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## SCHEDULES

### SCHEDULE 1 **U.K.**

Section 41.

#### APPEALS TO <sup>[F1]</sup>SUPREME COURT] IN CERTAIN CRIMINAL MATTERS

##### Textual Amendments

**F1** Words in Sch. 1 heading substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 30(8)(a); S. I. 2009/1604, art. 2(d)

1 (1) Subject to sub-paragraph (2) an application to the court below for leave to appeal shall be made within the period of <sup>[F2]</sup>28] days beginning with the <sup>[F3]</sup>relevant date]; and an application to <sup>[F4]</sup>the Supreme Court] for such leave shall be made within the period of <sup>[F2]</sup>28] days beginning with the date on which the application is refused by the court below.

<sup>[F5]</sup>(1A) In sub-paragraph (1), “the relevant date” means—

- (a) the date of the decision of the court below, or
- (b) if later, the date on which that court gives reasons for its decision.]

(2) <sup>F6</sup>. . . <sup>[F4]</sup>The Supreme Court] or the court below may, upon application made at any time by the defendant, extend the time within which an application may be made by him to that House or <sup>[F7]</sup>the court below] under sub-paragraph (1).

##### Textual Amendments

**F2** Words in Sch. 1 para. 1(1) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 105(1)(2)(a), 110(1); S.I. 2005/910, art. 3(x)

**F3** Words in Sch. 1 para. 1(1) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 105(1)(2)(b), 110(1); S.I. 2005/910, art. 3(x)

**F4** Words in Sch. 1 para. 1 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 30(8)(b); S. I. 2009/1604, art. 2(d)

**F5** Sch. 1 para. 1(1A) inserted (1.4.2005) by Courts Act 2003 (c. 39), ss. 105(3), 110(1); S.I. 2005/910, art. 3(x)

**F6** Words in Sch. 1 para. 1(2) repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110(1), Sch. 8 para. 198(2), Sch. 10; S.I. 2005/910, art. 3(y)

**F7** Words in Sch. 1 para. 1(2) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 30(8)(b); S.I. 2009/1604, art. 2(d)

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<sup>F8</sup> . . . . .

##### Textual Amendments

**F8** Sch. 1 para. 2 repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110(1), Sch. 8 para. 198(3), Sch. 10; S.I. 2005/910, art. 3(y)

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- 3 (1) Without prejudice to any other power to grant bail, a person appealing or applying for leave to appeal from the Court of Appeal or the High Court under section 41 may be admitted to bail by the court below pending the appeal; and in relation to any recognizances to be entered into under [F9 Article 148 of the Magistrates' Courts (Northern Ireland) Order 1981] or under [F10 Article 63 of the County Courts (Northern Ireland) Order 1980] any reference in [F10 that section or that Article] to the judgment of the Court of Appeal shall be construed as including a reference to the judgment of the [F11 the Supreme Court] or, if the case is remitted by [F12 the Supreme Court] to the Court of Appeal, to the judgment of that court on the case as so remitted.
- (2) Where application is made to the High Court or the Court of Appeal for leave to appeal, that court may give such directions as it thinks fit for discharging or enlarging any recognizances entered into by the applicant or any surety, under any statutory provision or otherwise, with reference to the proceedings of that court.

#### Textual Amendments

- F9** Words substituted by S.I. 1981/1675 (N.I. 26), s. 170(2), **Sch. 6 para. 55**
- F10** Words substituted by S.I. 1980/397 (N.I. 3), art. 168(2), **Sch. 1 Pt. II**
- F11** Words in Sch. 1 para. 3 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 30(8)(b)**; S.I. 2009/1604, **art. 2(d)**
- F12** Words in Sch. 1 para. 3 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 30(8)(b)**; S.I. 2009/1604, **art. 2(d)**

- 4 (1) Where the defendant in any proceedings from which an appeal lies under section 41 would, but for the decision of the court below, be liable to be detained, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order providing for the detention of the defendant or directing that he shall not be released except on bail, which may be granted by the court as under paragraph 3 so long as any appeal under section 41 is pending.
- (2) An order under sub-paragraph (1) shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the court below.
- (3) Any order made under sub-paragraph (1) for the detention of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an order or direction under the Mental Health [F13 (Northern Ireland) Order 1986 (other than under Article 42, 43 or 45)], shall be an order authorising his continued detention in pursuance of the order or direction under the [F13 said Order], and the provisions of the [F13 said Order] with respect to persons so liable (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- [F14(3A) Where an order is made under sub-paragraph (1) in the case of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an interim hospital order under Article 45 of the Mental Health (Northern Ireland) Order 1986, the order may, if the court thinks fit, be one authorising his continued detention in hospital and in that event—
- (a) sub-paragraph (2) shall not apply to the order;

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- (b) Part III of that Order shall apply as if he had been ordered under this paragraph to be detained in custody so long as any appeal under section 41 is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
  - (c) if the defendant is detained by virtue of this sub-paragraph and the appeal by the prosecutor succeeds, paragraph (2) of the said Article 45 (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.]
- (4) Where the court below has power to make an order under sub-paragraph (1) and either no such order is made or the defendant is released or discharged by virtue of sub-paragraph (2) [F13(3) or (3A)] before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the [F15the Supreme Court] on the appeal.

#### Textual Amendments

- F13** Words substituted by virtue of S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), **Sch. 5 Pt. II**
- F14** Sch. 1 para. 4(3A) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), **Sch. 5 Pt. II**
- F15** Words in Sch. 1 para. 4 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 30(8)(b)**; S.I. 2009/1604, **art. 2(d)**

- 5
- (1) Where a person subject to a sentence is admitted to bail pending an appeal under section 41, the time during which he is at large after being so admitted shall be disregarded in computing the term of his sentence.
  - (2) Subject to sub-paragraph (1), any sentence passed on an appeal under section 41 in substitution for another sentence shall, unless the [F16the Supreme Court] or the court below otherwise directs, begin to run from the time when that other sentence would have begun to run.

#### Textual Amendments

- F16** Words in Sch. 1 para. 5 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 30(8)(b)**; S. I. 2009/1604, **art. 2(d)**

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- (1) Rules of court may be made—
    - (a) for determining the cases in which the powers of the Court of Appeal under section 41 and this Schedule may be exercised by a judge thereof;
    - (b) for prescribing the persons before whom and the manner in which a recognizance shall be entered into, or other security given, where bail is granted to a person under paragraph 3 or 4 pending an appeal under section 41 from a decision of the High Court or Court of Appeal, and the manner in which any such recognizance or security may be enforced;
    - (c) for authorising the recommittal of any person to whom bail is granted.
  - (2) A defendant who is detained pending an appeal under section 41 shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto except where [F17Supreme Court Rules] or rules of court authorise him to be present or where [F18the Supreme Court] or the court below, as the case may be, gives him leave to be present.

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#### **Textual Amendments**

- F17** Words in Sch. 1 para. 6 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\)](#), [Sch. 9 para. 30\(8\)\(c\)\(i\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F18** Words in Sch. 1 para. 6 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\)](#), [Sch. 9 para. 30\(8\)\(c\)\(ii\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

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