



Courts-Martial (Appeals) Act 1968

1968 CHAPTER 20

PART II

APPEALS FROM COURTS-MARTIAL

Right of appeal and initiating procedure

8 Right of appeal.

- (1) Subject to the provisions of this Act, a person convicted by court-martial may, with the leave of the Appeal Court, appeal to the Court [^{F1}—
- (a) against his conviction; and
 - (b) against any sentence (not being a sentence fixed by law) passed on him for the offence for which he was convicted.]

[^{F2}(1ZA) In subsection (1) above, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.]

[^{F3}(1A) An appeal may also be brought, with the leave of the Appeal Court,—

- ^{F4}(a)
- (b) by a person on whom a fine is imposed or against whom a compensation order is made under paragraph 13 of any of those Schedules (parents and guardians subject to service jurisdiction).]

- (2) Subject as aforesaid, the person's right of appeal shall not be exercisable—
- (a) unless, within such period as may be prescribed, he presents to the Defence Council a petition praying that his conviction be quashed [^{F5}or, as the case may require, that his sentence be quashed ^{F6}. . .]; and
 - (b) until either the prescribed period (beginning with the day on which the petition is presented) expires or he is notified by the Defence Council that the petition has not been granted, whichever event first occurs.

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

- (3) If a person presents a petition for the purposes of subsection (2)(a) above, but fails to do so within the period prescribed for those purposes and subsequently applies for leave to appeal, the Appeal Court may direct that he be treated as not having thereby lost his right of appeal if they think that there is a reasonable explanation of the failure and that it is in the interests of justice that he should be so treated.
- (4) Rules of court may provide that, in such circumstances as may be specified in the rules, a petition for the purposes of subsection (1) above which is presented to such person as may be specified in the rules shall be treated, for the purposes of that subsection, as having been presented to the Defence Council.

^{F7}(5)

Textual Amendments

- F1** S. 8(1): hyphen and sub-paras (a) and (b) substituted (1.4.1997 with savings) for words by 1996 c. 46, s. 17(2)(a); S.I. 1997/304, art. 2 (with art. 3)
- F2** S. 8(1ZA) inserted (E.W.) (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 271(2), 336(2)
- F3** S. 8(1A) added by Armed Forces Act 1976 (c. 52, SIF 7:1), s. 22(5), Sch. 9 para. 16
- F4** S. 8(1A)(a) repealed (1.4.1997 with savings) by 1996 c. 46, ss. 17(2)(b), 35(2), Sch. 7 Pt. II; S.I. 1997/304, art. 2 (with art. 3)
- F5** Words inserted by Armed Forces Act 1971 (c. 33), Sch. 2 para. 1(2)
- F6** Words in s. 8(2)(a) repealed (1.4.1997 with savings) by 1996 c. 46, s. 35(2), Sch. 7 Pt. III; S.I. 1997/304, art. 2, Sch. 1 (with art. 3)
- F7** S. 8(5) repealed (1.4.1997 with savings) by 1996 c. 46, ss. 17(2)(c), 35(2), Sch. 7 Pt. II; S.I. 1997/304, art. 2, Sch. 1 (with art. 3)

9 Application for leave to appeal.

- (1) Leave to appeal to the Appeal Court shall not be given except on an application in that behalf made by or on behalf of the appellant and lodged, within the prescribed period, with the registrar.
- (2) The application must be in the prescribed form and specify the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.
- (3) The Appeal Court may extend the period within which an application for leave to appeal must be lodged, whether the period has expired or not.
- (4) Rules of court may provide that, in such circumstances as may be specified in the rules, an application which is lodged with a person (other than the registrar) specified in the rules shall be treated for purposes of subsection (1) above as having been lodged with the registrar; and it shall be the duty of the specified person, if an application is lodged with him in accordance with the rules, to act as follows:—
- he shall forward the application to the registrar with as much expedition as practicable; and
 - if it appears to him practicable to do so, and in all the circumstances expedient, he shall forthwith furnish the registrar (before the receipt by the latter of the application) with such particulars of the application as will enable the registrar to prepare a copy of it.

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10 Alternative procedure for appeal from court-martial abroad.

