



Courts-Martial (Appeals) Act 1968

1968 CHAPTER 20

PART III

APPEAL FROM COURTS-MARTIAL APPEAL COURT TO HOUSE OF LORDS

39 Right of appeal.

- (1) An appeal lies to the House of Lords, at the instance of the accused or the Defence Council, from any decision of the Appeal Court on an appeal to them under Part II of this Act, whether given by them when sitting within or outside the United Kingdom.
- (2) The appeal lies only with the leave of the Appeal Court or the House of Lords; and such leave shall not be granted unless it is certified by the Appeal Court that a point of law of general public importance is involved in the decision and it appears to the Court or the House of Lords, as the case may be, that the point is one which ought to be considered by that House.

40 Application for leave to appeal.

- (1) An application to the Appeal Court for leave to appeal to the House of Lords shall be made within the period of fourteen days beginning with the date of the decision of the Court; and an application to the House of Lords for leave shall be made within the period of fourteen days beginning with the date on which the application is refused by the Appeal Court.
- (2) The House of Lords or the Appeal Court may, upon application made at any time by the accused, extend the time within which an application may be made by him to that House or the Court under subsection (1) above.
- (3) An appeal 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.

Status: Point in time view as at 01/04/1997.

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

41 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 not less than three of the persons designated Lords of Appeal by section 5 of the ^{M1}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 under this Part of this Act, the House of Lords may exercise any powers of the Appeal Court or may remit the case to the Court.

Modifications etc. (not altering text)

- C1** S. 41(1) applied (*prosp.*) by 1955 c. 18, s. 113C(4) (as inserted (*prosp.*) by 2001 c. 19, ss. 21(1), 39(2))
 S. 41(1) applied (*prosp.*) by 1955 c. 19, s. 113C(4) (as inserted (*prosp.*) by 2001 c. 19, s. 21(1), 39(2))
 S. 41(1) applied (*prosp.*) by 1957 c. 53, s. 71AC(4) (as inserted (*prosp.*) by 2001 c. 19, s. 21(2), 39(2))

Marginal Citations

- M1** 1876 c. 59.

42 Bail.

- (1) When a person to whom this section applies appeals, or applies for leave to appeal, to the House of Lords from a decision of the Appeal Court, the Court shall have power to grant him bail pending the appeal.
- (2) This section applies to any person who—
 - (a) not being subject to the ^{M2}Naval Discipline Act, nor to military law nor to air force law, is liable by virtue of that Act, or the Army Act or the ^{M3}Air Force ^{M4}Act, to be tried as if he were so subject; or
 - (b) is subject to the Naval Discipline Act by virtue only of section 119(1) of it (sentenced offenders).

Marginal Citations

- M2** 1957 c. 53.
M3 1955 c. 18.
M4 1955 c. 19.

43 Detention of accused.

- (1) Where the accused would, but for the decision of the Appeal Court, be liable to be detained, and immediately after that decision the Defence Council are granted, or give notice that they intend to apply for, leave to appeal, the Appeal Court may make an order providing for the detention of the accused or directing that he shall not be released except on bail (which may, in the case of a person to whom section 42 of this Act applies, be granted as under that section) so long as any appeal to the House of Lords is pending.

Status: Point in time view as at 01/04/1997.

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

- (2) An order under this section shall (unless the appeal has been previously disposed of) cease to have effect at the expiration of the period for which the accused would have been liable to be detained but for the decision of the Appeal Court.
- (3) An order made under this section for the detention of a person who, but for the decision of the Appeal Court, would be liable to be detained in pursuance of an order or direction under United Kingdom mental health legislation shall be an order authorising his continued detention in pursuance of that order or direction; and the relevant provisions of that legislation with respect to persons liable to be detained thereunder (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- (4) The legislation referred to in subsection (3) above is [^{F1}Part III of the Mental Health Act 1983] the [^{F2}Mental Health (Scotland) Act 1984]and the Mental Health [^{F3}(Northern Ireland) Order 1986].
- (5) Where the Appeal Court has power to make an order under this section, and either no such order is made or the accused is released or discharged by virtue of subsection (2) or (3) above before the appeal is disposed of, the accused shall not be liable to be again detained as a result of the decision of the House of Lords on the appeal.

Textual Amendments

- F1** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\), s. 148, Sch. 4 para. 24\(a\)](#)
- F2** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 13](#)
- F3** Words substituted by [S.I. 1986/596, art. 6\(a\)](#)

44 Presence of accused at hearing.

Where the accused is detained pending an appeal from the Appeal Court to the House of Lords, he shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto unless an order of the House of Lords authorises him to be present, or that House or the Appeal Court give him leave to be present.

45 Effect of appeal on sentence.

- (1) Subject to this section, any sentence passed on an appeal from the Appeal Court to the House of Lords in substitution for another sentence shall, unless the House of Lords or the Appeal Court otherwise direct, begin to run from the time when that other sentence would have begun to run.
- (2) Where under this Part of this Act a person subject to a sentence is [^{F4}granted]bail pending an appeal, the time during which he is [^{F4}released on bail]shall be disregarded in computing the term of his sentence.

Textual Amendments

- F4** Words substituted by [Bail Act 1976 \(c. 63, SIF 39:1\), s. 12, Sch. 2 para. 46](#)

Status: Point in time view as at 01/04/1997.

