



# Criminal Appeal Act 1968

## 1968 CHAPTER 19

### PART II

#### APPEAL TO HOUSE OF LORDS FROM COURT OF APPEAL (CRIMINAL DIVISION)

##### *The appeal*

### 33 Right of appeal to House of Lords.

- (1) An appeal lies to the House of Lords, at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under Part I of this Act [<sup>F1</sup>or Part 9 of the Criminal Justice Act 2003][<sup>F2</sup>or section 9 (preparatory hearings) of the Criminal Justice Act 1987][<sup>F3</sup>or section 35 of the Criminal Procedure and Investigations Act 1996].
  - [<sup>F4</sup>(1A) In subsection (1) above the reference to the prosecutor includes a reference to the Director of the Assets Recovery Agency in a case where (and to the extent that) he is a party to the appeal to the Court of Appeal.]
  - [<sup>F5</sup>(1B) An appeal lies to the House of Lords, at the instance of the acquitted person or the prosecutor, from any decision of the Court of Appeal on an application under section 76(1) or (2) of the Criminal Justice Act 2003 (retrial for serious offences).]
- (2) The appeal lies only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- [<sup>F6</sup>(3) Except as provided by this Part of this Act and section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), no appeal shall lie from any decision of the criminal division of the Court of Appeal.]
- [<sup>F7</sup>(4) In relation to an appeal under subsection (1B), references in this Part to a defendant are references to the acquitted person.]

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### Textual Amendments

- F1** Words in s. 33(1) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 68(1)**, 336(3), (4); [S.I. 2005/950](#), **art. 2(1)**, **Sch. 1 para. 4** (with **Sch. 2**) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))
- F2** Words added by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\)](#), s. 15, **Sch. 2 para. 3**
- F3** Words in s. 33(1) inserted (4.7.1996 but with effect on 15.4.1997 as mentioned in s. 28) by [1996 c. 25](#), **ss. 28, 36** (with s. 76(1)); [S.I. 1997/1019](#), **art. 4**
- F4** S. 33(1A) inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), **Sch. 11 para. 4(2)**; [S.I. 2003/333](#), **art. 2**, **Sch.**
- F5** S. 33(1B) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 81(2)**, 336(3)(4); [S.I. 2005/950](#), **art. 2(1)**, **Sch. 1 para. 5** (with **Sch. 2**) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))
- F6** S. 33(3) inserted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **Sch. 5 para. 1**
- F7** S. 33(4) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 81(3)**, 336(3)(4); [S.I. 2005/950](#), **art. 2(1)**, **Sch. 1 para. 5** (with **Sch. 2**) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))

### Modifications etc. (not altering text)

- C1** S. 33(3) restricted (30.12.2002 for certain purposes, 24.3.2003 otherwise) by [Proceeds of Crime Act 2002 \(c. 29\)](#), **ss. 90(1)**, 458(1); [S.I. 2002/3015](#), art. 2, **Sch.**; [S.I. 2003/333](#), art. 2, **Sch.**
- C2** S. 33(3) restricted (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(2), **Sch. 22 para. 14(4)**
- C3** S. 33(3) restricted (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 274(6)**, 336(2)
- C4** S. 33(3) restricted (31.12.2005) by [The Criminal Justice \(International Co-operation\) Act 1990 \(Enforcement of Overseas Forfeiture Orders\) Order 2005 \(S.I. 2005/3180\)](#), arts. 1(1), **34(1)**
- C5** S. 33(3) restricted (1.1.2006) by [The Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\)](#), arts. 1, **48(1)**

## 34 Application for leave to appeal.

- (1) An application to the Court of Appeal for leave to appeal to the House of Lords shall be made within the period of [<sup>F8</sup>28] days beginning with the [<sup>F9</sup>relevant date]; and an application to the House of Lords for leave shall be made within the period of [<sup>F8</sup>28] days beginning with the date on which the application for leave is refused by the Court of Appeal.

[<sup>F10</sup>(1A) In subsection (1), “the relevant date” means—

- (a) the date of the Court of Appeal’s decision, or
- (b) if later, the date on which the Court gives reasons for its decision.]

- (2) The House of Lords or the Court of Appeal may, upon application made at any time by the defendant [<sup>F11</sup>or, in the case of an appeal under section 33(1B), by the prosecutor], extend the time within which an application may be made by him to that House or the Court under subsection (1) above.

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- (3) An appeal to the House of Lords shall be treated 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 purposes of this Part 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.