- (1) The following provisions apply where a person who has been convicted by a court-martial held outside the United Kingdom duly petitions the Defence Council in accordance with section 8 of this Act.
- (2) If, before the expiration of the time for appealing, the Defence Council receive from the person convicted an application for leave to appeal to the Appeal Court accompanied by a request that the Council will forward the application to the registrar in the event of its being decided not to grant the petition, it shall be the duty of the Council to comply with that request.
- (3) The convicted person's right of appeal under section 8 of this Act becomes exercisable (if it has not already done so) on the happening of the event referred to in subsection (2) above, that is to say its being decided not to grant the petition.
- (4) In this section "the time for appealing" means the period prescribed for the purpose of section 9(1) of this Act as the period within which an application for leave to appeal must be lodged.

11 Consideration of application by Appeal Court.

- (1) In considering whether or not to give leave to appeal the Appeal Court shall have regard to any expression of opinion made by the Judge Advocate of Her Majesty's Fleet or the Judge Advocate General that the case is a fit one for appeal, and if any such expression is so made they may, without more, give leave to appeal.
- (2) Where the Appeal Court dismiss an application for leave to appeal they may, if they consider the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Appeal Court dismiss the application.

Disposal of appeal

12 Power to quash conviction as [^{F8}unsafe.]

- [^{F9}(1) The Appeal Court—
- (a) shall allow an appeal against conviction by court-martial if they think that the conviction is unsafe; and
 - (b) shall dismiss such an appeal in any other case.]
- (2) If the Appeal Court allow an appeal against conviction, they shall quash the conviction.

Textual Amendments

F8 Word in s. 12 sidenote substituted (1.1.1996) by 1995 c. 35, s. 29(1), **Sch. 2 para. 5(2)**; S.I. 1995/3061, **art. 3** (with **art. 4**)

F9 S. 12(1) substituted (1.1.1996) for s. 12(1) including the proviso by 1995 c. 35, s. 29(1), **Sch. 2 para. 5(2)**; S.I. 1995/3061, **art. 3** (with **art. 4**)

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13 Adjustment of sentence in case of conviction on two or more charges.

Where—

- (a) it appears to the Appeal Court [^{F10}on an appeal against conviction] that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred; and
- (b) the sentence passed by the court-martial on the appellant was not warranted by the relevant Service Act for the offence of which he was convicted on the other charge,

the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence so warranted as they think proper.

Textual Amendments

F10 Words inserted by [Armed Forces Act 1971 \(c. 33\), Sch. 2 para. 1\(3\)](#)

14 Substitution of conviction on different charge.

- (1) This section applies where an appellant has been convicted of an offence [^{F11}to which he did not plead guilty] and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Appeal Court [^{F12}on an appeal against conviction] that the court-martial must have been satisfied of facts which proved him guilty of that other offence.
- (2) The Appeal Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence, and may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Service Act for that other offence, but not a sentence of greater severity.

Textual Amendments

F11 Words in s. 14(1) inserted (E.W.) (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\), ss. 318\(2\), 336\(3\)\(4\); S.I. 2004/1629, art. 3\(1\)\(2\)\(e\)](#)

F12 Words inserted by [Armed Forces Act 1971 \(c. 33\), Sch. 2 para. 1\(3\)](#)

[^{F13}14A Substitution of conviction on different charge after guilty plea

- (1) This section applies where—
 - (a) an appellant has been convicted of an offence to which he pleaded guilty,
 - (b) if he had not so pleaded, he could lawfully have pleaded, or been found, guilty of some other offence, and
 - (c) it appears to the Appeal Court on an appeal against conviction that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of that other offence.
- (2) The Appeal Court 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 may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such

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sentence as they think proper, being a sentence warranted by the relevant Service Act for that other offence, but not a sentence of greater severity.]

Textual Amendments

F13 S. 14A inserted (E.W.) (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 318\(3\), 336\(3\)\(4\)](#); S.I. 2004/1629, [art. 3\(1\)\(2\)\(e\)](#)

15 Variation of conviction so as to attract different sentence.

- (1) Where an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Appeal Court [^{F14}on an appeal against conviction] that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment.
- (2) Where an appellant has been convicted of an offence and it appears to the Appeal Court [^{F14}on an appeal against conviction] that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence subject to exceptions or variations.
- (3) Where the Appeal Court exercise the power conferred by subsection (1) or subsection (2) above, they may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Service Act for the offence specified or involved in the substituted finding, but not a sentence of greater severity.

Textual Amendments

F14 Words inserted by [Armed Forces Act 1971 \(c. 33\)](#), [Sch. 2 para. 1\(3\)](#)

[^{F15}16 Substitution of finding of insanity or findings of unfitness to stand trial etc.