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

46 Restitution of property.

- (1) Where the operation of an order for the restitution of property, being an order made under—
- section 76 of the ^{M5}Naval Discipline Act;
 - section 138 of the ^{M6}Army Act; or
 - section 138 of the ^{M7}Air Force Act,
- (which sections apply when persons are convicted by court-martial of theft or other offences against property), is suspended until the determination of an appeal to the Appeal Court, the following subsections apply.
- (2) If the conviction [^{F5}or, in the case of an appeal against sentence, the order] is not quashed on 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 to the House of Lords may be made (disregarding any extension of time which may be granted under section 40 of this Act); and
 - (b) if such an application is made within that time, so long as the appeal to the House of Lords is pending.
- (3) Where the operation of an order is suspended under this section,—
- (a) the order shall not take effect if the conviction [^{F5}or, in the case of an appeal against sentence, the order] 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.
- (4) Where by reason of the quashing by the Appeal Court of a person's conviction an order to which subsection (1) of this section applies does not take effect and on appeal to the House of Lords the conviction is restored by the House, the House may make any order for the restitution of property which could be made on his conviction by the court-martial which convicted him or, in the case of an appeal relating to a conviction under the ^{M8}Naval Discipline Act, by the Defence Council.

Textual Amendments

- F5** Words in s. 46(2)(3)(a) inserted (1.4.1997 with savings) by 1996 c. 46, s. 17(5); S.I. 1997/304, art. 2 (with art. 3)

Marginal Citations

- M5** 1957 c. 53.
M6 1955 c. 18.
M7 1955 c. 19.
M8 1957 c. 53.

47 Costs.

- (1) Where the Appeal Court or the House of Lords dismiss an application for leave to appeal to that House and the application was made by the Secretary of State, the Court or the House may direct the payment by the Secretary of State of such sums as appear to the Court or the House to be reasonably sufficient to compensate the accused for any expenses properly incurred by him in resisting the application.

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- (2) Where the Appeal Court or the House of Lords dismiss an application for leave to appeal to that House and the application was made by the accused, the Court or the House may make the like order as may be made by the Court under section 32(1) of this Act where they dismiss an application for leave to appeal to the Court; and any order made under this subsection may be enforced in the manner described in section 32(2) of this Act.
- (3) [^{F6}On determining an appeal from the Appeal Court], the House of Lords may, if they think fit, direct the payment by the Secretary of State of such sums as appear to the House to be reasonably sufficient to compensate the accused for any expenses properly incurred by him in the case up to and including the appeal, that is to say—
- (a) in the appeal to the House of Lords;
 - (b) in the prosecution of his appeal to the Appeal Court (including any proceedings preliminary or incidental thereto); and
 - (c) in carrying on his defence before the court-martial by which he was convicted or found not guilty by reason of insanity or unfit to stand his trial, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted or so found, as the case may be.
- (4) Except as provided by the foregoing provisions of this section, no costs shall be allowed on the hearing or determination of an appeal from the Appeal Court to the House of Lords, or of any proceedings preliminary or incidental to such an appeal.

Textual Amendments

F6 Words substituted by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), [s. 5\(4\)](#)

48 Powers under Part III which are exercisable by single judge.

The following powers of the Appeal Court under this Part of this Act, that is to say the power—

- (a) to extend the time for making an application for leave to appeal;
- (b) to make an order for or in relation to bail; and
- (c) to give leave to be present at the hearing of any proceedings preliminary or incidental to an appeal,

may be exercised by any judge of the Court; 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 Appeal Court.

[^{F7}48A Appeals on behalf of deceased persons.

- (1) Where a person has died—
- (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Appeal Court; and
 - (b) 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, 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.

Status: Point in time view as at 01/04/1997.

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- (2) In this section “relevant appeal” means—
- (a) an appeal under section 8, 21 or 24 of this Act; or
 - (b) an appeal under section 39 of this Act from any decision of the Appeal Court on an appeal under any of those sections.
- (3) Approval for the purposes of this section may only be given to—
- (a) the widow or widower of the dead person;
 - (b) a personal representative of the dead person; or
 - (c) 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) An application for such approval may not be made after the end of the period of one year beginning with the date of death.
- (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 Appeal Court to approve a person under this section may be exercised by any judge of the Appeal Court in the same manner as by the Court and subject to the same provisions; but if the judge refuses the application, the applicant shall be entitled to have the application determined by the Appeal Court.
- (7) In subsection (3)(b) above “personal representative” means—
- (a) for England and Wales, a person who is a personal representative within the meaning of section 55(1)(xi) of the ^{M9}Administration of Estates Act 1925;
 - (b) for Scotland, an executor confirmed to the estate of the dead person; or
 - (c) for Northern Ireland, a person who is one of the personal representatives within the meaning of the ^{M10}Administration of Estates Act (Northern Ireland) 1955.]

Textual Amendments

F7 S. 48A inserted (1.10.1996) by 1996 c. 46, s. 19; S.I. 1996/2474, art. 2(with art. 3)

Marginal Citations

M9 1925 c.23

M10 1955 c. 24(N.I.).

Status:

Point in time view as at 01/04/1997.

Changes to legislation:

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