



Criminal Appeal (Northern Ireland) Act 1980

1980 CHAPTER 47

PART I

APPEAL TO COURT OF APPEAL FROM CROWN COURT

Modifications etc. (not altering text)

C1 Ss. 1-30 (Pt. I) extended (N.I.) (25.8.1996) by 1996 c. 22, ss. 11(6), 62(1) (with s. 62(2))

Appeal against conviction on indictment

1 Right of appeal against conviction on indictment.

A person convicted on indictment may appeal to the Court of Appeal against his conviction—

- (a) on any ground which involves a question of law alone; and
- (b) with the leave of the Court, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or of mixed law and fact, an appeal lies under this section without the leave of the Court.

2 Grounds for allowing appeal against conviction.

(1) Except as provided by this Act, the Court of Appeal shall allow an appeal against conviction where the Court is of opinion—

- (a) that the conviction should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or

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- (b) that the judgment of the court of trial should be set aside on the ground of a wrong decision of any question of law; or
 - (c) that there was a material irregularity in the course of the trial,
- and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

- (2) If the Court allows an appeal against conviction it shall quash the conviction.
- (3) An order of the Court quashing a conviction shall, except when under section 6 of this Act the appellant is ordered to be retried, operate as a direction to the chief clerk acting for the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

3 Power to substitute conviction of alternative offence.

- (1) This section applies where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence.
- (2) The Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law by the verdict so substituted.

VALID FROM 01/09/2004

[^{F1}3A Power to substitute conviction of alternative offence 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 on the indictment have pleaded, or been found, guilty of some other offence, and
 - (c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of that other offence.
- (2) The Court may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law by the plea so substituted.]

Textual Amendments

- F1** S. 3A inserted (N.I.) (1.9.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 317(3); S.I. 2004/1629, art. 3(2)(d) (subject to art. 3(3)(4))

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4 Alteration of sentence on appeal against conviction.

- (1) Where a person appeals against conviction on an indictment containing two or more counts and the Court of Appeal allows the appeal in respect of part of the indictment, it may in respect of any count on which he remains convicted pass such sentence, in substitution for the sentence passed thereon at the trial, as it thinks proper and is authorised by law for the offence of which he remains convicted on that count.
- (2) On an appeal to the Court against conviction the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence authorised by law (whether more or less severe) in substitution therefor as it thinks ought to have been passed; but in no case shall any sentence be increased by reason or in consideration of any evidence that was not given at the trial.

5 Appeal against conviction on special verdict.

- (1) This section applies on an appeal against conviction where the jury have found a special verdict.
- (2) If the Court of Appeal considers that a wrong conclusion has been arrived at by the court of trial as to the effect of the jury's verdict the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to it to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law by the verdict so substituted.

Retrial

6 Power to order retrial.

- (1) Where an appeal against conviction is allowed by the Court of Appeal under section 2 of this Act and it appears to the Court that the interests of justice so require, the Court, upon quashing the conviction and any sentence passed thereon, may order the appellant to be retried.
- (2) Where, on an appeal to the Court against a sentence imposed upon conviction on indictments, it appears to the Court that there has been a mistrial of the indictment, the Court may quash the conviction, and sentence and may, if it appears to the Court that the interests of justice so require, order the appellant to be retried.
- (3) An appellant shall not be retried by virtue of this section for any offence other than—
 - (a) the offence of which he was convicted at the original trial;
 - (b) any offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence;
 - (c) any offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of that conviction.

7 Supplementary provisions as to retrial.

- (1) An appellant who is to be retried for an offence in pursuance of an order under section 6 of this Act shall be tried upon a fresh indictment preferred by the direction of the Court of Appeal and shall be tried before the Crown Court at such place as the Court

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of Appeal may direct or, if no such direction is given, at the place at which he was originally tried or such other place as the Crown Court may direct.

(2) The Court of Appeal may, upon ordering a retrial under section 6 of this Act, make such orders as appear to the Court to be necessary or expedient—

- (a) for the custody or admission to bail of the appellant pending the retrial; or
- (b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

(3) Where a retrial is ordered under section 6 of this Act in the case of a person who, immediately before the determination of his appeal, was liable to be detained in pursuance of an order or direction under Part III of the ^{M1}Mental Health [^{F2}Order (other than under Article 42, 43 or 45 of that Order)]—

- (a) that order or direction shall continue in force pending the retrial as if the appeal had not been allowed; and
- (b) any order made by the Court of Appeal under this section for his custody or admission to bail shall have effect subject to the order or direction under the said Part III.

[^{F3}(3A) Where a retrial is ordered under section 6 of this Act in the case of a person who, immediately before the determination of his appeal, was liable to be detained in pursuance of a remand under Article 43 of the Mental Health Order or an interim hospital order under Article 45 of that Order, the Court of Appeal may, if it thinks fit, order that he shall continue to be detained in hospital, and in that event Part III of the Mental Health Order shall apply as if he had been ordered under this section to be kept in custody pending his retrial and were detained in pursuance of a transfer direction together with a restriction direction.]

(4) Schedule 1 to this Act has effect with respect to legal aid for a person ordered under section 6 of this Act to be retried, his retrial, and the sentence which may be passed if the retrial results in his conviction.

Textual Amendments

F2 Words substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

F3 S. 7(3A) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

Marginal Citations

M1 1961 c. 15 (N.I.)

Appeal against sentence

8 Appeal against sentence following conviction on indictment.

A person convicted on indictment may appeal to the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

Modifications etc. (not altering text)

C2 S. 8 amended by S.I.1986/595 (N.I. 4), art.51(4)(a)

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9 Appeal in other cases dealt with by Crown Court.

(1) This section has effect for providing rights of appeal to the Court of Appeal against sentence where a person is dealt with by the Crown Court otherwise than on conviction on indictment.

(2) An offender who—

- (a) has been made the subject of a probation order or an order for conditional discharge or an order under section 18(1) [^{F4}or (1A)] of the ^{M2}Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentence); and
- (b) appears or is brought before the Crown Court in circumstances such that the Crown Court has power to deal with him in respect of the offence for which the probation order or the order for conditional discharge or the order under the said section 18(1) [^{F4}or (1A)] was made; and
- (c) is sentenced by the Crown Court for that offence,

shall have the like right of appeal to the Court of Appeal against that sentence as if the Crown Court had immediately before passing it convicted him on indictment for that offence and passed the sentence upon such conviction.