- (1) This section applies where, on an appeal against conviction, the Appeal Court, 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 finding would have been one of not guilty by reason of insanity; or
 - (b) that the case is not one where there should have been a finding of not guilty, but that there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
- (2) The Appeal Court shall make in respect of the appellant—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.

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- (3) Where—
- (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
 - (b) the Appeal Court have power to make a hospital order,
- the Appeal 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) The provisions of, or made under, the sections specified below shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.
- The sections are—
- (c) where the relevant Service Act is the Army Act, sections 116B to 116D of that Act;
 - (d) where the relevant Service Act is the Air Force Act, sections 116B to 116D of that Act;
 - (e) where the relevant Service Act is the Naval Discipline Act, sections 63B to 63D of that Act.
- (5) Where the Appeal Court 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 a judicial officer and not by the Appeal Court; and
 - (b) section 38(7) of the Mental Health Act 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
- (6) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.]

Textual Amendments

F15 S. 16 substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 7](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)

[^{F16}16A Powers on appeals against sentence.

On an appeal against sentence the Appeal Court, if they consider that the sentence is not appropriate for the case, may quash the sentence and pass in substitution for it such sentence as they think is appropriate, being a sentence which the court-martial had power to pass and which is not of greater severity than that for which it is substituted.]

Textual Amendments

F16 S. 16A added by [Armed Forces Act 1971 \(c. 33\), s. 73\(3\)](#)

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17 Term of sentence passed under s. 13, 14 or 15.

- (1) The term of any sentence passed by the Appeal Court under section 13, 14 [^{F17}15 or 16A] of this Act shall, unless the Court otherwise direct, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal was brought.
- (2) A sentence passed by the Appeal Court under any of those sections shall—
 - (a) if passed on an appeal against conviction by a [^{F18}or the sentence of] a naval court-martial, be deemed, for purposes of the ^{M1}Naval Discipline Act, to be a sentence passed by such a court-martial; and
 - (b) if passed on an appeal against conviction by [^{F18}or the sentence of] an army or air force court-martial, be deemed for purposes of the ^{M2}Army Act or the ^{M3}Air Force Act, as the case may be, to be a sentence passed by an army, or as the case may be, an air force court-martial, ^{F19} . . .

Textual Amendments

F17 Words substituted by [Armed Forces Act 1971 \(c. 33\), Sch. 2 para. 1\(5\)](#)

F18 Words inserted by [Armed Forces Act 1971 \(c. 33\), Sch. 2 para. 1\(5\)](#)

F19 Words in s. 17(2)(b) repealed (1.4.1997) by [1996 c. 46, s. 35\(2\)](#), Sch. 7 Pt. II; [S.I. 1997/304, art. 2](#)(with art. 3)

Marginal Citations

M1 1957 c. 53.

M2 1955 c. 18.

M3 1955 c. 19.

[^{F20}17A Appeals by civilians: application of Service Act provisions.

For the avoidance of doubt, the exercise of the power conferred by sections 13, 14, 15 and 16A above, in relation to an order under Schedule 5A to the ^{M4}Army Act 1955, Schedule 5A to the ^{M5}Air Force Act 1955 or Schedule 4A to the ^{M6}Naval Discipline Act 1957 (powers of court on trial of civilians) shall be subject to the restrictions contained in paragraph 15 of each of those Schedules.]

Textual Amendments

F20 S. 17A substituted (1.4.1997 with savings) by [1996 c. 46, s. 17\(3\)](#); [S.I. 1997/304, art. 2](#) (with art. 3)

Marginal Citations

M4 1955 c. 18.

M5 1955 c. 19.

M6 1957 c. 53.

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Retrial

18 Retrial generally excluded.

Except as provided by this Act, where the conviction of a person by court-martial for an offence has been quashed under this Act, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

19 Power to authorise retrial in certain cases.

- (1) The Appeal Court shall have the power, on quashing a conviction, to make an order authorising the appellant to be retried by court-martial, but shall only exercise this power when ^{F21} . . . it appears to the Court that the interests of justice require that an order under this section should be made.
- (2) This section has effect notwithstanding the restrictions on retrial imposed by section 134 of the Army Act and section 134 of the ^{M7}Air Force ^{M8}Act.
- (3) An appellant shall not be retried under this section for an offence other than—
 - (a) the offence of which he was convicted by the original court-martial and in respect of which his appeal is allowed as mentioned in subsection (1) above;
 - (b) any offence of which he could have been convicted at the original court-martial on a charge of the first-mentioned offence; or
 - (c) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence.
- (4) A person who is to be retried under this section for an offence shall, if the Appeal Court so directs, be retried on a fresh charge or charges specified in the direction; but whether he is so tried or is retried on one or more of the original charges, no fresh investigation or other steps shall be taken under sections 76 to 79 of the Army Act or sections 76 to 79 of the Air Force Act (investigation and summary disposal of charge by commanding officer) in relation to the charge or charges on which he is to be retried.

