



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 10

#### RETRIAL FOR SERIOUS OFFENCES

##### *Cases that may be retried*

#### 75 Cases that may be retried

- (1) This Part applies where a person has been acquitted of a qualifying offence in proceedings—
  - (a) on indictment in England and Wales,
  - (b) on appeal against a conviction, verdict or finding in proceedings on indictment in England and Wales, or
  - (c) on appeal from a decision on such an appeal.
- (2) A person acquitted of an offence in proceedings mentioned in subsection (1) is treated for the purposes of that subsection as also acquitted of any qualifying offence of which he could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence—
  - (a) of which he has been convicted,
  - (b) of which he has been found not guilty by reason of insanity, or
  - (c) in respect of which, in proceedings where he has been found to be under a disability (as defined by section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84)), a finding has been made that he did the act or made the omission charged against him.
- (3) References in subsections (1) and (2) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under section 77(1) or (3).
- (4) This Part also applies where a person has been acquitted, in proceedings elsewhere than in the United Kingdom, of an offence under the law of the place where the proceedings were held, if the commission of the offence as alleged would have

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amounted to or included the commission (in the United Kingdom or elsewhere) of a qualifying offence.

- (5) Conduct punishable under the law in force elsewhere than in the United Kingdom is an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) This Part applies whether the acquittal was before or after the passing of this Act.
- (7) References in this Part to acquittal are to acquittal in circumstances within subsection (1) or (4).
- (8) In this Part “qualifying offence” means an offence listed in Part 1 of Schedule 5.

#### Commencement Information

- I1** S. 75 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

### *Application for retrial*

#### 76 Application to Court of Appeal

- (1) A prosecutor may apply to the Court of Appeal for an order—
  - (a) quashing a person’s acquittal in proceedings within section 75(1), and
  - (b) ordering him to be retried for the qualifying offence.
- (2) A prosecutor may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in the United Kingdom, for—
  - (a) a determination whether the acquittal is a bar to the person being tried in England and Wales for the qualifying offence, and
  - (b) if it is, an order that the acquittal is not to be a bar.
- (3) A prosecutor may make an application under subsection (1) or (2) only with the written consent of the Director of Public Prosecutions.
- (4) The Director of Public Prosecutions may give his consent only if satisfied that—
  - (a) there is evidence as respects which the requirements of section 78 appear to be met,
  - (b) it is in the public interest for the application to proceed, and
  - (c) any trial pursuant to an order on the application would not be inconsistent with obligations of the United Kingdom under Article 31 or 34 of the Treaty on European Union relating to the principle of *ne bis in idem*.
- (5) Not more than one application may be made under subsection (1) or (2) in relation to an acquittal.

#### Commencement Information

- I2** S. 76 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

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## 77 Determination by Court of Appeal

- (1) On an application under section 76(1), the Court of Appeal—
  - (a) if satisfied that the requirements of sections 78 and 79 are met, must make the order applied for;
  - (b) otherwise, must dismiss the application.
- (2) Subsections (3) and (4) apply to an application under section 76(2).
- (3) Where the Court of Appeal determines that the acquittal is a bar to the person being tried for the qualifying offence, the court—
  - (a) if satisfied that the requirements of sections 78 and 79 are met, must make the order applied for;
  - (b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.
- (4) Where the Court of Appeal determines that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.

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### Commencement Information

- I3** S. 77 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 78 New and compelling evidence

- (1) The requirements of this section are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.
- (2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).
- (3) Evidence is compelling if—
  - (a) it is reliable,
  - (b) it is substantial, and
  - (c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.
- (4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.
- (5) For the purposes of this section, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

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### Commencement Information

- I4** S. 78 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

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## 79 Interests of justice

- (1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order under section 77.
- (2) That question is to be determined having regard in particular to—
  - (a) whether existing circumstances make a fair trial unlikely;
  - (b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;
  - (c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by a prosecutor to act with due diligence or expedition;
  - (d) whether, since those proceedings or, if later, since the commencement of this Part, any officer or prosecutor has failed to act with due diligence or expedition.
- (3) In subsection (2) references to an officer or prosecutor include references to a person charged with corresponding duties under the law in force elsewhere than in England and Wales.
- (4) Where the earlier prosecution was conducted by a person other than a prosecutor, subsection (2)(c) applies in relation to that person as well as in relation to a prosecutor.