(3) A person—

- (a) against whom an order is made by the Crown Court under section 76 of the ^{M3}Children and Young Persons Act (Northern Ireland) 1968;
- (b) who is ordered by the Crown Court to be returned to prison or a young offenders centre under Article 3(1) or (5) of the ^{M4}Treatment of Offenders (Northern Ireland) Order 1976; or
- (c) who is sentenced by the Crown Court under Article 9(5)(b) of that Order for an offence or upon whom a fine is imposed under Article 9(5)(a) of that Order;
- (d) who is sentenced by the Crown Court under Article 10(3) of that Order for an offence,

shall have the like right of appeal to the Court of Appeal against that order, sentence or fine as if the Crown Court had immediately before making that order, passing that sentence or imposing that fine (as the case may be) convicted him on indictment and that order, sentence or fine were a sentence passed upon that conviction.

(4) So much of the following provisions of this Act as have effect in relation to an appeal against sentence passed on conviction on indictment shall, with necessary modifications, have effect in relation to appeals under this section.

Textual Amendments

F4 Words inserted by [S.I.1989/1344 \(N.I. 15\)](#), art. 14(1), [Sch. 1 para. 28](#)

Marginal Citations

M2 [1968 c. 29 \(N.I.\)](#)

M3 [1968 c. 34 \(N.I.\)](#)

M4 [S.I. 1976/226 \(N.I. 4\)](#).

10 Supplementary provisions as to appeals against sentence.

(1) An appeal against sentence, whether under section 8 or section 9 of this Act, lies only with the leave of the Court of Appeal.

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- (2) Where the Crown Court has passed on an offender two or more sentences in the same proceedings, being sentences against which an appeal lies under section 8 or 9 of this Act, an appeal or application for leave to appeal against any one of those sentences shall be treated as an application in respect of both or all of them; and for the purpose of this subsection two or more sentences shall be treated as passed in the same proceedings if—
- (a) they are passed on the same day, or
 - (b) they are passed on different days, but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence.
- (3) On an appeal to the Court against sentence under section 8 or 9 of this Act the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed by the Crown Court and pass such other sentence authorised by law (whether more or less severe) in substitution therefor as it thinks ought to have been passed; but in no case shall any sentence be increased by reason or in consideration of any evidence that was not given at the Crown Court.
- [^{F5}(4) The power of the Court under section 4(2) of this Act or subsection (3) above to pass a sentence which the Crown Court has power to pass for an offence shall, notwithstanding that the Crown Court made no order under section 19(1) of the Treatment of Offenders Act (Northern Ireland) 1968 ^{M5}in respect of a suspended sentence or order for detention previously passed or made on or in relation to the appellant for another offence, include power to deal with the appellant in respect of that sentence or order for detention where the Crown Court made no order in respect of it.]
- [^{F6}(5) The fact that an appeal is pending against an interim hospital order under Article 45 of the Mental Health Order shall not affect the power of the Crown Court to renew or terminate the order or to deal with the appellant on its termination; and where the Court of Appeal quashes such an order but does not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or admitted to bail pending his being dealt with by the Crown Court.
- (6) Where the Court of Appeal makes an interim hospital order by virtue of section 4(2) of this Act or subsection (3) above—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the Crown Court and not by the Court of Appeal; and
 - (b) the Crown Court shall be treated for the purposes of Article 45(6) of the Mental Health Order (absconding offenders) as the court that made the order.]

Textual Amendments

F5 S. 10(4) substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 72](#)

F6 S. 10(5)(6) added by [S.I.1986/595.\(N.I. 4\)](#), art. 51(6), 136(1), Sch. 5 Pt.I

Marginal Citations

M5 [1968 c.29 \(N.I.\)](#)

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VALID FROM 01/02/2010

[^{F7}10A Quashing of certain confiscation orders: supplementary

- (1) This section applies where the Court of Appeal—
 - (a) quashes a confiscation order under section 10(3) (“the quashed order”), and
 - (b) under section 10(3A), directs the Crown Court to proceed afresh under the relevant enactment.
- (2) Nothing in this section prevents any sum paid by the appellant pursuant to the quashed order being a sum which is recoverable from the Secretary of State as a debt owing to the appellant, but the Court of Appeal may direct that any sum is not to be repaid until such time as the Crown Court makes a confiscation order, or decides not to make such an order, when proceeding afresh pursuant to section 10(3A).
- (3) Nothing in this section prevents an amount which would otherwise fall to be repaid as a result of the order being quashed being set against an amount which the appellant is required to pay by virtue of a confiscation order made by the Crown Court in those proceedings.
- (4) In this section “confiscation order” and “relevant enactment” have the same meaning as in section 10(3C).]

Textual Amendments

- F7** S. 10A inserted (1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 141(3), 182(5) (with s. 180, Sch. 22 para. 39); S.I. 2010/145, art. 2(2), Sch. para. 11

Appeal in cases of insanity

11 Appeal against conviction: substitution of finding of insanity.

- [^{F8}(1) If, on an appeal, it appears to the Court of Appeal that, although the appellant did the act or made the omission charged against him, he was an insane person at the time the act was done or the omission made, the Court may—
- (a) quash the conviction and direct that a finding of not guilty on the ground of insanity be entered; and
 - (b) quash the sentence passed at the trial and make any such order as may be made under [^{F9}Article 50 of the Mental Health Order] (admission to hospital of persons found not guilty by reason of insanity).]

[^{F10}(2) If, on an appeal, it appears to the Court of Appeal that the case is not one where there should have been a verdict of acquittal, but that there should have been a finding that the accused was unfit to be tried, the Court may—

 - (a) quash the conviction and any sentence passed at the trial; and
 - (b) make any such order as may be made under Article 49 of the Mental Health Order (admission to hospital of persons found unfit to be tried).]

