meaning of the Geneva Conventions Act, 1957, the periods specified in subsection (1) of this section shall be extended until fourteen days after the date on which the applicant receives notice, given as mentioned in paragraph (a) or paragraph (b) of subsection (1) of section four of that Act, that the protecting power has been notified of the decision of the court below, or of the refusal by that court of the application, as the case may be.
- (3) Except in a case involving sentence of death, the House of Lords or the court below may, upon application made at any time by the defendant, extend the time within which an application may be made by him to that House or that court under subsection (1) of this section.

3 Special provisions as to capital cases

- (1) Any application for leave to appeal in a case involving sentence of death, and any appeal for which leave is granted on such an application, shall be heard and determined with as much expedition as practicable.
- (2) Where an appeal to the Court of Criminal Appeal is dismissed in a case involving sentence of death, the sentence shall not in any case be executed until after the expiration of the time within which an application for leave to appeal may be made; and if such an application is duly made, the sentence shall not be executed while that application, and any appeal for which leave is granted thereon, is pending.

4 Admission of appellant to bail

- (1) The power of the Court of Criminal Appeal under section fourteen of the Criminal Appeal Act, 1907, to grant bail pending an appeal to that court shall include power to grant bail to an appellant pending an appeal from that court under section one of this Act.
- (2) The power of the High Court under any enactment or rule of law to grant bail in connection with proceedings pending before a Divisional Court shall include power to grant bail to an appellant pending an appeal under section one of this Act in such proceedings; and in relation to any recognizance to be entered into under section thirty-seven of the Criminal Justice Act, 1948, as applied by this subsection, any reference in that section to the judgment of the High Court shall be construed as a reference to the judgment of the House of Lords or, if the case is remitted by that House to the court below, to the judgment of that court on the case as so remitted.
- (3) Where application is made to a Divisional Court for leave to appeal, that court may give such directions as it thinks fit for discharging or enlarging any recognizances entered into by the applicant or any surety, under any enactment or otherwise, with reference to the proceedings of that court.

5 Power to order detention or admission to bail of defendant

- (1) Where the defendant in any proceedings from which an appeal lies under section one of this Act would, but for the decision of the court below, be liable to be detained,

and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order providing for -the detention of the defendant, or directing that he shall not be released except on bail, so long as any appeal under section one of this Act is pending.

- (2) Bail may be granted under this section by the court below subject to the like conditions and other incidents and subject to the like power of variation and revocation (if any) by that court as in the case of bail granted to a person appealing under section one of this Act from a decision of that court.
- (3) An order under subsection (1) of 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 have been liable to be detained but for the decision of the court below.
- (4) Any order made under the said subsection (1) for the detention of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an order or direction under Part V of the Mental Health Act, 1959, shall be an order authorising his continued detention in pursuance of the order or direction under the said Part V, and the provisions of the said Act with respect to persons so liable (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- (5) Where the court below has power to make an order under subsection (1) of this section, and either no such order is made or the defendant is released or discharged by virtue of subsection (3) or subsection (4) 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 House of Lords on the appeal.

6 Computation of sentence where bail granted

- (1) Where a person subject to a sentence is admitted to bail pending an appeal under section one of this Act, the time during which he is at large after being so admitted shall be disregarded in computing the term of his sentence.
- (2) In relation to a person sentenced to borstal training, the reference in subsection (1) of this section to the term of his sentence shall be construed as a reference to the period during which, under section forty-five of the Prison Act, 1952, he may be detained in a borstal institution; and nothing in that subsection shall be construed as affecting the period during which a person so sentenced is liable to supervision under the said section forty-five.
- (3) Subject to the foregoing provisions of this section, any sentence passed on an appeal under section one of this Act in substitution for another sentence shall, unless the House of Lords or the court below otherwise directs, begin to run from the time when that other sentence would have begun to run.

7 Restitution and reversion of property

- (1) Where the operation of an order for the restitution of property made on conviction on indictment is suspended until the determination of an appeal to the Court of Criminal Appeal, then, if the conviction is not quashed on that appeal, the operation of the order shall continue to be suspended—