### Commencement Information

- I5** S. 79 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 80 Procedure and evidence

- (1) A prosecutor who wishes to make an application under section 76(1) or (2) must give notice of the application to the Court of Appeal.
- (2) Within two days beginning with the day on which any such notice is given, notice of the application must be served by the prosecutor on the person to whom the application relates, charging him with the offence to which it relates or, if he has been charged with it in accordance with section 87(4), stating that he has been so charged.
- (3) Subsection (2) applies whether the person to whom the application relates is in the United Kingdom or elsewhere, but the Court of Appeal may, on application by the prosecutor, extend the time for service under that subsection if it considers it necessary to do so because of that person's absence from the United Kingdom.
- (4) The Court of Appeal must consider the application at a hearing.
- (5) The person to whom the application relates—
  - (a) is entitled to be present at the hearing, although he may be in custody, unless he is in custody elsewhere than in England and Wales or Northern Ireland, and
  - (b) is entitled to be represented at the hearing, whether he is present or not.
- (6) For the purposes of the application, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

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- (a) order the production of any document, exhibit or other thing, the production of which appears to the court to be necessary for the determination of the application, and
  - (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.
- (7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

#### Commencement Information

**I6** S. 80 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 81 Appeals

- (1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.
- (2) In section 33 (right of appeal to House of Lords), after subsection (1A) there is inserted—
- “(1B) An appeal lies to the House of Lords, at the instance of the acquitted person or the prosecutor, from any decision of the Court of Appeal on an application under section 76(1) or (2) of the Criminal Justice Act 2003 (retrial for serious offences).”
- (3) At the end of that section there is inserted—
- “(4) In relation to an appeal under subsection (1B), references in this Part to a defendant are references to the acquitted person.”
- (4) In section 34(2) (extension of time for leave to appeal), after “defendant” there is inserted “ or, in the case of an appeal under section 33(1B), by the prosecutor ”.
- (5) In section 38 (presence of defendant at hearing), for “has been convicted of an offence and” substitute “ has been convicted of an offence, or in whose case an order under section 77 of the Criminal Justice Act 2003 or a declaration under section 77(4) of that Act has been made, and who ”.

#### Commencement Information

**I7** S. 81 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 82 Restrictions on publication in the interests of justice

- (1) Where it appears to the Court of Appeal that the inclusion of any matter in a publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the court may order that the matter is not to be included in any publication while the order has effect.

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- (2) In subsection (1) “retrial” means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under section 77.
- (3) The court may make an order under this section only if it appears to it necessary in the interests of justice to do so.
- (4) An order under this section may apply to a matter which has been included in a publication published before the order takes effect, but such an order—
  - (a) applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication), and
  - (b) does not otherwise affect the earlier publication.
- (5) After notice of an application has been given under section 80(1) relating to the acquitted person and the qualifying offence, the court may make an order under this section only—
  - (a) of its own motion, or
  - (b) on the application of the Director of Public Prosecutions.
- (6) Before such notice has been given, an order under this section—
  - (a) may be made only on the application of the Director of Public Prosecutions, and
  - (b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by officers.
- (7) The court may at any time, of its own motion or on an application made by the Director of Public Prosecutions or the acquitted person, vary or revoke an order under this section.
- (8) Any order made under this section before notice of an application has been given under section 80(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.
- (9) An order under this section which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time—
  - (a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application, or
  - (b) if he is tried pursuant to such an order, at the conclusion of the trial.
- (10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication or any power, under an enactment or otherwise, to impose such a prohibition or restriction.
- (11) In this section—
 

“programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42),

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings,

“relevant programme” means a programme included in a programme service.