Textual Amendments

F21 Words in s. 19(1) repealed (01.01.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), ss. 26(1)(2), 27(2), Sch. 2 para. 8, [Sch. 3, S.I. 1991/2719](#), arts. 2, 3(3), Sch.

Marginal Citations

M7 1955 c. 18.

M8 1955 c. 19.

20 Implementation of authority for retrial, and supplementary orders of Appeal Court.

- (1) The limitations imposed by—
 - section 52 of the ^{M9}Naval Discipline Act;
 - section 132 of the Army Act; and
 - section 132 of the Air Force Act,

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with respect to the time within which a trial under those Acts respectively may be begun, shall not apply in the case of a retrial authorised by an order of the Appeal Court under section 19 of this Act; but a person to whom such an order applies shall not be retried unless the order convening the court-martial is issued within the period of three months beginning with the date of the order under section 19.

- (2) The Appeal Court may, where they authorise a retrial, make such orders as appear to them to be necessary or expedient for the retention until the relevant time of property or money which has been restored, delivered or paid in pursuance of an order made on or in consequence of the original conviction or has been placed in safe custody while the operation of any such order is suspended.
- (3) Where retrial is authorised in the case of a person who immediately before the date of the authorisation was liable to be detained in pursuance of a direction under United Kingdom mental health legislation, that direction shall continue in force until the relevant time as if his conviction had not been quashed.
- (4) The legislation referred to in subsection (3) above is [^{F22}Part III of the Mental Health Act 1983], [^{F23}Part VI of the Mental Health (Scotland) Act 1984] and Part III of the Mental Health [^{F24}(Northern Ireland) Order 1986].
- (5) In subsections (2) and (3) above the references to “the relevant time” are references to the expiration of the period of three months mentioned in subsection (1) of this section or, if during that period a court-martial has been convened for the retrial of an appellant, the time when his case is finally disposed of:

Provided that for the purposes of subsection (2) above the relevant time, in a case where the appellant is found guilty on his retrial, is the expiration of the period of twenty-eight days beginning with the date of the finding.

- (6) Schedule 1 to this Act contains additional provisions applicable to a retrial authorised by order of the Appeal Court under section 19 of this Act; and of the four Parts of the Schedule, Part I applies to retrial under the ^{M10}Naval Discipline Act; Part II applies to retrial under the Army Act; Part III applies to retrial under the ^{M11}Air Force ^{M12}Act; and Part IV applies to all three cases.

Textual Amendments

F22 Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\), s. 148, Sch. 4 para. 24\(a\)](#)

F23 Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 10](#)

F24 Words substituted by [S.I. 1986/596, art. 6\(a\)](#)

Marginal Citations

M9 1957 c. 53.

M10 1957 c. 53.

M11 1955 c. 18.

M12 1955 c. 19.

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Insanity

21 Appeal against finding of not guilty by reason of insanity.

- (1) A person who has been tried by court-martial for an offence and been found not guilty by reason of insanity may, with the leave of the Appeal Court, appeal to the Court against the finding; and in relation to any such appeal this Part of this Act, except [^{F25}section 8(2) and] sections 13 to 16, shall apply, subject to this section and section 22 below, as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptations of references to a person convicted or to conviction).
- (2) Where apart from this subsection—
- (a) an appeal against a finding of not guilty by reason of insanity would fall to be allowed; and
 - (b) none of the grounds for allowing it relates to the question of the insanity of the appellant,

the Appeal Court may dismiss the appeal if they are of opinion that but for the insanity of the appellant the proper finding would have been that he was guilty of an offence other than the offence charged.

Textual Amendments

F25 Words in s. 21(1) inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 3 para. 8](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)

22 Consequences where appeal under s. 21 allowed.

- (1) The following provisions shall have effect where an appeal against a finding of not guilty by reason of insanity is allowed by the Appeal Court.
- (2) If the ground, or one of the grounds, for allowing the appeal is that the finding as to the appellant's insanity ought not to stand and the Appeal Court are of opinion that the proper finding would have been a finding of guilty of an offence (whether the offence charged or any other offence of which the court-martial could have found him guilty), the Court shall substitute for the finding of the court-martial a finding of guilty of that offence.
- (3) On substituting a finding of guilty of an offence, the Appeal Court shall have the like powers of sentencing the appellant, and other powers, as the court-martial which tried him would have had on the like finding of guilty; and section 17 of this Act shall apply as in the case of a sentence passed by the Court under section 13, 14 or 15 of this Act.
- (4) [^{F26}Subject to section 23 below,] in any case where subsection (2) above does not apply, the Appeal Court shall substitute for the finding appealed against a finding of not guilty.