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Textual Amendments

- F8** By S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), **Sch. 5 Pt. I** it is provided that section 11 is renumbered as subsection (1) of that section
- F9** Words substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), **Sch. 5 Pt. I**
- F10** S. 11(2) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), **Sch. 5 Pt. I**

12 Appeal against finding of not guilty on ground of insanity.

- (1) A person in whose case a finding is recorded under [F11 Article 50(1) of the Mental Health Order] that he was not guilty of the offence charged on the ground of insanity may appeal against that finding to the Court of Appeal—
- (a) on any ground of appeal which involves a question of law alone; and
 - (b) with the leave of the Court, on any ground of appeal which involves a question of fact alone or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal;
- but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or of mixed law and fact, an appeal lies under this section without the leave of the Court.
- (2) The Court, on an appeal under this section, shall (subject to subsections (3) and (4) below) allow the appeal where the Court is of opinion—
- (a) that the finding should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
 - (b) that any order made by the court of trial upon, or giving effect to, the finding should be set aside on the ground of a wrong decision of any question of law; or
 - (c) that there was a material irregularity in the course of the trial,
- and in any other case shall dismiss the appeal.
- (3) The Court may dismiss an appeal under this section if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.
- (4) Where but for this subsection—
- (a) an appeal under this section 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 Court may dismiss the appeal if of opinion that but for the insanity of the accused the proper verdict would have been that he was guilty of an offence other than the offence charged.

Textual Amendments

- F11** Words substituted by S.I. 1986/595 (N.I. 4), arts. 52(6), 136(1), **Sch. 5 Pt. I**

13 Disposal of appeal allowed under s. 12.

- (1) The following provisions apply where an appeal under section 12 of this Act is allowed in accordance with that section.

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- (2) If the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand, but the Court of Appeal is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court—
- (a) shall substitute for the finding of not guilty on the ground of insanity a verdict of guilty of that offence; and
 - (b) subject to subsection (3) below, shall have the like powers of punishing or otherwise dealing with the appellant and all other powers as the court of trial would have had if the jury had returned that verdict.
- (3) Where the offence mentioned in subsection (2) above is one for which the sentence fixed by law is one of death or of imprisonment for life, the sentence shall (whatever the circumstances) be one of imprisonment for life.
- (4) In a case where the Court allows an appeal under section 12 above but subsection (2) of this section does not apply, the Court shall substitute for the finding of the jury a verdict of acquittal.
- (5) An order of the Court allowing an appeal under section 12 of this Act shall operate as a direction to the chief clerk acting for the court of trial to amend the record to conform with the order.
- [^{F12}(5A) Where, on an appeal under section 12, the Court is of opinion that the case is not one where there should have been a verdict of acquittal but that there should have been a finding that the accused was unfit to be tried, the Court may make any such order as may be made under Article 49 of the Mental Health Order (admission to hospital of persons found unfit to be tried).]
- (6) Where in accordance with subsection (4) of this section the Court substitutes a verdict of acquittal for a finding of not guilty on the ground of insanity, any order previously made in consequence of that finding under [^{F13}Article 50(2)] of the Mental Health [^{F14}Order] shall cease to have effect, so however that if the Court is of opinion—
- [^{F15}(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); and
 - (b) that failure to so detain him would create a substantial likelihood of serious physical harm to himself or to other persons.]
- the Court may make an order that he be detained in any hospital in which he was detained by virtue of an order under the said [^{F13}Article 50(2)]; and Schedule 2 to this Act shall apply as to the consequences and effect of an order made by the Court under this subsection.

Textual Amendments

F12 S. 13(5A) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

F13 Words substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

F14 Word substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

F15 S. 13(6)(a)(b) substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

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[^{F16} Appeal against finding of unfitness to be tried.]

Textual Amendments

F16 S. 13A inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

13A Appeal against finding of unfitness to be tried.

- (1) Where there has been a determination under Article 49 of the Mental Health Order of the question of a person's fitness to be tried, and the jury has returned a finding that he is unfit to be tried, the person may appeal to the Court of Appeal against the finding.
- (2) An appeal under this section may be—
 - (a) on any ground of appeal which involves a question of law alone; and
 - (b) with the leave of the Court, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or of mixed law and fact, an appeal lies under this section without the leave of the Court.
- (3) Subject to subsection (4), the Court shall allow an appeal under this section where the Court is of opinion—
 - (a) that the finding should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
 - (b) that any order made by the court of trial upon, or giving effect to, the finding should be set aside on the ground of a wrong decision of any question of law; or
 - (c) that there was a material irregularity in the course of the determination of the question of fitness to be tried,

and in any other case (except one to which subsection (5) below applies) shall dismiss the appeal.
- (4) The Court may dismiss an appeal under this section if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.
- (5) An appeal under this section may, in a case where the question of fitness to be tried was determined later than on arraignment, be allowed by the Court (notwithstanding that the finding was properly come to) if the court is of opinion that the case is one in which the accused should have been acquitted before the question of fitness to be tried was considered; and, if an appeal is allowed under this subsection, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).
- (6) Subject to subsection (5) above, where an appeal under this section is allowed, the appellant may be tried accordingly for the offence with which he was charged, and the Court may make such orders as appear to it to be necessary or expedient pending any such trial for his custody, admission to bail or continued detention under the Mental Health Order.

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- (7) Where an order is made by the Court under subsection (6) above for a person's continued detention under the Mental Health Order, Part III of that Order shall apply to him as if he had been ordered under that subsection to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a restriction direction.

VALID FROM 14/07/2008

[^{F17} Appeals following references by the CCRC

Textual Amendments

- F17** S. 13B and preceding cross-heading inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 43, 148, 153\(7\)\(8\)](#) (with [Sch. 27 para. 15](#)); [S.I. 2008/1586](#), [art. 2\(1\)\(3\)](#), Sch. 1 para. 22 (subject to Sch. 2)

13B Power to dismiss certain appeals following references by the CCRC

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 10(1)(a), (6) or (7) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.
- (2) Notwithstanding anything in section 2, 12 or 13A of this Act, the Court of Appeal may dismiss the appeal if—
- the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
 - the condition in subsection (3) is met.
- (3) The condition in this subsection is that if—
- the reference had not been made, but
 - the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,
- the Court would not think it appropriate to grant the application by exercising the power conferred by section 16(2).]

Review of cases

14 Reference by Secretary of State.

- (1) Where a person has been convicted on indictment or, being charged on indictment with an offence, has been found not guilty on the ground of insanity [^{F18}or been found by a jury to be unfit to be tried], the Secretary of State may, if he thinks fit,—
- refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to the Court by that person; or

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- (b) if he desires the assistance of the Court on any point arising in the case, refer that point to the Court for its opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with its opinion thereon accordingly.
- (2) The Secretary of State's power of reference under this section shall be exercisable at any time, and whether or not there has been an appeal or an application for leave to appeal.