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#### Commencement Information

- 18** S. 82 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

### 83 Offences in connection with publication restrictions

- (1) This section applies if—
  - (a) an order under section 82 is made, whether in England and Wales or Northern Ireland, and
  - (b) while the order has effect, any matter is included in a publication, in any part of the United Kingdom, in contravention of the order.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme—
  - (a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and
  - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) If an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (7) If the affairs of a body corporate are managed by its members, “director” in subsection (6) means a member of that body.
- (8) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Proceedings for an offence under this section may not be instituted—
  - (a) in England and Wales otherwise than by or with the consent of the Attorney General, or
  - (b) in Northern Ireland otherwise than by or with the consent of—
    - (i) before the relevant date, the Attorney General for Northern Ireland, or
    - (ii) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.

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- (11) In subsection (10) “the relevant date” means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

#### Commencement Information

- 19** S. 83 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

### *Retrial*

## 84 Retrial

- (1) Where a person—
  - (a) is tried pursuant to an order under section 77(1), or
  - (b) is tried on indictment pursuant to an order under section 77(3),
 the trial must be on an indictment preferred by direction of the Court of Appeal.
- (2) After the end of 2 months after the date of the order, the person may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal gives leave.
- (3) The Court of Appeal must not give leave unless satisfied that—
  - (a) the prosecutor has acted with due expedition, and
  - (b) there is a good and sufficient cause for trial despite the lapse of time since the order under section 77.
- (4) Where the person may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order and—
  - (a) for any direction required for restoring an earlier judgment and verdict of acquittal of the qualifying offence, or
  - (b) in the case of a person acquitted elsewhere than in the United Kingdom, for a declaration to the effect that the acquittal is a bar to his being tried for the qualifying offence.
- (5) An indictment under subsection (1) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order or declaration under section 77.
- (6) Evidence given at a trial pursuant to an order under section 77(1) or (3) must be given orally if it was given orally at the original trial, unless—
  - (a) all the parties to the trial agree otherwise,
  - (b) section 116 applies, or
  - (c) the witness is unavailable to give evidence, otherwise than as mentioned in subsection (2) of that section, and section 114(1)(d) applies.
- (7) At a trial pursuant to an order under section 77(1), paragraph 5 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (use of depositions) does not apply to a deposition read as evidence at the original trial.



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### Commencement Information

**I10** S. 84 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## Investigations

### 85 Authorisation of investigations

- (1) This section applies to the investigation of the commission of a qualifying offence by a person—
  - (a) acquitted in proceedings within section 75(1) of the qualifying offence, or
  - (b) acquitted elsewhere than in the United Kingdom of an offence the commission of which as alleged would have amounted to or included the commission (in the United Kingdom or elsewhere) of the qualifying offence.
- (2) Subject to section 86, an officer may not do anything within subsection (3) for the purposes of such an investigation unless the Director of Public Prosecutions—
  - (a) has certified that in his opinion the acquittal would not be a bar to the trial of the acquitted person in England and Wales for the qualifying offence, or
  - (b) has given his written consent to the investigation (whether before or after the start of the investigation).
- (3) The officer may not, either with or without the consent of the acquitted person—
  - (a) arrest or question him,
  - (b) search him or premises owned or occupied by him,
  - (c) search a vehicle owned by him or anything in or on such a vehicle,
  - (d) seize anything in his possession, or
  - (e) take his fingerprints or take a sample from him.
- (4) The Director of Public Prosecutions may only give his consent on a written application, and such an application may be made only by an officer who—
  - (a) if he is an officer of the metropolitan police force or the City of London police force, is of the rank of commander or above, or
  - (b) in any other case, is of the rank of assistant chief constable or above.
- (5) An officer may make an application under subsection (4) only if—
  - (a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or
  - (b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (6) The Director of Public Prosecutions may not give his consent unless satisfied that—
  - (a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation, and
  - (b) it is in the public interest for the investigation to proceed.

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- (7) In giving his consent, the Director of Public Prosecutions may recommend that the investigation be conducted otherwise than by officers of a specified police force or specified team of customs and excise officers.