Textual Amendments

F26 Words in s. 22(4) inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 3 para. 9](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)

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[^{F27}23 Substitution of findings of unfitness to stand trial etc.

- (1) This section applies where, on an appeal under section 21 of this Act, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—
 - (a) the case is not one where there should have been a finding of not guilty; but
 - (b) there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
- (2) The Appeal Court shall make in respect of the appellant—
 - (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 Appeal Court have power to make a hospital order,the Appeal 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) The provisions of, or made under, the sections specified below shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.

The sections are—

 - (c) where the relevant Service Act is the Army Act, sections 116B to 116D of that Act;
 - (d) where the relevant Service Act is the Air Force Act, sections 116B to 116D of that Act;
 - (e) where the relevant Service Act is the Naval Discipline Act, sections 63B to 63D of that Act.
- (5) Where the Appeal Court 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 a judicial officer and not by the Appeal Court; and
 - (b) section 38(7) of the Mental Health Act 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
- (6) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.]

Textual Amendments

F27 S. 23 substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 3 para. 10](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b)

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PROSPECTIVE

F28 23A Substitution of finding of not guilty.

- (1) This section applies where, in accordance with section 22(4) of this Act, the Appeal Court substitute a finding of not guilty and the Court, 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 appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
 - (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.
- (2) The Appeal Court shall—
 - (a) in the case of an appellant detained pursuant to an admission order made by a court-martial, make an order for his continued detention;
 - (b) in any other case, make an order that the appellant be admitted for assessment, in accordance with regulations made by the Secretary of State, to such hospital as may be specified by the Secretary of State.
- (3) An order under subsection (2) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the Appeal Court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.
- (4) The power of the Secretary of State under subsections (2)(b) and (3) above to make regulations shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “hospital” and “mental disorder” have the same meanings as in the appropriate mental health legislation.

Textual Amendments

F28 Ss. 23 and 23A substituted (*prosp.*) for s. 23 by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 9**

Unfitness to stand trial

24 Appeal against finding of unfitness.

- (1) A person found by a court-martial to be unfit to stand [F29]trial and to have done the act or made the omission charged against him] may, with the leave of the Appeal Court, appeal to the Court against [F30]either or both of those findings].
- (2) In relation to an appeal under this section, this Part of this Act, except [F31]section 8(2) and] sections 13 to 16, shall apply (subject to section 25 below) as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptations of references to a person convicted or to conviction).

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

Textual Amendments

- F29** Words in s. 24(1) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 11\(2\)\(a\)](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)
- F30** Words in s. 24(1) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 11\(2\)\(b\)](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)
- F31** Words in s. 24(2) inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 11\(3\)](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)

[^{F32}25 Disposal of appeal under s. 24

- (1) This section applies to appeals under section 24 of this Act.
- (2) Where the Appeal Court allow an appeal against a finding that the appellant is unfit to stand trial—
 - (a) the appellant may be tried accordingly for the offence with which he was charged; and
 - (b) the Court may make such orders as appear to them necessary or expedient pending any such trial for the custody, release or continued detention of the appellant.
- (3) Where, otherwise than in a case falling within subsection (2) above, the Appeal Court allow an appeal against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a finding of not guilty to be recorded (but not a finding of not guilty by reason of insanity).]

Textual Amendments

- F32** S. 25 substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 12](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)

[^{F33}Appeal against order made in cases of insanity or unfitness to stand trial

Textual Amendments

- F33** Ss. 25A, 25B and cross-heading inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 13](#) (with [Sch. 12 para. 8](#)); S.I. 2005/579, art. 3(b)

25A Right of appeal against hospital order etc.

- (1) A person in whose case a court-martial—
 - (a) makes a hospital order or interim hospital order by virtue of the relevant Service Act, or
 - (b) makes a supervision order under the relevant Service Act,may appeal to the Appeal Court against the order.
- (2) An appeal under this section lies only with the leave of the Appeal Court.