- (a) in any case, until the expiration of the time within which an application for leave to appeal may be made (disregarding any extension of time which may be granted under section two of this Act); and
 - (b) if any such application is made within that time, so long as the appeal under section one of this Act is pending.
- (2) Where the operation of any such order as aforesaid is suspended under this section—
- (a) the order shall not take effect if the conviction is quashed on appeal to the House of Lords ;
 - (b) such steps shall be taken for the safe custody of the property in question during the period during which the operation of the order is suspended as may be prescribed by rules under section eighteen of the Criminal Appeal Act, 1907.
- (3) Where by reason of the quashing by the Court of Criminal Appeal of a person's conviction any such order does not take effect and on an appeal under this Act the conviction is restored by the House of Lords, that House may make any order for the restitution of property which could be made on his conviction by the court which convicted him.
- (4) This section applies in relation to subsection (1) of section twenty-four of the Sale of Goods Act, 1893 (which provides that the property in stolen goods is to revert in the owner on the conviction of the thief) as it applies in relation to an order for the restitution of property; and without prejudice to the powers of the House of Lords under subsection (3) of this section, the said section twenty-four shall apply in any case where a conviction on indictment is restored by that House as it applies on the conviction of an offender.

8 Legal aid and costs on appeal from Court of Criminal Appeal

- (1) Section ten of the Criminal Appeal Act, 1907 (which enables the Court of Criminal Appeal to grant legal aid to an appellant under that Act), and subsection (3) of section three of the Costs in Criminal Cases Act, 1952, so far as it relates to the payment out of local funds of the fees of counsel and the expenses and fees of any solicitor assigned to an appellant under the said section ten, shall have effect as if references to an appeal and an appellant included references to an appeal under section one of this Act and to the defendant (whether appellant or respondent in the appeal).
- (2) In relation to any expenses or fees payable out of local funds by virtue of the foregoing subsection, subsection (3) of section three of the Costs in Criminal Cases Act, 1952, shall have effect as if for the words " up to an amount allowed by the Court " there were substituted the words " up to an amount allowed by the House of Lords or by such officer or officers of that House as may be prescribed by order of that House ".
- (3) Where the Court of Criminal Appeal or the House of Lords dismisses an application for leave to appeal from that court, that court or that House may, if it thinks fit.—
- (a) where the application was made by the prosecutor, order the payment out of local funds of such sums as appear to it reasonably sufficient to compensate the defendant for any expenses properly incurred by him in resisting the application;
 - (b) where the application was made by the defendant, order him to pay the whole or any part of the costs of the application.
- (4) Except as provided by this section and section four of the Costs in Criminal Cases Act, 1952 (which empowers the House of Lords to award costs to a defendant who

is successful on an appeal to that House), no costs shall be allowed on the hearing or determination of an appeal under section one of this Act from the Court of Criminal Appeal or of any proceedings preliminary or incidental to such an appeal.

- (5) Subsection (3) of this section shall be construed as one with the Costs in Criminal Cases Act, 1952.

9 Procedure

- (1) Section eighteen of the Criminal Appeal Act, 1907 (which provides for the making of rules of court for the purposes of that Act) shall have effect as if references to that Act included references to the foregoing provisions of this Act so far as they relate to the Court of Criminal Appeal.
- (2) Subsection (4) of section thirty-seven of the Criminal Justice Act, 1948 (which enables rules of court to be made with respect to the security given for the purposes of that section and the recommitment of persons admitted to bail thereunder) shall have effect as if references to that section included references to sections four and five of this Act so far as they relate to a Divisional Court.
- (3) A defendant who is detained pending an appeal under section one of this Act 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 House of Lords or rules of court, as the case may be, authorise him to be present or where that House or the court below, as the case may be, gives him leave to be present.
- (4) The following powers of the Court of Criminal Appeal under this Act may be exercised by any judge of that court, that is to say the power—
- (a) to extend under section two of this Act the time for making an application for leave to appeal;
 - (b) to make an order for or in relation to bail under this Act;
 - (c) to grant free legal aid under section eight of this Act; or
 - (d) to give leave under subsection (3) of this section to be present at the hearing of any proceedings preliminary or incidental to an appeal;
- but where the judge refuses an application to exercise any such power, the applicant shall be entitled to have the application determined by the court.

10 Appeals from Courts-Martial Appeal Court

The foregoing provisions of this Act shall apply in relation to the Courts-Martial Appeal Court as they apply in relation to the Court of Criminal Appeal subject to the modifications set out in the First Schedule to this Act, and shall so apply whether the court is sitting within or outside the United Kingdom.

Contempt of court, habeas corpus and certiorari

11 Innocent publication and distribution

- (1) A person shall not be guilty of contempt of court on the ground that he has published any matter calculated to interfere with the course of justice in connection with any proceedings pending or imminent at the time of publication if at that time (having taken

all reasonable care) he did not know and had no reason to suspect that the proceedings were pending, or that such proceedings were imminent, as the case may be.