#### Textual Amendments

- F8** Words in s. 34(1) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), [ss. 88\(4\)\(5\)\(a\)](#), 110(1); S.I. 2005/910, [art. 3\(v\)](#)
- F9** Words in s. 34(1) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), [ss. 88\(4\)\(5\)\(b\)](#), 110(1); S.I. 2005/910, [art. 3\(v\)](#)
- F10** S. 34(1A) inserted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), [ss. 88\(6\)](#), 110(1); S.I. 2005/910, [art. 3\(v\)](#)
- F11** Words in s. 34(2) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 81\(4\)](#), 336(3)(4); S.I. 2005/950, [art. 2\(1\)](#), [Sch. 1 para. 5](#) (with [Sch. 2](#)) (as explained (29.7.2005) by S.I. 2005/2122, [art. 2](#); and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); S.I. 2008/1586, [Sch. 1 paras. 48\(s\)](#), 50(2)(d); (30.11.2009) by S.I. 2009/3111, [art. 2](#); (3.12.2012) by S.I. 2012/2905, [art. 4](#); (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); S.I. 2012/2906, [art. 2\(1\)](#))

### 35 Hearing and disposal of appeal.

- (1) An appeal under this Part of this Act shall not be heard and determined by the House of Lords unless there are present at least three of the persons designated Lords of Appeal by section 5 of the <sup>M1</sup>Appellate Jurisdiction Act 1876.
- (2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of the said Act of 1876 may direct that the decision of that committee shall be taken on behalf of the House.
- (3) For the purpose of disposing of an appeal, the House of Lords may exercise any powers of the Court of Appeal or may remit the case to the Court.

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

- C6** S. 35(1) applied by [Criminal Justice Act 1988 \(c. 33\)](#), [SIF 39:1](#), [s. 36\(5\)](#)
- C7** S. 35(1) extended by [Criminal Justice Act 1972 \(c. 71\)](#), [s. 36\(4\)](#)

#### Marginal Citations

- M1** 1876 c. 59.

*Matters preliminary to hearing*

### 36 Bail on appeal by defendant.

The Court of Appeal may<sup>F12</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] if it seems fit, on the application of a person appealing or applying for leave to appeal to the House of Lords, [<sup>F13</sup> other than a person appealing or applying for leave to appeal from a decision on an appeal under [<sup>F14</sup> Part 9 of the Criminal Justice Act 2003 or] section 9(11) of the Criminal Justice Act 1987 [<sup>F15</sup> or section 35 of the

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Criminal Procedure and Investigations Act 1996] (appeals against orders or rulings at preparatory hearings),][<sup>F16</sup>grant him] bail pending the determination of his appeal.

#### Textual Amendments

- F12** Words in s. 36 inserted (10.4.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 23**; S.I. 1995/721, art. 2, **Sch.**
- F13** Words inserted by **Criminal Justice Act 1987 (c. 38, SIF 39:1)**, s. 15, **Sch. 2 para. 4**
- F14** Words in s. 36 inserted (4.4.2005) by **Criminal Justice Act 2003 (c. 44)**, **ss. 68(2)**, 336(3)(4); S.I. 2005/950, art. 2(1), **Sch. 1 para. 4** (with **Sch. 2**) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(1))
- F15** Words in s. 36 inserted (4.7.1996 but with effect on 15.4.1997 as mentioned in s. 28) by 1996 c. 25, **ss. 28, 36** (with s. 78(1)); S.I. 1997/1019, **art. 4**
- F16** Words substituted by **Bail Act 1976 (c. 63)**, **Sch. 2 para. 43**

### 37 Detention of defendant on appeal by the Crown.

- (1) The following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the House of Lords, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.
- (2) If, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal may make an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 36 above), so long as an appeal to the House of Lords is pending.
- (3) An order under 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 of Appeal.
- (4) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—
  - (a) an order or direction under [<sup>F17</sup>Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act)] (admission to hospital of persons convicted by criminal courts); or
  - [<sup>F18</sup>(b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc),]

the order under this section shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) or (b) of this subsection; and the provisions of [<sup>F17</sup>the Mental Health Act 1983] with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

- [<sup>F19</sup>(4A) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under [<sup>F20</sup>section 36 of the Mental Health Act 1983] or an interim hospital order under [<sup>F20</sup>section 38] of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

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- (a) subsection (3) of this section shall not apply to the order;
  - (b) [<sup>F20</sup>Part III of the said Act of 1983] shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the House of Lords is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
  - (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.]
- (5) Where the Court of Appeal have power to make an order under this section, and either no such order is made or the defendant is released or discharged, by virtue of [<sup>F21</sup>subsection (3), (4) or (4A)] 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.

#### Textual Amendments

- F17** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 23\(g\)](#)
- F18** S. 37(4)(b) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 10 para. 5](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(g)
- F19** S. 37(4A) inserted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\)](#), [Sch. 3 para. 39\(a\)](#)
- F20** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), [Sch. 4 para. 23\(h\)](#)
- F21** Words substituted by [Mental Health Act 1982 \(c. 51\)](#), [Sch. 3 para. 38\(b\)](#)

### 38 Presence of defendant at hearing.

A defendant who [<sup>F22</sup>has been convicted of an offence, or in whose case an order under section 77 of the Criminal Justice Act 2003 or a declaration under section 77(4) of that Act has been made, and who] is detained pending an appeal to the House of Lords 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 authorises him to be present, or where the House or the Court of Appeal, as the case may be, give him leave to be present.

