



# Criminal Appeal Act 1968

## 1968 CHAPTER 19

### PART I

#### APPEAL TO COURT OF APPEAL IN CRIMINAL CASES

##### *Appeal against conviction on indictment*

### 1 Right of appeal.

(1) [<sup>F1</sup>Subject to subsection (3) below] a person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.

[<sup>F2</sup>(2) An appeal under this section lies only—

- (a) with the leave of the Court of Appeal; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.]

[<sup>F3</sup>(3) Where a person is convicted before the Crown Court of a scheduled offence it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which committed him for trial as to the value involved was mistaken.

(4) In subsection (3) above “scheduled offence” and “the value involved” have the same meanings as they have in section 22 of the Magistrates’ Courts Act 1980 (certain offences against property to be tried summarily if value of property or damage is small).]

#### Textual Amendments

- F1** Words inserted by [Magistrates' Courts Act 1980 \(c. 43\)](#), [Sch. 7 para. 71\(a\)](#)
- F2** S. 1(2) substituted (1.1.1996) by [1995 c. 35, s. 1\(1\)](#); [S.I. 1995/3061, art. 3\(a\)](#) (with [art. 4](#))
- F3** S. 1(3)(4) inserted by the [Magistrates' Courts Act 1980 \(c. 43\)](#), [Sch. 7 para. 71\(b\)](#)

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

- C1** S. 1 extended (19.2.2001) by [2000 c. 11, s. 7\(4\)\(b\)](#); [S.I. 2001/421, art. 2\(a\)](#)

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**C2** S. 1 extended (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 12\(4\)\(c\)](#)

## 2 Grounds for allowing appeal under s. 1.

- [<sup>F4</sup>(1) Subject to the provisions of this Act, the Court of Appeal—
- (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
  - (b) shall dismiss such an appeal in any other case.]
- (2) In the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.
- (3) An order of the Court of Appeal quashing a conviction shall, except when under section 7 below the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

### Textual Amendments

**F4** S. 2(1) substituted (1.1.1996) by [1995 c. 35, s. 2\(1\)](#); [S.I. 1995/3061, art. 3\(a\)](#) (with [art. 4](#))

### Modifications etc. (not altering text)

**C3** S. 2(1) modified (24.7.2002) by [1999 c. 23, s. 56\(5\)](#) (with [s. 63\(2\)](#), [Sch. 7 paras. 3\(3\), 5\(2\)](#)); [S.I. 2002/1739, art. 2](#)

## 3 Power to substitute conviction of alternative offence.

- (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence [<sup>F5</sup>to which he did not plead guilty] and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence.
- (2) The Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

### Textual Amendments

**F5** Words in s. 3(1) inserted (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\), ss. 316\(2\), 336\(3\)\(4\)](#); [S.I. 2004/1629, art. 3\(1\)\(2\)\(c\)](#)

## [<sup>F6</sup>3A Power to substitute conviction of alternative offence after guilty plea

- (1) This section applies on an appeal against conviction where—
- (a) an appellant has been convicted of an offence to which he pleaded guilty,
  - (b) if he had not so pleaded, he could on the indictment have pleaded, or been found, guilty of some other offence, and
  - (c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.

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- (2) The Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.]

#### Textual Amendments

- F6** S. 3A inserted (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 316\(3\), 336\(3\)\(4\)](#); S.I. 2004/1629, [art. 3\(1\)\(2\)\(c\)](#)

#### **4 Sentence when appeal allowed on part of an indictment.**

- (1) This section applies where, on an appeal against conviction on an indictment containing two or more counts, the Court of Appeal allow the appeal in respect of part of the indictment.
- (2) Except as provided by subsection (3) below, the Court may in respect of any count on which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as they think proper and is authorised by law for the offence of which he remains convicted on that count.
- (3) The Court shall not under this section pass any sentence such that the appellant's sentence on the indictment as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all offences of which he was convicted on the indictment.

#### **5 Disposal of appeal against conviction on special verdict.**

- (1) This section applies on an appeal against conviction [<sup>F7</sup>in a case where] the jury have found a special verdict.
- (2) If the Court of Appeal consider that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict they may, instead of allowing the appeal, order such conclusion to be recorded as appears to them to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

#### Textual Amendments

- F7** Words in s. 5(1) substituted (1.1.1996) by [1995 c. 35, s. 29\(1\)](#), [Sch. 2 para. 4\(2\)](#); S.I. 1995/3061, [art. 3\(d\)\(h\)](#) (with [art. 4](#))

#### **[<sup>F86</sup> Substitution of finding of insanity or findings of unfitness to plead etc.**

- (1) This section applies where, on an appeal against conviction, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
  - (a) that the proper verdict would have been one of not guilty by reason of insanity;or

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- (b) that the case is not one where there should have been a verdict of acquittal, but there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.
- [<sup>F9</sup>(2) The Court of Appeal shall make in respect of the accused—
- (a) a hospital order (with or without a restriction order);
- (b) a supervision order; or
- (c) an order for his absolute discharge.
- (3) Where—
- (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
- (b) the court have power to make a hospital order,
- the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) Section 5A of the Criminal Procedure (Insanity) Act 1964 (“the 1964 Act”) applies in relation to this section as it applies in relation to section 5 of that Act.
- (5) Where the Court of Appeal make an interim hospital order by virtue of this section—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
- (b) the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.
- (6) Where the Court of Appeal make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable as if the order had been made by the court below.
- (7) In this section—
- “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
- “interim hospital order” has the meaning given in section 38 of that Act;
- “restriction order” has the meaning given to it by section 41 of that Act;
- “supervision order” has the meaning given in Part 1 of Schedule 1A to the 1964 Act.]]

#### **Textual Amendments**

- F8** S. 6 substituted (1.1.1992) by [Criminal Procedure \(Insanity and Unfitness to Plead\) Act 1991 \(c. 25, SIF 39:1\)](#), **ss. 4(1), 8**; S.I. 1991/2488, **art. 2**.
- F9** S. 6(2)-(7) substituted (31.3.2005) for s. 6(2)(3) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), **ss. 24(3), 60** (with [Sch. 12 para. 8](#)); S.I. 2005/579, **art. 3(b)**

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