- (2) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing such matter as is mentioned in subsection (1) of this section if at the time of distribution (having taken all reasonable care) he did not know that it contained any such matter as aforesaid and had no reason to suspect that it was likely to do so.
- (3) The proof of any fact tending to establish a defence afforded by this section to any person in proceedings for contempt of court shall lie upon that person.

12 Publication of information relating to proceedings in private

- (1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—
 - (a) where the proceedings relate to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
 - (b) where the proceedings are brought under Part VIII of the Mental Health Act, 1959, or under any provision of that Act authorising an application or reference to be made to a Mental Health Review Tribunal or to a county court;
 - (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
 - (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
 - (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.
- (2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.
- (3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
- (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

13 Appeal in cases of contempt of court

- (1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or -decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.

- (2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
- (a) from an order or decision of any inferior court not referred to in the next following paragraph, to a Divisional Court of the High Court;
 - (b) from an order or decision of a county court or any other inferior court from which appeals generally lie to the Court of Appeal, and from an order or decision of the Chancery Court of a County Palatine, of a single judge of the High Court, or of any court having the powers of the High Court or of a judge of that court, to the Court of Appeal;
 - (c) from an order or decision of a Divisional Court or the Court of Appeal (including a decision of either of those courts on an appeal under this section), and from an order or decision of the Court of Criminal Appeal or the Courts-Martial Appeal Court, to the House of Lords.
- (3) The court to which an appeal is brought under this section may reverse or vary the order or decision of the court below, and make such other order as may be just; and without prejudice to the inherent powers of any court referred to in subsection (2) of this section, provision may be made by rules of court for authorising the release on bail of an appellant under this section.
- (4) Subsections (2) to (4) of section one and section two of this Act shall apply to an appeal to the House of Lords under this section as they apply to an appeal to that House under the said section one, except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section.
- (5) In this section " court" includes any tribunal or person having power to punish for contempt; and references in this section to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references—
- (a) to an order or decision of the High Court or a county court under any enactment enabling that court to deal with an offence as if it were contempt of court;
 - (b) to an order or decision of a county court, or of any court having the powers of a county court, under section thirty, section one hundred and twenty-seven or section one hundred and fifty-seven of the County Courts Act, 1959;
 - (c) to an order or decision of a magistrates' court under subsection (3) of section fifty-four of the Magistrates' Courts Act, 1952,
- but do not include references to orders under section five of the Debtors Act, 1869, or under any provision of the Magistrates' Courts Act, 1952, or the County Courts Act, 1959, except those referred to in paragraphs (b) and (c) of this subsection and except sections seventy-four and one hundred and ninety-five of the last mentioned Act so far as those sections confer jurisdiction in respect of contempt of court.
- (6) This section does not apply to a conviction or sentence in respect of which an appeal lies under the Criminal Appeal Act, 1907, or to a decision of the Court of Criminal Appeal under that Act; and for the purposes of that Act and of this subsection an order for the punishment of any person for contempt of court in proceedings in which he has a right of appeal against his sentence shall be treated as part of that sentence.

14 Procedure on application for habeas corpus

- (1) On a criminal application for habeas corpus an order for the release of the person restrained shall be refused only by a Divisional Court of the Queen's Bench Division, whether the application is made in the first instance to such a court or to a single judge in accordance with rules of court.
- (2) Notwithstanding anything in any enactment or rule of law, where a criminal or civil application for habeas corpus has been made by or in respect of any person, no such application shall again be made by or in respect of that person on the same grounds, whether to the same court or judge or to any other court or judge, unless fresh evidence is adduced in support of the application; and no such application shall in any case be made to the Lord Chancellor.
- (3) In every case where the person by or in respect of whom an application for habeas corpus is made is restrained as a person liable, or treated by virtue of any enactment as liable, to be detained in pursuance of an order or direction under Part V of the Mental Health Act, 1959 (otherwise than by virtue of paragraph (e) or paragraph (f) of subsection (2) of section seventy-three of that Act), the application shall be deemed for the purposes of this section and of any appeal in the proceedings to constitute a criminal cause or matter.

15 Appeal in habeas corpus proceedings

- (1) Subject to the provisions of this section, an appeal shall lie, in any proceedings upon application for habeas corpus, whether civil or criminal, against an order for the release of the person restrained as well as against the refusal of such an order.
- (2) No appeal shall lie by virtue of this section from an order made by a single judge on a criminal application for habeas corpus.
- (3) In relation to a decision of a Divisional Court on a criminal application for habeas corpus, section one of this Act shall have effect as if so much of subsection (2) as restricts the grant of leave to appeal were omitted.
- (4) Except as provided by section five of this Act in the case of an appeal against an order of a Divisional Court on a criminal application, an appeal brought by virtue of this section shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal and (unless an order under subsection (1) of that section is in force at the determination of the appeal) to remain at large regardless of the decision on appeal.