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

25B Disposal of appeal under s. 25A

- (1) If on an appeal under section 25A of this Act the Appeal Court consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
 - (a) they may quash any order which is the subject of the appeal; and
 - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- (2) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- (3) Where the Appeal Court 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 a judicial officer and not by the Appeal Court; and
 - (b) section 38(7) of the said Act of 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
- (4) The fact that an appeal is pending against a supervision order under the relevant Service Act shall not affect any power conferred on any other court to revoke or amend the order.
- (5) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.]

General procedural provisions

26 Presentation, of appellant’s case.

An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

27 Presence of appellant at hearing.

An appellant shall not be entitled to be present at the hearing of an appeal to the Appeal Court or at any proceedings preliminary or incidental to such an appeal, except where the Court give him leave to be so; and accordingly any power of the Court to pass a sentence may be exercised notwithstanding the absence of the appellant.

28 Evidence.

- (1) The Appeal Court may—
 - (a) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case;

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Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

- (b) order any witness who would have been a compellable witness at the trial to attend for examination and be examined before the Court, whether or not he was called at the trial; and
- [^{F34}(c) receive any evidence which was not adduced at the trial.]
- [^{F35}(2) The Appeal Court shall, in considering whether to receive any evidence, have regard in particular to—
- (a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial.]
- (3) Subsection (1)(c) above applies to any [^{F36}evidence of a] witness (including the appellant) who is competent but not compellable ^{F37} . . .
- (4) The Appeal Court may order the examination of any witness whose attendance may be required under subsection (1)(b) of this section to be conducted in the prescribed manner before any judge of the Court or before any other person appointed by the Court for that purpose, and allow the admission of any depositions so taken as evidence before the Court.

Textual Amendments

- F34** S. 28(1)(c) substituted (1.1.1996 subject to savings) by 1995 c. 35, s. 29(1), Sch. 2 para. 5(3)(a); S.I. 1995/3061, art. 3 (with art. 4)
- F35** S. 28(2) substituted (1.1.1996 subject to savings) by 1995 c. 35, s. 29(1), Sch. 2 para. 5(3)(b); S.I. 1995/3061, art. 3 (with art. 4)
- F36** Words in s. 28(3) inserted (1.1.1996 subject to savings) by 1995 c. 35, s. 29(1), Sch. 2 para. 5(3)(c); S.I. 1995/3061, art. 3 (with art. 4)
- F37** Words in s. 28(3) repealed (1.1.1996 subject to savings) by 1995 c. 35, s. 29(2), Sch. 3; S.I. 1995/3061, art. 3 (with art. 4)

29 Power to call for report by member of trial court.

- (1) The Appeal Court may order the taking of such steps as are requisite to obtain from any member of the court-martial by which the appellant was tried, or the person who officiated as judge advocate at the trial, a report giving his opinion on the case or on any point arising in it, or containing a statement as to any facts of which the ascertainment appears to the Court to be material for the purpose of determining the case.
- (2) The Court shall not make an order under this section for the purpose of obtaining a report from a member of a court-martial other than the president of it unless they also make such order for the purpose of obtaining a report from the president or are satisfied that the obtaining of a report from him is impracticable or would involve undue delay.

30 Other powers for facilitating disposal of appeal.

- (1) Where any question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the

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opinion of the Appeal Court conveniently be conducted before them, the Court may order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by them, and act upon the report of the commissioner so far as they think fit to adopt it.

- (2) The Appeal Court may appoint a person with special expert knowledge to act as assessor to the Court in any case where it appears to them that such knowledge is required for the proper determination of the case.
- (3) There may be paid out of moneys provided by Parliament to a special commissioner to whom a question is referred under this section for inquiry and report, and to a person appointed as assessor to the Appeal Court, such remuneration and such travelling and subsistence allowances as may be prescribed by regulations made by the Lord Chancellor.
- (4) The power of the Lord Chancellor under subsection (3) above to make regulations shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Costs

31 **Costs of successful appeal.**

- (1) Where the Appeal Court allow an appeal [^{F38}other than an appeal against sentence] they may if they think fit, direct the payment by the Secretary of State of costs to the appellant.
- (2) The costs which may under this section be directed to be paid are such sums as appear to the Appeal Court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the case that is to say—
 - (a) in the prosecution of his appeal (including any proceedings preliminary or incidental thereto); or
 - (b) in carrying on his defence before the court-martial from which the appeal lies, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the first-mentioned court-martial.