#### Commencement Information

- III** S. 85 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 86 Urgent investigative steps

- (1) Section 85 does not prevent an officer from taking any action for the purposes of an investigation if—
- (a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced,
  - (b) the requirements of subsection (2) are met, and
  - (c) either—
    - (i) the action is authorised under subsection (3), or
    - (ii) the requirements of subsection (5) are met.
- (2) The requirements of this subsection are met if—
- (a) there has been no undue delay in applying for consent under section 85(2),
  - (b) that consent has not been refused, and
  - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.
- (3) An officer of the rank of superintendent or above may authorise the action if—
- (a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or
  - (b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (4) An authorisation under subsection (3) must—
- (a) if reasonably practicable, be given in writing;
  - (b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.
- (5) The requirements of this subsection are met if—
- (a) there has been no undue delay in applying for authorisation under subsection (3),
  - (b) that authorisation has not been refused, and
  - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation before taking the action.
- (6) Where the requirements of subsection (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, an officer of the rank of superintendent or above certifies in writing that he is satisfied that, when the action was taken—

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- (a) new evidence had been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or
- (b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

#### Commencement Information

**I12** S. 86 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

VALID FROM 21/04/2007

#### [<sup>F1</sup>86A Application of sections 85 and 86 to investigations by the Police Ombudsman

- (1) Sections 85 and 86 apply in relation to an investigation by an officer of the Police Ombudsman for Northern Ireland with the following modifications.
- (2) References in sections 85(2) and (3) and 86(1) to an officer shall be read as references to an officer of the Ombudsman.
- (3) Section 85(4) has effect as if for the words from “an officer who” to the end there were substituted the Ombudsman.
- (4) Section 85(5) has effect as if for “An officer” there were substituted The Ombudsman.
- (4) Section 85(7) does not apply.
- (6) Section 86(3) has effect as if for “An officer of the rank of superintendent or above” there were substituted A senior officer of the Ombudsman.
- (7) Section 86(6) has effect as if for “an officer of the rank of superintendent or above” there were substituted a senior officer of the Ombudsman.
- (8) References to a senior officer of the Ombudsman are to an officer of the rank of senior investigating officer or above.]

#### Textual Amendments

**F1** S. 86A inserted (N.I.) (21.4.2007) by The Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (S.I. 2007/912 (N.I. 6)), art. 11(1)

### *Arrest, custody and bail*

#### **87 Arrest and charge**

- (1) Where section 85 applies to the investigation of the commission of an offence by any person and no certification has been given under subsection (2) of that section—

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- (a) a justice of the peace may issue a warrant to arrest that person for that offence only if satisfied by written information that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the commission by that person of that offence, and
  - (b) that person may not be arrested for that offence except under a warrant so issued.
- (2) Subsection (1) does not affect section 89(3)(b) or 91(3), or any other power to arrest a person, or to issue a warrant for the arrest of a person, otherwise than for an offence.
- (3) Part 4 of the 1984 Act (detention) applies as follows where a person—
- (a) is arrested for an offence under a warrant issued in accordance with subsection (1)(a), or
  - (b) having been so arrested, is subsequently treated under section 34(7) of that Act as arrested for that offence.
- (4) For the purposes of that Part there is sufficient evidence to charge the person with the offence for which he has been arrested if, and only if, an officer of the rank of superintendent or above (who has not been directly involved in the investigation) is of the opinion that the evidence available or known to him is sufficient for the case to be referred to a prosecutor to consider whether consent should be sought for an application in respect of that person under section 76.
- (5) For the purposes of that Part it is the duty of the custody officer at each police station where the person is detained to make available or known to an officer at that police station of the rank of superintendent or above any evidence which it appears to him may be relevant to an application under section 76(1) or (2) in respect of the offence for which the person has been arrested, and to do so as soon as practicable—
- (a) after the evidence becomes available or known to him, or
  - (b) if later, after he forms that view.
- (6) Section 37 of that Act (including any provision of that section as applied by section 40(8) of that Act) has effect subject to the following modifications—
- (a) in subsection (1)—
    - (i) for “determine whether he has before him” there is substituted “ request an officer of the rank of superintendent or above (who has not been directly involved in the investigation) to determine, in accordance with section 87(4) of the Criminal Justice Act 2003, whether there is ”;
    - (ii) for “him to do so” there is substituted “ that determination to be made ”;
  - (b) in subsection (2)—
    - (i) for the words from “custody officer determines” to “before him” there is substituted “ officer determines that there is not such sufficient evidence ”;
    - (ii) the word “custody” is omitted from the second place where it occurs;
  - (c) in subsection (3)—
    - (i) the word “custody” is omitted;
    - (ii) after “may” there is inserted “ direct the custody officer to ”;
  - (d) in subsection (7) for the words from “the custody officer” to the end of that subsection there is substituted “ an officer of the rank of superintendent or above (who has not been directly involved in the investigation) determines,