Textual Amendments

F18 Words inserted by **S.I. 1986/595 (N.I. 4)**, arts. 51(6), 136(1), **Sch. 5 Pt. I**

Reference of point of law

15 Reference of point of law following acquittal on indictment.

- (1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney General for Northern Ireland may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the Court, and the Court shall, in accordance with this section, consider the point and give the Court's opinion on it.
- (2) For the purpose of the Court's consideration of a point referred to it under this section, the Court shall hear argument—
 - (a) by, or by counsel on behalf of, the Attorney General for Northern Ireland; and
 - (b) if the acquitted person desires to present any argument to the Court, by counsel on his behalf or, with the leave of the Court, by the acquitted person himself.
- (3) Where on a point being referred to the Court under this section the acquitted person appears by counsel for the purpose of presenting any argument to the Court, he shall be entitled to his costs, that is to say to the payment out of money provided by Parliament of such sums as are reasonably sufficient to compensate him for his expenses properly incurred for the purpose of being represented on the reference; and any amount recoverable under this subsection shall be ascertained as soon as practicable by the Master (Taxing Office).
- (4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

Procedure from notice of appeal to hearing

16 Notice of appeal or application for leave.

- (1) Subject to subsection (2) below, a person who wishes to appeal under this Part of this Act to the Court of Appeal, or to obtain the Court's leave to appeal, shall give notice of appeal, or of his application for leave to appeal, in the prescribed manner within twenty-eight days from the date of the conviction, verdict or finding appealed against or, in the case of an appeal or application for leave to appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.

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- (2) The time for giving notice of appeal or of application for leave to appeal may be extended at any time by the Court.
- (3) The Master shall furnish the necessary forms and instructions in relation to notices of appeal, or notices of application under this Act, to any person who demands them, and to officers of courts, governors of prisons and such other persons as he thinks fit; and governors of prisons shall—
 - (a) cause the forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Act; and
 - (b) cause any such notice given by a prisoner in custody to be forwarded on behalf of the prisoner to the Master.

[^{F19}**16A Appeals in cases of contempt of court.**

- (1) Subject to subsection (2) below, a person who wishes to appeal under section 44 of the Judicature (Northern Ireland) ^{M6}Act 1978 from any order or decision of the Crown Court in the exercise of jurisdiction to punish for contempt of court shall give notice of appeal in the prescribed manner within twenty-eight days from the date of the order or decision appealed against.
- (2) The time for giving notice under this section may be extended either before or after its expiry by the Court.]

Textual Amendments

F19 S. 16A inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 73](#)

Marginal Citations

M6 [1978 c. 23 \(38\)](#).

[^{F20}**17 Bail.**

- (1) The Court of Appeal may, if it thinks fit—
 - (a) grant an appellant bail pending the determination of his appeal; or
 - (b) vary the conditions of bail granted to an appellant in the exercise of the power conferred by paragraph (a) above; or
 - (c) revoke bail granted to an appellant under paragraph (a) above.
- (2) The powers conferred by subsection (1) above may be exercised—
 - (a) on the application of the appellant; or
 - (b) if it appears to the Master that any of them ought to be exercised, on a reference to the court by him.]

Textual Amendments

F20 S. 17 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 74](#)

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[^{F21}18] **Groundless appeals or applications for leave to appeal.**

If it appears to the Master that a notice of appeal or of application for leave to appeal under this Part of this Act does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court of Appeal for summary determination; and the Court may then, if it considers that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning the proceedings for a full hearing, dismiss the appeal or application for leave summarily without calling on any one to attend the hearing or to appear for the Crown thereon.]

Textual Amendments

F21 S. 18 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 75](#)

19 **Legal aid.**

(1) The Court of Appeal may at any time, when it appears to the Court in the case of an appeal or proceedings preliminary or incidental thereto that it is desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid, assign to the appellant a solicitor and counsel, or counsel only, in the appeal or proceedings.

[^{F22}(1A) The Crown Court or the Court of Appeal may order that a person shall be given legal aid for the purpose of—

- (a) an application for leave to appeal under Article 8(11) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (appeals against orders or rulings at preparatory hearings); or
- (b) of an appeal under that paragraph.]

(2) If on a question of granting a person free legal aid under this section there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

(3) The Master shall report to the Court or a judge thereof any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant under the powers conferred on the Court by this section.

Textual Amendments

F22 S. 19(1A) inserted by [S.I. 1988/1846 \(N.I. 16\)](#), art. 12, [Sch. 5 para. 5\(1\)](#)

20 **Preparation of case for hearing.**

The Master shall—

- (a) subject to section 18 of this Act, take all necessary steps for obtaining a hearing of any appeal or application to the Court of Appeal under this Act, notice of which is given to him thereunder; and

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- (b) obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court of trial which appear necessary for the proper determination of the appeal or application.

Transcripts, documents, etc.

21 Transcripts.

- (1) Rules of court may provide—
 - (a) for the making of a record (whether by means of short-hand notes, by mechanical means or otherwise) of any proceedings in respect of which an appeal lies (with or without leave) to the Court of Appeal under this Part of this Act;
 - (b) for the making and verification of a transcript of any such record and for supplying the transcript, on payment of such charge, if any, as may be fixed for the time being by the Treasury, to the Master for the use of the Court or any judge thereof, and to such other persons and in such circumstances as may be prescribed.
- (2) Without prejudice to subsection (1) above, the Secretary of State may, if he thinks fit in any case, direct that a transcript shall be made of any such record made in pursuance of the rules and shall be supplied to him.
- (3) The cost—
 - (a) of making any such record in pursuance of the rules; and
 - (b) of making and supplying in pursuance of this section any transcript ordered to be supplied to the Master or the Secretary of State,shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament, and the cost of providing and installing at any court any equipment required for the purpose of making any such record or transcript shall also be defrayed out of money so provided.