Textual Amendments

F38 Words inserted by [Armed Forces Act 1971 \(c. 33\)](#), [Sch. 2 para. 1\(6\)](#)

32 **Costs against appellant.** E+W+S

- (1) Where the Appeal Court dismiss an appeal or an application for leave to appeal they may, if they think fit, order the appellant or applicant (as the case may be) to pay to the Secretary of State the whole or any part of the costs of the appeal or application, including the costs of copying or transcribing any documents for the use of the Appeal Court.
- (2) An order under this section may be enforced—
 - [^{F39}(a) in the same manner as an order for costs made by the criminal division of the Court of Appeal ^{F40}. . . ; or]

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

- (b) by making deductions from pay due to the appellant or applicant, as the case may be,
or partly in the one way and partly in the other.
- (3) Any sums which by virtue of subsection (2)(a) above are recovered from a person by the Secretary of State shall be paid into the Exchequer.

Extent Information

E1 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only.

Textual Amendments

F39 S. 32(2)(a) substituted (E.W.) (S.) by [Administration of Justice Act 1970 \(c. 31\), s. 41\(7\)](#)

F40 Words in s. 32(2)(a) repealed (1.4.1997 with savings) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. III](#); [S.I. 1996/304, art. 2, Sch. 1](#) (with [art. 3](#))

32 Costs against appellant. **N.I.**

- (1) Where the Appeal Court dismiss an appeal or an application for leave to appeal they may, if they think fit, order the appellant or applicant (as the case may be) to pay to the Secretary of State the whole or any part of the costs of the appeal or application, including the costs of copying or transcribing any documents for the use of the Appeal Court.
- (2) An order under this section may be enforced—
- (a) in the same manner as an order for the payment of costs made by the High Court in civil proceedings; or
- (b) by making deductions from pay due to the appellant or applicant, as the case may be,
or partly in the one way and partly in the other.
- (3) Any sums which by virtue of subsection (2)(a) above are recovered from a person by the Secretary of State shall be paid into the Exchequer.

Extent Information

E2 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only.

33 Witnesses' expenses.

- (1) The Appeal Court may, whether or not they exercise their powers under either of the two foregoing sections, order the payment out of moneys provided by Parliament of such sums as appear to the Court reasonably sufficient to compensate any person properly attending to give evidence on an appeal under this Part of this Act or any proceedings preliminary or incidental thereto (whether or not he gives evidence) for the expense, trouble or loss of time properly incurred in or incidental to his attendance.
- (2) The amount of any costs ordered to be paid under this section shall be ascertained as soon as practicable by the registrar.

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

[^{F41}33A Appellant's expenses.

Without prejudice to section 31 above, where an appellant who is not in custody appears before the Appeal Court either on the hearing of his appeal or in any preliminary or incidental proceedings, the Appeal Court may direct the Secretary of State to pay him the expenses of his appearance.]

Textual Amendments

F41 S. 33A added by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 5(1)

Special references to Appeal Court

34 Reference of cases by Service authorities.

- (1) If, in the case of the conviction of a person by court-martial,—
 - (a) it appears to the Judge Advocate of Her Majesty's Fleet or the Judge Advocate General that the finding of the court-martial involves a point of law of exceptional importance which in his opinion should be determined by the Appeal Court; or
 - (b) it appears to the Secretary of State, upon consideration of matters appearing to him not to have been brought to the notice of the court-martial at the trial, to be expedient that the finding of the court-martial should be considered or reconsidered by the Appeal Court,
 the Judge Advocate of Her Majesty's Fleet, the Judge Advocate General or the Secretary of State, as the case may be, may refer the finding to the Court.
- (2) A reference to the Appeal Court under [^{F42}subsection (1) above] shall, for all purposes [^{F43}other than that of section 32] of this Act, be treated as an appeal by the person convicted against his conviction.
- (3) The foregoing provisions of this section shall apply in the case of a finding by a court-martial of not guilty by reason of insanity as they apply in the case of the conviction of a person by court-martial.
- [^{F44}(4) The Secretary of State may, if consideration by the Appeal Court appears to him for any reason desirable, refer the sentence passed on any person convicted by a court-martial to the Appeal Court.
- (5) Any reference under subsection (4) above shall be treated as an appeal by the person convicted against sentence for all purposes except those of section 32 of this Act.]