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in accordance with section 87(4) of the Criminal Justice Act 2003, that there is sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested shall be charged.”;

- (e) subsections (7A), (7B) and (8) do not apply;
- (f) after subsection (10) there is inserted—

“(10A) The officer who is requested by the custody officer to make a determination under subsection (1) above shall make that determination as soon as practicable after the request is made.”.

- (7) Section 40 of that Act has effect as if in subsections (8) and (9) of that section after “(6)” there were inserted “ and (10A) ”.
- (8) Section 42 of that Act has effect as if in subsection (1) of that section for the words from “who” to “detained” there were substituted “ (who has not been directly involved in the investigation) ”.

#### Commencement Information

**I13** S. 87 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 88 Bail and custody before application

- (1) In relation to a person charged in accordance with section 87(4)—
  - (a) section 38 of the 1984 Act (including any provision of that section as applied by section 40(10) of that Act) has effect as if, in subsection (1), for “either on bail or without bail” there were substituted “ on bail ”,
  - (b) section 47(3) of that Act does not apply and references in section 38 of that Act to bail are references to bail subject to a duty to appear before the Crown Court at such place as the custody officer may appoint and at such time, not later than 24 hours after the person is released, as that officer may appoint, and
  - (c) section 43B of the Magistrates' Courts Act 1980 (c. 43) does not apply.
- (2) Where such a person is, after being charged—
  - (a) kept in police detention, or
  - (b) detained by a local authority in pursuance of arrangements made under section 38(6) of the 1984 Act,he must be brought before the Crown Court as soon as practicable and, in any event, not more than 24 hours after he is charged, and section 46 of the 1984 Act does not apply.
- (3) For the purpose of calculating the period referred to in subsection (1) or (2), the following are to be disregarded—
  - (a) Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, and
  - (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is to appear before the Crown Court as mentioned in subsection (1) or, where subsection (2) applies, is for the time being detained.

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- (4) Where a person appears or is brought before the Crown Court in accordance with subsection (1) or (2), the Crown Court may either—
  - (a) grant bail for the person to appear, if notice of an application is served on him under section 80(2), before the Court of Appeal at the hearing of that application, or
  - (b) remand the person in custody to be brought before the Crown Court under section 89(2).
- (5) If the Crown Court grants bail under subsection (4), it may revoke bail and remand the person in custody as referred to in subsection (4)(b).
- (6) In subsection (7) the “relevant period”, in relation to a person granted bail or remanded in custody under subsection (4), means—
  - (a) the period of 42 days beginning with the day on which he is granted bail or remanded in custody under that subsection, or
  - (b) that period as extended or further extended under subsection (8).
- (7) If at the end of the relevant period no notice of an application under section 76(1) or (2) in relation to the person has been given under section 80(1), the person—
  - (a) if on bail subject to a duty to appear as mentioned in subsection (4)(a), ceases to be subject to that duty and to any conditions of that bail, and
  - (b) if in custody on remand under subsection (4)(b) or (5), must be released immediately without bail.
- (8) The Crown Court may, on the application of a prosecutor, extend or further extend the period mentioned in subsection (6)(a) until a specified date, but only if satisfied that—
  - (a) the need for the extension is due to some good and sufficient cause, and
  - (b) the prosecutor has acted with all due diligence and expedition.