22 Trial documents, etc.

Any documents, exhibits or other things connected with the proceedings on a trial on indictment shall be kept in the custody of the court of trial, in accordance with such provisions as may be prescribed, for such time as may be prescribed and subject to such power as may be prescribed for the conditional release of any such documents, exhibits or things from that custody.

23 Judge's notes and report.

In the case of an appeal under this Part of this Act, or an application for leave to appeal thereunder, the judge of the court of trial shall, on request, furnish to the Master in the prescribed manner his notes of the trial and a report giving his opinion upon the case or any point arising in it.

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The hearing

24 Right of appellant to be present.

- (1) Except as provided by this section, an appellant shall be entitled to be present, if he desires it, on the hearing of his appeal, although he may be in custody.
- (2) A person in custody shall not be entitled to be present—
 - (a) where the appeal is on some ground involving a question of law alone; or
 - (b) on any proceedings preliminary or incidental to an appeal;
 unless rules of court provide that he is to be so entitled or the Court of Appeal gives him leave to be present; nor shall he be so entitled where he is in custody in consequence of a finding of not guilty on the ground of insanity [^{F23} or of a finding of unfitness to be tried].
- (3) The power of the Court to pass sentence may be exercised notwithstanding that the appellant is for any reason not present.

Textual Amendments

F23 Words added by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

25 Evidence.

- (1) For the purposes of this Part of this Act, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—
 - (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the Court necessary for the determination of the case;
 - (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether or not he was called at the trial; and
 - (c) subject to subsection (3) below, receive the evidence, if tendered, of any witness.
- (2) Without prejudice to subsection (1) above, where evidence is tendered to the Court under that subsection the Court shall, unless it is satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise its power of receiving it if—
 - (a) it appears to the Court that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and
 - (b) the Court is satisfied that it was not adduced at the trial but there is a reasonable explanation for the failure to adduce it.
- (3) Subsection (1)(c) above applies to any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's husband or wife where the appellant makes an application for that purpose and the evidence of the husband or wife could not have been given at the trial except on such an application.

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VALID FROM 31/03/1997

[^{F24}25A Power to order investigations.

- (1) On an appeal against conviction the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that—
 - (a) the matter is relevant to the determination of the case and ought, if possible, to be resolved before the case is determined;
 - (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
 - (c) the matter cannot be resolved by the Court without an investigation by the Commission.
- (2) A direction by the Court under subsection (1) above shall be given in writing and shall specify the matter to be investigated.
- (3) Copies of such a direction shall be made available to the appellant and the respondent.
- (4) Where the Commission have reported to the Court of Appeal on any matter which they have been directed under subsection (1) above to investigate, the Court—
 - (a) shall notify the appellant and the respondent that the Commission have reported; and
 - (b) may make available to the appellant and the respondent the report of the Commission and any statements, opinions and reports which accompanied it.]

Textual Amendments

F24 S. 25A inserted (31.3.1997) by 1995 c. 35, s. 5(2); S.I. 1997/402, art. 3(a)

26 Additional powers of Court.

- (1) For the purposes of this Part of this Act, the Court of Appeal may exercise any of the following powers, where it thinks it necessary or expedient in the interests of justice:—
 - (a) in the case of any witness whose attendances might be required under section 25(1)(b) above, the Court may order his examination to be conducted in the prescribed manner before a judge of the Court or before any other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;
 - (b) where a question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before it, the Court may order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by the Court, and act upon the report of the commissioner so far as the Court thinks fit to adopt it;
 - (c) the Court may appoint a person with special expert knowledge to act as assessor to the Court in a case where it appears to the Court that such knowledge is required for the proper determination of the case.

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- (2) The Court may, in relation to its proceedings, exercise any other powers which may for the time being be exercised by the Court on appeals in civil matters, and may issue any warrants necessary for enforcing the orders or sentences of the Court.

Matters depending on result of appeal

27 Restitution of property.

- (1) Except as provided by this section the operation of an order made on a conviction on indictment for the restitution of property to any person shall be suspended—
- (a) in any case until the expiration of twenty-eight days from the date of conviction; and
 - (b) in cases where notice of appeal or of application for leave to appeal is given within twenty-eight days from the date of conviction, until the determination of the appeal.
- (2) Subsection (1) of this section shall not apply where the court of trial directs to the contrary in any case in which, in the court's opinion, the title to the property is not in dispute.
- (3) In cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.
- (4) Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order.
- (5) The Court of Appeal may by order annul or vary an order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.
- (6) References in this section to an order for the restoration of property include references to—
- (a) an order made under section 27 of the ^{M7}Theft Act (Northern Ireland) 1969; and
 - (b) a compensation order made under Article 3 of the ^{M8}Criminal Justice (Northern Ireland) Order 1980.

Marginal Citations

M7 1969 c. 16 (N.I.)

M8 S.I. 1980/704 (N.I. 6).

28 Costs.

- (1) Except as provided by the ^{M9}Costs in Criminal Cases Act (Northern Ireland) 1968 or any other Northern Ireland legislation, no costs shall be allowed on the hearing and determination of an appeal under this Part of this Act, or of proceedings preliminary or incidental to such an appeal.
- (2) [^{F25}The following expenses, that is to say—]

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- (a) the expenses of any solicitor or counsel assigned to an appellant under this Part of this Act;
 - (b) the expenses of any witnesses attending on the order of the Court of Appeal, or examined in any proceedings incidental to the appeal;
 - (c) the expenses of the appearance of an appellant on the hearing of his appeal, or in proceedings preliminary or incidental thereto;
 - (d) all expenses of or incidental to any examination of witnesses conducted by a person appointed by the Court for the purpose; and
 - (e) all expenses of or incidental to any reference of a question to a special commissioner appointed by the Court, or of any person appointed as assessor to the Court [F26 shall, up to an amount allowed by the Master (Taxing Office) be defrayed, in the case of expenses within paragraph (a), by the Lord Chancellor and, in any other case by the Secretary of State].
- (3) Where in any proceedings on an appeal to the Court under this Part of this Act or preliminary or incidental to such an appeal an interpreter is required because of an appellant's lack of English, the expenses properly incurred on his employment shall be defrayed by the Secretary of State up to an amount allowed by the Court.