Textual Amendments

F42 Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), **Sch. 2 para. 1(7)**

F43 Words substituted by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 5(2)

F44 S. 34(4)(5) substituted for s. 34(4) (1.4.1997 with savings) by virtue of [1996 c. 46, s. 17\(4\)](#); [S.I. 1997/304, art. 2](#) (with [art. 3](#))

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

Textual Amendments

F45 S. 35 repealed by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), ss. 5(3), 32, **Sch. 5 Pt. VI**

Supplementary

36 Powers under Part II which are exercisable by single judge.

- (1) The following powers of the Appeal Court under this Part of this Act, that is to say the power—
- (a) to give a direction under section 8(3) that a person be treated as not having lost his right of appeal;
 - (b) to give leave to appeal;
 - (c) to extend the period within which an application for leave to appeal must be lodged;
 - (d) to make orders under section 20(2) and discharge or revoke such orders;
 - (e) to allow an appellant to be present at any proceedings;
 - (f) to order witnesses to attend for examination; and
 - (g) to make an order under section 32 for the payment of costs,
- [^{F46}and the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976 as adapted by section 5(1)(d) of that Act][^{F47}or section 3(4) of the Sexual Offences (Amendment) Act 1992] may be exercised by any judge of the Appeal Court in the same manner as they may be exercised by the Court, and subject to the same provisions.
- (2) If the judge refuses an application on the part of an appellant to exercise in his favour any of the powers mentioned in subsection (1) above (other than the power to make an order for the payment of costs), the appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined by the Appeal Court as duly constituted [^{F48}for the purpose in accordance with section 5 of this Act].

Textual Amendments

- F46** Words inserted (E.W.) (and (S.N.I.) so far as relating to Courts-Martial and the Courts-Martial Appeal Court) by [Sexual Offences \(Amendment\) Act 1976 \(c. 82, SIF 39:1\)](#), s. 5(6)
- F47** Words in s. 36(1) inserted (1.8.1992) (E.W., and S. and N.I. so far as relating to courts-martial and the Courts-Martial Appeal Court) by [Sexual Offences \(Amendment\) Act 1992 \(c. 34\)](#), s. 7(4) (with s. 6(4)); S.I. 1992/1336, art.2
- F48** Words substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), ss. 145(5), 153(4)(d)

[^{F49}36A Powers under Part II which are exercisable by registrar.

- (1) The following powers of the Appeal Court under this Part of this Act, namely the power—
- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given; and
 - (b) to order a witness to attend for examination,

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Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)

may be exercised by the registrar in the same manner as they may be exercised by the Court and subject to the same restrictions.

- (2) If the registrar refuses an application on the part of an appellant to exercise in his favour any power specified in subsection (1) above, the appellant shall be entitled to have the application determined by any judge of the Appeal Court.]

Textual Amendments

F49 S. 36A inserted (1.10.1996 with savings) by 1996 c. 46, s. 18; S.I. 1996/2474, art. 2 (with art. 3)

37 Documents relating to trial to be furnished for appeal.

- (1) In the case of every appeal or application for leave to appeal to the Appeal Court from a naval court-martial it shall be the duty of the Defence Council to furnish to the registrar, in accordance with rules of court, the proceedings of the court-martial and any petition presented by the person tried thereby.
- (2) In the case of every appeal or application for leave to appeal from an army or air force court-martial, it shall be the duty of the Judge Advocate General to furnish to the registrar, in accordance with rules of court, the proceedings of the court-martial^{F50} . . . and any petition presented by the person tried thereby.

Textual Amendments

F50 Words in s. 37(2) repealed (1.4.1997) by 1996 c. 46, s. 35(2), Sch. 7 Pt. II; S.I. 1997/304, art. 2 (with art. 3)

^{F51}_{F52} 37A False statements in computer record certificates.

- (1) Any person who in a certificate tendered under paragraph 8 of Schedule 3 to the Police and Criminal Evidence Act 1984 (computer records) in evidence before the Appeal Court makes a statement which he knows to be false or does not believe to be true shall be guilty of an offence and liable—
- on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
 - on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (2) Proceedings for an offence under this section committed outside the United Kingdom may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (3) In this section “statutory maximum” has the meaning given by section 74 of the Criminal Justice Act^{M13} 1982.]]

Textual Amendments

F51 S. 37A repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 5

F52 S. 37A inserted by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119, Sch. 6 para. 34

Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

*Changes to legislation: There are currently no known outstanding effects for the
Courts-Martial (Appeals) Act 1968, Part II. (See end of Document for details)*

Marginal Citations

M13 1982 c.48 (39:1).

38 Defence of appeals.

It shall be the duty of the Defence Council to undertake the defence of any appeal to the Appeal Court under this Part of this Act.

Status:

Point in time view as at 31/03/2005. This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part II.