#### **Commencement Information**

**I14** S. 88 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## **89 Bail and custody before hearing**

- (1) This section applies where notice of an application is given under section 80(1).
- (2) If the person to whom the application relates is in custody under section 88(4)(b) or (5), he must be brought before the Crown Court as soon as practicable and, in any event, within 48 hours after the notice is given.
- (3) If that person is not in custody under section 88(4)(b) or (5), the Crown Court may, on application by the prosecutor—
  - (a) issue a summons requiring the person to appear before the Court of Appeal at the hearing of the application, or
  - (b) issue a warrant for the person’s arrest,
 and a warrant under paragraph (b) may be issued at any time even though a summons has previously been issued.
- (4) Where a summons is issued under subsection (3)(a), the time and place at which the person must appear may be specified either—

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- (a) in the summons, or
  - (b) in a subsequent direction of the Crown Court.
- (5) The time or place specified may be varied from time to time by a direction of the Crown Court.
- (6) A person arrested under a warrant under subsection (3)(b) must be brought before the Crown Court as soon as practicable and in any event within 48 hours after his arrest, and section 81(5) of the Supreme Court Act 1981 (c. 54) does not apply.
- (7) If a person is brought before the Crown Court under subsection (2) or (6) the court must either—
- (a) remand him in custody to be brought before the Court of Appeal at the hearing of the application, or
  - (b) grant bail for him to appear before the Court of Appeal at the hearing.
- (8) If bail is granted under subsection (7)(b), the Crown Court may revoke the bail and remand the person in custody as referred to in subsection (7)(a).
- (9) For the purpose of calculating the period referred to in subsection (2) or (6), the following are to be disregarded—
- (a) Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, and
  - (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is for the time being detained.

#### Commencement Information

**I15** S. 89 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 90 Bail and custody during and after hearing

- (1) The Court of Appeal may, at any adjournment of the hearing of an application under section 76(1) or (2)—
- (a) remand the person to whom the application relates on bail, or
  - (b) remand him in custody.
- (2) At a hearing at which the Court of Appeal—
- (a) makes an order under section 77,
  - (b) makes a declaration under subsection (4) of that section, or
  - (c) dismisses the application or makes a declaration under subsection (3) of that section, if it also gives the prosecutor leave to appeal against its decision or the prosecutor gives notice that he intends to apply for such leave,
- the court may make such order as it sees fit for the custody or bail of the acquitted person pending trial pursuant to the order or declaration, or pending determination of the appeal.
- (3) For the purpose of subsection (2), the determination of an appeal is pending—

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- (a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;
  - (b) if leave to appeal is granted, until the appeal is disposed of.
- (4) Section 4 of the Bail Act 1976 (c. 63) applies in relation to the grant of bail under this section as if in subsection (2) the reference to the Crown Court included a reference to the Court of Appeal.
- (5) The court may at any time, as it sees fit—
- (a) revoke bail granted under this section and remand the person in custody, or
  - (b) vary an order under subsection (2).

#### Commencement Information

**I16** S. 90 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 91 Revocation of bail

- (1) Where—
- (a) a court revokes a person’s bail under this Part, and
  - (b) that person is not before the court when his bail is revoked,
- the court must order him to surrender himself forthwith to the custody of the court.
- (2) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (1), the court must remand him in custody.
- (3) A person who has been ordered to surrender to custody under subsection (1) may be arrested without a warrant by an officer if he fails without reasonable cause to surrender to custody in accordance with the order.
- (4) A person arrested under subsection (3) must be brought as soon as practicable, and, in any event, not more than 24 hours after he is arrested, before the court and the court must remand him in custody.
- (5) For the purpose of calculating the period referred to in subsection (4), the following are to be disregarded—
- (a) Sunday,
  - (b) Christmas Day,
  - (c) Good Friday,
  - (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is for the time being detained.

#### Commencement Information

**I17** S. 91 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)



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## Part 10: supplementary

### 92 Functions of the DPP

- (1) Section 1(7) of the Prosecution of Offences Act 1985 (c. 23) (DPP's functions exercisable by Crown Prosecutor) does not apply to the provisions of this Part other than section 85(2)(a).
- (2) In the absence of the Director of Public Prosecutions, his functions under those provisions may be exercised by a person authorised by him.
- (3) An authorisation under subsection (2)—
  - (a) may relate to a specified person or to persons of a specified description, and
  - (b) may be general or relate to a specified function or specified circumstances.