Textual Amendments

F25 Words substituted by [S.I. 1982/159, art. 4, Sch. para. 4](#)

F26 Words inserted by [S.I. 1982/159, art. 4, Sch. para. 4](#)

Modifications etc. (not altering text)

C3 Functions of the Secretary of State under s. 28(2) so far as relating to the expenses mentioned in para. (a) of that subsection now exercisable by the Lord Chancellor: [S.I. 1982/159, arts. 2\(1\)\(c\), 4](#)

Marginal Citations

M9 [1968 c. 10 \(N.I.\)](#)

29 Computation of sentence.

- (1) The time during which an appellant, pending the determination of his appeal, is not detained in custody shall not count as part of any term of imprisonment or detention under his sentence.
- (2) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.
- (3) Where the Court gives a direction under subsection (2) of this section, the Court shall state the reasons for giving it and the Court shall not give any such direction where—
 - (a) leave to appeal has been granted; or
 - (b) a certificate has been given under section 1 of this Act; or
 - (c) the case has been referred to the Court under section 14 of this Act.
- (4) The term of any sentence passed by the Court in the exercise of its powers under section 13(2) of this Act shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

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Interpretation

VALID FROM 14/07/2008

[^{F27}29A Effect of interim hospital orders

- (1) This section applies where the Court of Appeal—
 - (a) makes an interim hospital order by virtue of any provision of this Part, or
 - (b) renews an interim hospital order so made.
- (2) The Crown Court shall be treated for the purposes of Article 45(6) of the Mental Health Order (absconding offenders) as the court that made the order.]

Textual Amendments

F27 S. 29A inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 47, 153\(7\)\(8\), Sch. 8 para. 20\(2\)](#); [S.I. 2008/1586, art. 2\(1\)\(3\)](#), Sch. 1 para. 26 (subject to Sch. 2)

30 Interpretation of Part I.

In this Part of this Act, unless the context otherwise requires,—

“appellant” includes a person who has given notice of application for leave to appeal;

“the court of trial” means, in relation to an appeal, the court from which the appeal lies;

“insane person” has the meaning given to it by section 1 of the ^{M10}Criminal Justice Act (Northern Ireland) 1966, and “insanity” shall be construed accordingly; and

“sentence” includes any order of the court of trial made on conviction with reference to the person convicted or his wife or children, and any recommendation of that court as to the making of a deportation order in the case of a person convicted;

and a power of the Court of Appeal to pass sentence includes power to make any such order or recommendation which could lawfully have been made by the court of trial.

Marginal Citations

M10 1966 c. 20 (N.I.)

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PART II

APPEAL TO HOUSE OF LORDS FROM DECISION UNDER PART I

The appeal

31 Right of appeal to House of Lords.

- (1) Subject to the provisions of this Part of this Act, 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 [^{F28}or Article 8 (preparatory hearings) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988].
- (2) No appeal lies under this Part of this Act except with the leave of the Court or of the House of Lords; and such leave shall not be granted unless it is certified by the Court that a point of law of general public importance is involved in the decision and it appears to the Court or to the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (3) In this Part of this Act “the defendant” means, in relation to an appeal, the person who was the appellants before the Court, and references to the prosecutor shall be construed accordingly.

Textual Amendments

F28 Words added by S.I. 1988/1846 (N.I. 16), art. 12, Sch. para. 5(2)

32 Application for leave to appeal.

- (1) Subject to subsection (2) below, an application to the Court of Appeal for leave to appeal under this Part of this Act 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 such leave shall be made within the period of fourteen days beginning with the date on which the application is refused by the Court.
- (2) The House of Lords or the Court 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 the Court under subsection (1) above.
- (3) An appeal under this Part of this Act 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 the 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.

33 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 ^{M11}Appellate Jurisdiction Act 1876.
- (2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal under this Part of this Act by a committee constituted in accordance

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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 Court or may remit the case to the Court.

Modifications etc. (not altering text)

C4 S. 33(1) applied by *Criminal Justice Act 1988 (c. 33, SIF 39:1)*, s. 36(5)(9)

Marginal Citations

M11 1876 c. 59.

Reference of point of law

34 Further reference to House of Lords of point of law following acquittal on indictment.

- (1) Where the Court of Appeal has given its opinion on a point referred to the Court under section 15 of this Act the Court may, of its own motion or in pursuance of an application in that behalf, refer the point to the House of Lords if it appears to the Court that the point ought to be considered by that House.
- (2) If a point is referred to the House of Lords under subsection (1) of this section, the House shall consider the point and give the House's opinion on it accordingly; and section 33(1) of this Act shall apply also in relation to any proceedings of the House under this section.
- (3) Where on a point being referred to the House of Lords under this section the acquitted person appears by counsel for the purpose of presenting any argument to the House, he shall be entitled to his costs, that is to say to the payment out of money provided by Parliament of such sums as are reasonably sufficient to compensate him for his expenses properly incurred for the purpose of being represented on the reference; and any amount recoverable under this subsection shall be ascertained as soon as practicable by such officer as may be prescribed by order of the House of Lords.
- (4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

Matters preliminary to hearing

35 Bail.

The Court of Appeal may, if it thinks fit, on the application of an appellant under this Part of this Act or a person applying for leave to appeal thereunder, [F²⁹ other than a person appealing or applying for leave to appeal from a decision on an appeal under Article 8(11) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (appeals against orders or rulings at preparatory hearings),] admit him to bail pending an appeal from the Court.

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Textual Amendments

F29 Words inserted by S.I. 1988/1846 (N.I. 16), art. 12, Sch. para. 5(3)

36 Detention of defendant pending appeal by Crown.

- (1) Where the defendant in any proceedings from which an appeal lies to the House of Lords under this Part of this Act would, but for the decision of the Court of Appeal, 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 his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 35 above) so long as an appeal under this Part of this Act is pending.
 - (2) An order under subsection (1) above 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.
 - (3) When an order is made under this section in the case of a defendant who, but for the decision of the Court, would be liable to be detained in pursuance of an order or direction under the Mental Health ^[F30]Order (otherwise than under Article 42, 43 or 45 of that Order), the order under this section shall be one authorising his continued detention in pursuance of the order or direction, and the provisions of ^[F30]that 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.
- ^[F31](3A) Where an order is made under this section in the case of a defendant who, but for the decision of the Court, would be liable to be detained in pursuance of a remand under Article 43 of the Mental Health Order or an interim hospital order under Article 45 of that Order, the order may, if the Court thinks fit, be one authorising his continued detention in a hospital and in that event—
- (a) subsection (2) of this section shall not apply to the order;
 - (b) Part III of the Mental Health Order 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, 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 has 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 subsection (2) ^[F32](3) or (3A) above, 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