#### Textual Amendments

- F22** Words in s. 38 substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 81\(5\)](#), [336\(3\)\(4\)](#); S.I. 2005/950, art. 2(1), [Sch. 1 para. 5](#) (with [Sch. 2](#)) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); S.I. 2008/1586, [Sch. 1 paras. 48\(s\)](#), [50\(2\)\(d\)](#); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); S.I. 2012/2906, art. 2(l))

39— ..... F23  
41.

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**Textual Amendments**

**F23** Ss. 24–28, 39–41 repealed by Costs in Criminal Cases Act 1973 (c. 14), **Sch. 2**

*Supplementary*

**42** ..... **F24**

**Textual Amendments**

**F24** S. 42 repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, Sch. 8 para. 16, **Sch. 16**

**43** **Effect of appeal on sentence.**

- (1) Where a person subject to a sentence is [<sup>F25</sup>granted] bail under section 36 or 37 of this Act, the time during which he is [<sup>F25</sup>released on bail] shall be disregarded in computing the term of his sentence.
- (2) Subject to the foregoing subsection, any sentence passed on an appeal to the House of Lords in substitution for another sentence shall, unless that House or the Court of Appeal otherwise direct, begin to run from the time when the other sentence would have begun to run.

**Textual Amendments**

**F25** Word substituted by Bail Act 1976 (c. 63), **Sch. 2 para. 44**

**44** **Powers of Court of Appeal under Part II which are exercisable by single judge.**

[<sup>F26</sup>(1) There may be exercised by a single judge—

- (a) the powers of the Court of Appeal under this Part of the Act—
  - (i) to extend the time for making an application for leave to appeal;
  - (ii) to make an order for or in relation to bail; and
  - (iii) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal; and
- (b) their powers to make orders for the payment of costs under sections 16 and 17 of the <sup>M2</sup>Prosecution of Offences Act 1985 in proceedings under this Part of this Act.]

, but where the judge refuses an application to exercise any of the said powers the applicant shall be entitled to have the application determined by the Court of Appeal.

[<sup>F27</sup>(2) The power of the Court of Appeal to suspend a person’s disqualification under [<sup>F28</sup>section 40(3) of the Road Traffic Offenders Act 1988] may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.]

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[<sup>F29</sup>(3) The power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.]

#### Textual Amendments

- F26** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 15 para. 31**
- F27** S. 44(2) added by [Road Traffic Act 1974 \(c. 50\)](#), **Sch. 6 para. 11**
- F28** Words substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, **Sch. 3 para. 4(2)**
- F29** S. 44(3) inserted (24.11.2005) by [Licensing Act 2003 \(c. 17\)](#), s. 201(2), **Sch. 6 para. 41** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, art. 2(2)

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

- C8** S. 44 restricted (11.1.1995) by [1981 c. 54, s. 9\(6A\)](#) (as inserted (11.1.1995) by [1994 c. 33, s. 52\(5\)](#); S.I. 1994/3258, art. 2)

#### Marginal Citations

- M2** [1985 c.23 \(39:1\)](#).

### [<sup>F30</sup>44A Appeals in cases of death.

- (1) Where a person has died—
- any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal; and
  - where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (a) above or by a reference by the Criminal Cases Review Commission, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.
- (2) In this section “relevant appeal” means—
- an appeal under section 1, 9, 12 or 15 of this Act; or
  - an appeal under section 33 of this Act from any decision of the Court of Appeal on an appeal under any of those sections.
- (3) Approval for the purposes of this section may only be given to—
- the widow or widower [<sup>F31</sup>or surviving civil partner] of the dead person;
  - a person who is the personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925) of the dead person; or
  - any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.
- (4) Except in the case of an appeal begun by a reference by the Criminal Cases Review Commission, an application for such approval may not be made after the end of the period of one year beginning with the date of death.



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- (5) Where this section applies, any reference in this Act to the appellant shall, where appropriate, be construed as being or including a reference to the person approved under this section.
- (6) The power of the Court of Appeal to approve a person under this section may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions; but if the single judge refuses the application, the applicant shall be entitled to have the application determined by the Court of Appeal.]

#### **Textual Amendments**

- F30** S. 44A inserted (1.1.1996 for specified purposes and otherwise 31.3.1997) by 1995 c. 35, s. 7(1); S.I. 1995/3061, art. 3(b) (with art. 4); S.I. 1997/402, art. 3(a) (with art. 4)
- F31** Words in s. 44A(3)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 26; S.I. 2005/3175, art. 2(2)



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