#### Commencement Information

**I18** S. 92 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

### 93 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.
- (2) Without limiting subsection (1), rules of court may in particular make provision as to procedures to be applied in connection with sections 76 to 82, 84 and 88 to 90.
- (3) Nothing in this section is to be taken as affecting the generality of any enactment conferring power to make rules of court.

### 94 Armed Forces: Part 10

- (1) Section 31 of the Armed Forces Act 2001 (c. 19) (provision in consequence of enactments relating to criminal justice) applies to an enactment contained in this Part so far as relating to matters not specified in subsection (2) of that section as it applies to a criminal justice enactment.
- (2) The power under that section to make provision equivalent to that made in relation to qualifying offences by an enactment contained in this Part (with or without modifications) includes power to make such provision in relation to such service offences as the Secretary of State thinks fit.
- (3) In subsection (2) “service offence” means an offence under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53).

#### Commencement Information

**I19** S. 94 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

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## 95 Interpretation of Part 10

(1) In this Part—

“the 1984 Act” means the Police and Criminal Evidence Act 1984 (c. 60),  
“acquittal” and related expressions are to be read in accordance with section 75(7),

“customs and excise officer” means an officer as defined by section 1(1) of the Customs and Excise Management Act 1979 (c. 2), or a person to whom section 8(2) of that Act applies,

“new evidence” is to be read in accordance with section 78(2),

“officer”, except in section 83, means an officer of a police force or a customs and excise officer,

“police force” has the meaning given by section 3(3) of the Prosecution of Offences Act 1985 (c. 23),

“prosecutor” means an individual or body charged with duties to conduct criminal prosecutions,

“qualifying offence” has the meaning given by section 75(8).

(2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions)—

- (a) the jurisdiction of the Court of Appeal under this Part is to be exercised by the criminal division of that court, and
- (b) references in this Part to the Court of Appeal are to be construed as references to that division.

(3) References in this Part to an officer of a specified rank or above are, in the case of a customs and excise officer, references to an officer of such description as—

- (a) appears to the Commissioners of Customs and Excise to comprise officers of equivalent rank or above, and
- (b) is specified by the Commissioners for the purposes of the provision concerned.

### Commencement Information

**I20** S. 95 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2)

## 96 Application of Part 10 to Northern Ireland

(1) In its application to Northern Ireland this Part is to have effect subject to the modifications in this section.

(2) In sections 75(1)(a) and (b), 76(2)(a), 79(3) and 85(2)(a) for “England and Wales” substitute “Northern Ireland”.

(3) For section 75(2)(c) substitute—

“(c) in respect of which, in proceedings where he has been found to be unfit to be tried in accordance with Article 49 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)), a finding has

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been made that he did the act or made the omission charged against him.”

- (4) In section 75(8) for “Part 1” substitute “ Part 2 ”.
- (5) In section 81(1) for “Criminal Appeal Act 1968 (c. 19)” substitute “ Criminal Appeal (Northern Ireland) Act 1980 (c. 47) ”.
- (6) In section 81(2)—
  - (a) for “33” substitute “ 31 ”, and
  - (b) for “An” substitute “ Subject to the provisions of this Part of this Act, an ”.
- (7) In section 81(4)—
  - (a) for “34(2)” substitute “ 32(2) ”, and
  - (b) for “33(1B)” substitute “ 31(1B) ”.
- (8) In section 82(10) after “enactment” in each place insert “ (including any provision of Northern Ireland legislation) ”.
- (9) In section 84(1) and (2) for “preferred” substitute “ presented ”.
- (10) Section 84(6) has effect—
  - (a) as if any reference to a provision of Part 11 were a reference to any corresponding provision contained in an Order in Council to which section 334(1) applies, at any time when such corresponding provision is in force;
  - (b) at any other time, with the omission of paragraphs (b) and (c).
- (11) After section 84(6) insert—

“(6A) Article 29 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) applies in the case of a person who is to be tried in accordance with subsection (1) as if—