F30 Words substituted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

F31 S. 36(3A) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

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F32 Words substituted by [S.I. 1986/595 \(N.I. 4\)](#), arts. 51(6), 136(1), **Sch. 5 Pt. I**

37 Legal aid.

- (1) The Court of Appeal may at any time when it appears to the Court, in the case of an appeal from the Court under this Part of this Act or of proceedings preliminary or incidental to such an appeal, that it is desirable in the interests of justice that the defendant should have legal aid, and that he has not sufficient means to enable him to obtain that aid, assign to him (whether he is appellant or respondent in the appeal) a solicitor and counsel, or counsel only, in the appeal or proceedings.
- (2) If on a question of granting a person free legal aid under this section there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.
- (3) The fees of any counsel, and the expenses and fees of any solicitor, assigned to a defendant by virtue of this section, in either case up to an amount allowed by the House of Lords or by such officer or officers of that House as may be prescribed by order of that House, shall be paid by [^{F33}the Lord Chancellor].

Textual Amendments

F33 Words substituted by [S.I. 1982/159](#), **Sch. para. 5**

Modifications etc. (not altering text)

C5 Functions of the Secretary of State under s. 37(3) now exercisable by the Lord Chancellor: [S.I. 1982/159](#), **arts. 2(1)(d)**, 4

38 Presence of defendant at hearing.

A defendant who [^{F34}has been convicted of an offence and] is detained pending an appeal under this Part of this Act 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 or rules of court, as the case may be, authorise him to be present or where that House or the Court of Appeal, as the case may be, gives him leave to be present.

Textual Amendments

F34 Words inserted by [S.I. 1988/1846 \(N.I. 16\)](#), art. 12, **Sch. para. 5(4)**

Matters depending on result of appeal

39 Computation of sentence.

- (1) If a person subject to a sentence is admitted to bail pending an appeal under this Part of this Act, the time during which he is at large after being so admitted shall be disregarded in computing the term of his sentence.

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- (2) Subject to the foregoing subsection, any sentence passed on such an appeal in substitution for another sentence shall, unless the House of Lords or the Court of Appeal otherwise directs, begin to run from the time when the other sentence would have begun to run.

40 Restitution of property.

- (1) Where the operation of an order for the restitution of property made on conviction on indictment is suspended until the determination of an appeal to the Court of Appeal, then, if the conviction is not quashed on that 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 under this Part of this Act may be made (disregarding any extension of time which may be granted under section 32(2) of this Act); and
 - (b) if any such application is made within that time, so long as the appeal under this Part of this Act is pending.
- (2) Where the operation of any such order is suspended under this section—
- (a) the order shall not take effect if the conviction is quashed on appeal to the House of Lords; and
 - (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.
- (3) Where by reason of the quashing by the Court of a person's conviction such an order does not take effect and on an appeal under this Part of this Act the conviction is restored by the House of Lords, that House may make any order for the restitution of property which could be made on his conviction by the court which convicted him.
- (4) References in this section to an order for the restitution of property include references to—
- (a) an order made under section 27 of the ^{M12}Theft Act (Northern Ireland) 1969; and
 - (b) a compensation order made under Article 3 of the ^{M13}Criminal Justice (Northern Ireland) Order 1980.

Marginal Citations

M12 1969 c. 16 (N.I.)

M13 S.I. 1980/704 (N.I. 6).

41 Costs.

- (1) Where the Court of Appeal or the House of Lords dismisses an application for leave to appeal under this Part of this Act, the Court or the House may, if it thinks fit,—
- (a) where the application was made by the prosecutor, order the payment by the Secretary of State to the defendant of such sums as appear to the Court or the House reasonably sufficient to compensate the defendant for any expenses properly incurred by him in resisting the application; or
 - (b) where the application was made by the defendant, order him to pay the whole or any part of the costs of the application.

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- (2) Where an appeal to the House of Lords from the Court under this Part of this Act is determined in favour of the defendant, the House of Lords may, if it thinks fit, order the payment by the Secretary of State of such sums as appear to the House reasonably sufficient to compensate the defendant for any expenses properly incurred by him—
 - (a) in the appeal to the House of Lords or in the proceedings before the Court, as the case may be (including the cost of any application for leave to appeal); or
 - (b) in carrying on his defence before the Crown Court, at the preliminary investigation or preliminary enquiry and before any other court before which proceedings for the offence in respect of which he was committed for trial were begun but not concluded.
- (3) Where in any proceedings on an appeal or application for leave to appeal to the House of Lords under this Part of this Act, an interpreter is required because of a defendant's lack of English, the expenses properly incurred on his employment shall be defrayed by the Secretary of State up to an amount allowed by the House of Lords.
- (4) Except as provided by this section, no costs shall be allowed on the hearing or determination of an appeal under this Part of this Act or of any proceedings preliminary or incidental to such an appeal.

42 Taxation of costs.

- (1) Any amount which the Court of Appeal orders to be paid under section 41(1) of this Act shall, except where it is a specific amount ordered to be paid towards the costs of the application as a whole, be ascertained as soon as practicable by the Court.
- (2) Any amount which the House of Lords orders to be paid under section 41(1) or (2) of this Act shall, except as aforesaid, be ascertained as soon as practicable by such officer or officers, and in such manner, as may be prescribed by order of the House of Lords.
- (3) Where the Court or the House of Lords orders the payment of costs by the defendant under section 41 of this Act, the order shall be enforceable in the same manner as an order for payment of costs made by the High Court in a civil case.

PART III

MISCELLANEOUS AND SUPPLEMENTARY

Exercise of jurisdiction under this Act by Court of Appeal

43 Jurisdiction of Court of Appeal under this Act.

- (1) The Court of Appeal shall have full power to determine, in accordance with this Act, any question necessary to be determined for the purpose of doing justice in the case before the Court.
- (2) Except as provided by Part II of this Act, the determination by the Court of any appeal or other matter under Part I of this Act shall be final and no appeal shall lie from any such determination to any other court.

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44 Composition of Court of Appeal sitting under this Act.