16 Power of High Court to vary sentence on certiorari

- (1) Where a person who has been sentenced for an offence by a magistrates' court or, on appeal against conviction or sentence, by quarter sessions applies to the High Court for an order of certiorari to remove the proceedings of the magistrates' court or the court of quarter sessions into the High Court, and the High Court determines that the magistrates' court or court of quarter sessions had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrates' court had power to impose.
- (2) Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed in the proceedings of the magistrates' court or quarter sessions shall, unless the High Court otherwise directs, begin to run from the time when it would

have begun to run if passed in those proceedings; but in computing the term of the sentence any time during which the offender was at large after being admitted to bail in pursuance of paragraph (d) of subsection (1) of section thirty-seven of the Criminal Justice Act, 1948, shall be disregarded.

- (3) The foregoing provisions of this section shall apply, with the necessary modifications, in relation to any order of a magistrates' court or court of quarter sessions which is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.

Supplementary

17 Interpretation

- (1) In this Act any reference to the defendant shall be construed—
- (a) in relation to proceedings for an offence, and in relation to an application for an order of mandamus, prohibition or certiorari in connection with such proceedings, as a reference to the person who was or would have been the defendant in those proceedings;
 - (b) in relation to any proceedings or order for or in respect of contempt of court, as a reference to the person against whom the proceedings were brought or the order was made;
 - (c) in relation to a criminal application for habeas corpus, as a reference to the person by or in respect of whom that application was made,
- and any reference to the prosecutor shall be construed accordingly.
- (2) In this Act " application for habeas corpus" means an application for a writ of habeas corpus ad subjiciendum and references to a criminal application or civil application shall be construed according as the application does or does not constitute a criminal cause or matter.
- (3) In this Act any reference to the court below shall, in relation to any function of a Divisional Court, be construed as a reference to the Divisional Court or to a judge according as the function is by virtue of rules of court exercisable by the Divisional Court or a judge.
- (4) An appeal under section one of this Act shall be treated for the purposes of this Act as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this Act an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.
- (5) In this Act references to an appeal to the Court of Criminal Appeal shall be construed as including references to proceedings under the Crown Cases Act, 1848.
- (6) Any reference in this Act to any other enactment is a reference thereto as amended by or under any other enactment, including this Act.

18 Provisions as to Northern Ireland

- (1) No limitation or restriction imposed by the Government of Ireland Act, 1920, on the power of the Parliament of Northern Ireland to make laws shall preclude that Parliament :from enacting provisions—

- (a) conferring any jurisdiction or power on the Court of Criminal Appeal in Northern Ireland or any judge or officer of that court;
- (b) conferring on the rule-making authority power to make rules of court regulating the procedure and practice of that court;

and subsection (3) of section twenty-one of the Criminal Appeal (Northern Ireland) Act, 1930 (which, in effect, enables that Parliament to amend or repeal that Act so far as it relates to matters within the powers of that Parliament) shall have effect accordingly.

- (2) For the purposes of section six of the Government of Ireland Act, 1920, this Act shall, so far as it relates to matters within the powers of the Parliament of Northern Ireland, be deemed to be an Act passed before the appointed day within the meaning of that section.
- (3) An appeal shall lie to the House of Lords from any decision of the Court of Appeal in Northern Ireland in proceedings begun by a civil application for habeas corpus in like manner and subject to the like conditions (including requirements as to leave to appeal) as an appeal from a decision of the Court of Appeal in England in such proceedings.
- (4) This Act shall, in its application to Northern Ireland, have effect subject to the modifications set out in the Second Schedule to this Act; but this subsection shall not affect the operation of section ten of this Act in relation to proceedings of the Courts-Martial Appeal Court sitting in Northern Ireland.

19 Minor and consequential amendments and repeals

- (1) The enactments described in the Third Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule, being minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments described in the- Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The repeals effected by subsection (2) of this section in section four of the Geneva Conventions Act, 1957, shall not affect the power of Her Majesty under subsection (2) of section eight of that Act to extend the provisions of that Act outside the United Kingdom.

20 Short title and extent

- (1) This Act may be cited as the Administration of Justice Act, 1960.
- (2) Except so far as it relates to appeals from the Courts-Martial Appeal Court and to proceedings preliminary or incidental to such appeals, this Act shall not extend to Scotland.