  - (a) he had been returned for trial for the offence in question, and
  - (b) the reference in paragraph (2)(a) of that Article to a magistrates' court included a reference to the Court of Appeal.”
- (12) In section 87—
  - (a) in subsection (3), for “Part 4 of the 1984 Act” substitute “ Part 5 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S. I. 1989/1341 (N. I. 12)) (“the 1989 Order”) ”,
  - (b) in paragraph (b) of that subsection, for “section 34(7) of that Act” substitute “ Article 35(8) of that Order ”,
  - (c) in subsection (6)—
    - (i) for the words from the beginning to “40(8) of that Act)” substitute “ Article 38 of that Order (including any provision of that Article as applied by Article 41(8) of that Order) ”,
    - (ii) for “subsection” in each place substitute “paragraph ,
    - (iii) in paragraph (e), for “subsections (7A), (7B) and (8)” substitute “ paragraph (8) ”, and
    - (iv) in paragraph (f), in the inserted paragraph (10A) omit “above”,
  - (d) for subsection (7) substitute—

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- “(7) Article 41 of that Order has effect as if in paragraphs (8) and (9) of that Article after “(6)” there were inserted “and (10A).”
- (e) in subsection (8)—
- (i) for “Section 42 of that Act” substitute “ Article 43 of that Order ”, and
- (ii) for “subsection (1) of that section” substitute “ paragraph (1) of that Article ”.
- (13) For section 88(1) substitute—
- “(1) In relation to a person charged in accordance with section 87(4)—
- (a) Article 39 of the 1989 Order (including any provision of that Article as applied by Article 41(10) of that Order) has effect as if, in paragraph (1), for “either on bail or without bail” there were substituted “ on bail ”,
- (b) Article 48 of that Order has effect as if for paragraphs (1) to (11) there were substituted—
- “(1) A person who is released on bail shall be subject to a duty to appear before the Crown Court at such place as the custody officer may appoint and at such time, not later than 24 hours after the person is released, as that officer may appoint.
- (2) The custody officer may require a person who is to be released on bail to enter into a recognisance conditioned upon his subsequent appearance before the Crown Court in accordance with paragraph (1).
- (3) A recognisance under paragraph (2) may be taken before the custody officer.”, and
- (c) Article 132A of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) does not apply.”
- (14) In section 88(2)—
- (a) for paragraph (b) substitute—
- “(b) detained in a place of safety in pursuance of arrangements made under Article 39(6) of the 1989 Order,”, and
- (b) for “section 46 of the 1984 Act” substitute “ Article 47 of the 1989 Order ”.
- (15) In section 89(6) for “section 81(5) of the Supreme Court Act 1981 (c. 54)” substitute “ section 51(8) of the Judicature (Northern Ireland) Act 1978 (c. 23) ”.
- (16) For section 90(4) substitute—
- “(4) The court may at any time, as it sees fit, vary the conditions of bail granted under this section.”
- (17) In section 92(1) for the words from the beginning to “does” substitute “ Sections 30(4) and 36 of the Justice (Northern Ireland) Act 2002 (c. 26) do ”.
- (18) Until the coming into force of section 36 of that Act of 2002 the reference to that section in subsection (17) is to be read as a reference to Article 4(8) of the Prosecution of Offences (Northern Ireland) Order 1972 (S.I. 1972/538 (N.I. 1)).

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(19) In section 93(2) for “the Criminal Appeal Rules and the Crown Court Rules” substitute “ rules under section 55 of the Judicature (Northern Ireland) Act 1978 and Crown Court Rules ”.

(20) In section 93(3) after “enactment” insert “ (including any provision of Northern Ireland legislation) ”.

(21) In section 95(1) for the definition of “police force” substitute—

““police force” means—

- (a) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,
- (b) the Ministry of Defence Police,
- (c) any body of constables appointed under Article 19 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)), or
- (d) any body of special constables appointed in Northern Ireland under section 79 of the Harbours, Docks and Piers Clauses Act 1847 (c. 27) or section 57 of the Civil Aviation Act 1982 (c. 16),”.

(22) Omit section 95(2).

## **97 Application of Criminal Appeal Acts to proceedings under Part 10**

Subject to the provisions of this Part, the Secretary of State may make an order containing provision, in relation to proceedings before the Court of Appeal under this Part, which corresponds to any provision, in relation to appeals or other proceedings before that court, which is contained in the Criminal Appeal Act 1968 (c. 19) or the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).

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