- (1) Subject to the provisions of this and the next following section, every appeal or reference to the Court of Appeal under this Act [^{F35}or section 36 of the Criminal Justice Act 1988] and every matter preliminary or incidental to such appeal or reference shall be heard before three judges of the Court and shall, where necessary, be determined according to the opinion of the majority.
- (2) Where the Lord Chief Justice so directs, any such appeal, reference or matter may be heard before two judges.
- (3) Where in accordance with subsection (2) above an appeal, reference or matter is heard before two judges and those judges differ in opinion it shall be re-heard and determined by three judges.
- (4) No judge of the Court shall sit as a judge on the hearing of, or shall determine any application in proceedings incidental or preliminary to—
 - (a) an appeal against a conviction before him or a sentence passed by him; or
 - (b) a reference to the Court under section 14 or 15 of this Act [^{F36}or section 36 of the Criminal Justice Act 1988] of any case or any point arising in any case tried before him.

Textual Amendments

- F35** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 76\(1\)](#)
- F36** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 76\(2\)](#)

45 Powers of Court which are exercisable by single judge.

- (1) Subject to section 44(4) above, the powers of the Court of Appeal under Part I of this Act which are specified in subsection (2) below and the powers of the Court under Part II of this Act which are specified in subsection (3) below may be exercised by a single judge of the Court.
- (2) The said powers under Part I of this Act are the following, namely—
 - (a) to give leave to appeal;
 - (b) to make orders under section 7(2) of this Act and discharge or vary such orders;
 - (c) to extend the time for giving notice of appeal or of application for leave to appeal;
 - [^{F37}(d) to exercise the powers conferred by section 17 of the Act;]
 - (e) to grant legal aid;
 - (f) to give leave for an appellant to be present at any proceedings;
 - (g) to order a witness to attend for examination;
 - (h) to give directions under section 29(2) of this Act;
 - (i) to hear and determine such other matters preliminary or incidental to an appeal as may be prescribed.
- (3) The said powers under Part II of this Act are the following, namely—
 - (a) to extend the time for applying for leave to appeal;
 - (b) to make an order for or in relation to bail;

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- (c) to grant legal aid;
- (d) to give leave for a defendant to be present at the hearing of any proceedings preliminary or incidental to an appeal;
- (e) to make an order under section 41(1) of this Act.

[^{F38}(3A) The power of the Court of Appeal to grant leave to appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.]

- (4) An appellant who is aggrieved by the decision of a single judge on any matter under this section shall be entitled to have the matter re-heard and determined by the Court as constituted under section 44 of this Act.

Textual Amendments

F37 S. 45(2)(d) substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 77](#)

F38 S. 45(3A) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 15 para. 78](#)

46 Judgment.

Unless the Court of Appeal directs to the contrary in a case where it considers the question to be one of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, on an appeal under this Act—

- (a) the judgment of the Court shall be pronounced by the president of the Court or such other member of the Court hearing the case as the president directs; and
- (b) no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

Supplementary

47 Rules of court.

- (1) The officers of the Crown Court, the governor and other officers of any prison, any other officer having the custody of an appellant and all other persons shall comply with any rules of court so far as affecting those officers or persons; and compliance with such rules may be enforced by order of the Court of Appeal.
- (2) No rule of court affecting the governor or any other officer of a prison or any officer having the custody of an appellant shall be made except after consultation with the Secretary of State.

VALID FROM 01/01/1996

[^{F39}47A Appeals in cases of death.

- (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 Court of Appeal; 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 or by a reference by

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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—
- (a) an appeal under section 1, 8, 9, 12 or 13A of this Act; or
 - (b) an appeal under section 31 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—
- (a) the widow or widower of the dead person;
 - (b) a person who is the personal representative (within the meaning of the Wills and Administration Proceedings (Northern Ireland) Order 1994) 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) 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.
- (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.]

Textual Amendments

- F39** S. 47A added (31.3.1997 to the extent that s. 47A relates to references by the Criminal Cases Review Commission and 1.1.1996 otherwise) by 1995 c. 35, s. 7(2); S.I. 1995/3061, art. 3(b); S.I. 1997/402, art. 3(b)

48 Appeal in capital cases.

Schedule 3 to this Act shall have effect so as to modify and supplement certain provisions in Parts I and II of this Act in relation to cases involving sentence of death.

49 Saving for prerogative of mercy.

Nothing in this Act is to be taken as affecting the prerogative of mercy.

50 Interpretation.

- (1) In this Act—

“the Court” means the Court of Appeal;

“the Master” means the Master (Queen’s Bench and Appeals);

“Northern Ireland legislation” has the meaning assigned to that expression by section 24(5) of the^{M14} Interpretation Act 1978;

“prescribed” means prescribed by rules of court;

“rules of court” means rules made or having effect as if made under section 55 of the^{M15} Judicature (Northern Ireland) Act 1978.

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[^{F40}(1A) In this Act “the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986 and words or expressions used in this Act and in that Order have the same meaning in this Act as in that Order.]

(2) Any reference in this Act to a provision contained in Northern Ireland legislation shall be construed as including a reference to a provision corresponding thereto and for the time being in force in Northern Ireland.

Textual Amendments

F40 S. 50(1A) inserted by S.I. 1986/595 (N.I. 4), arts. 51(6), 136(1), Sch. 5 Pt. I

Marginal Citations

M14 1978 c. 30.

M15 1978 c. 23.

51 Consequential amendments, repeals and transitional provisions.

- (1) The enactments specified in Schedule 4 to this Act shall be amended as shown in that Schedule.
- (2) The enactments specified in the first and second columns of Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Any right of appeal subsisting immediately before the commencement of this Act by virtue of an enactment repealed thereby shall after that commencement be treated as subsisting by virtue of the corresponding provision of this Act.
- (4) Any appeal or application pending before the said commencement under an enactment so repealed may be prosecuted and disposed of in accordance with the provisions of this Act corresponding to those in force immediately before the said commencement and applicable to the appeal or application.

Modifications etc. (not altering text)

C6 The text of s. 51(1)(2) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

52 Short title and commencement.

- (1) This Act may be cited as the Criminal Appeal (Northern Ireland) Act 1980.
- (2) This Act shall come into operation on the expiry of the period of one month beginning with the date on which it is passed.

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