

# CRIMINAL APPEAL ACT 1968

1968 CHAPTER 19

(Extracts)

## PART I

### APPEAL TO COURT OF APPEAL IN CRIMINAL CASES

#### *Appeal against conviction on indictment*

#### **Right of appeal**

1.—(1) Subject to subsection (3) below, a person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.

(2) The appeal may be—

(a) on any ground which involves a question of law alone; and

(b) with the leave of the Court of Appeal, 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 of Appeal 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 a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

(3) Where a person is convicted before the Crown Court of a scheduled offence it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which committed him for trial as to the value involved was mistaken.

(4) In subsection (3) above “scheduled offence” and “the value involved” have the same meanings as they have in section 22 of the Magistrates’ Courts Act 1980 (certain offences against the property to be tried summarily if value of property or damage is small).

#### **Grounds for allowing appeal under s. 1**

2.—(1) Except as provided by this Act, the Court of Appeal shall allow an appeal against conviction if they think—

- (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
- (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 they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(2) In the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.

(3) An order of the Court of Appeal quashing a conviction shall, except when under section 7 below the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

#### **Power to substitute conviction of alternative offence**

3.—(1) This section applies on an appeal against conviction, where the 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 the 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 the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

#### **Sentence when appeal allowed on part of an indictment**

4.—(1) This section applies where, on an appeal against conviction of an indictment containing two or more counts, the Court of Appeal allow the appeal in respect of part of the indictment.

(2) Except as provided by subsection (3) below, the Court may in respect of any count on which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as they think proper and is authorised

by law for the offence of which he remains convicted on that count.

(3) The Court shall not under this section pass any sentence such that the appellant's sentence on the indictment as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all offences of which he was convicted on the indictment.

### **Disposal of appeal against conviction on special verdict**

5.—(1) This section applies on an appeal against conviction by a person in whose case the jury have found a special verdict.

(2) If the Court of Appeal consider that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict they may, instead of allowing the appeal, order such conclusion to be recorded as appears to them to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

### **Substitution of finding of insanity or findings of unfitness to plead etc.<sup>1</sup>**

6.—(1) This section applies where, on an appeal against conviction, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—

- (a) that the proper verdict would have been one of not guilty by reason of insanity; or
- (b) that the case is not one where there should have been a verdict of acquittal, but there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.

(2) Subject to subsection (3) below, the Court of Appeal shall either—

- (a) make an order that the appellant be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or
- (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the appellant such one

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<sup>1</sup> Section 6 substituted w.e.f. 1st January 1992 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 section 4 and Commencement Order 1991 (S.I. No. 2488).

of the following orders as they think most suitable in all the circumstances of the case, namely—

- (i) a guardianship order within the meaning of the Mental Health Act 1983;
- (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
- (iii) an order for his absolute discharge.

(3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the appeal relates is an offence the sentence for which is fixed by law.

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*Retrial***Power to order retrial**

7.—(1) Where the Court of Appeal allow an appeal against conviction . . .<sup>1</sup> and it appears to the Court that the interests of justice so require, they may order the appellant to be retried.

(2) A person shall not under this section be ordered to be retried for any offence other than—

- (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1) above;
- (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
- (c) an offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of convicting him of the first-mentioned offence.

**Supplementary provisions as to retrial**

8.—(1) A person who is to be retried for an offence in pursuance of an order under section 7 of this Act shall be tried on a fresh indictment preferred by direction of the Court of Appeal [but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.]<sup>2</sup>

(1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the court of appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.<sup>2</sup>

(1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—

- (a) to grant leave to arraign; or
- (b) to direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—
  - (i) and that the prosecution has acted with all due expedition and
  - (ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 7 of this Act was made.<sup>2</sup>

<sup>1</sup> Words repealed w.e.f. 31st July 1989 by Criminal Justice Act 1988, s. 43 and Commencement Order No. 8 (S.I. 1989 No. 1085).

<sup>2</sup> Words in square brackets added and subsections (1A) and (1B) inserted w.e.f. 31st July 1989, *ibid.* The amendments to sections 7 and 8 do not affect appeals already in progress at the date of coming into force.

(2) The Court of Appeal may, on ordering a retrial, make a such order as appear to them to be necessary or expedient—

- (a) for the custody or [subject to section 25 of the Criminal Justice and Public Order Act 1994]<sup>1</sup> release on bail of the person ordered to be retried pending his 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) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order or direction under Part V of the Mental Health Act 1959, or under Part III of the Mental Health Act 1983 (other than under section 35, 36, or 38 of that Act)—

- (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 Execution for his custody or release on bail shall have effect subject to the said order or direction.

(3A) If the person ordered to be retried was immediately before the determination of his appeal, liable to be detained in pursuance of a remand under section 36 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act, the Court of Appeal may, if they think fit, order that he shall continue to be detained in a hospital or mental nursing home, and in that event Part III of that Act 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 2 to this Act has effect with respect to the procedure in the case of a person ordered to be retried, the sentence which may be passed if the retrial results in his conviction and the order for costs which may be made if he is acquitted.

#### *Appeal against sentence*

#### **Appeal against sentence following conviction on indictment**

9.—(1) A person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.

(2) A person who on conviction on indictment has also been convicted of a summary offence under section 41 of the Criminal Justice Act 1988 (power of Crown Court to deal with summary offence where person committed for either way off-

<sup>1</sup>Words in square brackets inserted w.e.f. 10th April 1995 by the Criminal Justice and Public Order Act 1994. s. 168(2) and Sch. 10, para. 19 and Commencement Order No. 6, S.I. 1995 No. 721.

ence) may appeal to the Court of Appeal against any sentence passed on him for the summary offence (whether on his conviction or in subsequent proceedings) under subsection (7) of that section.<sup>1</sup>

**Appeal against sentence in other cases dealt with at assizes or quarter sessions**

10.—(1) This section has effect for providing rights of appeal against sentence when a person is dealt with by the Crown Court (otherwise than on appeal from a magistrates' court) for an offence of which he was not convicted on indictment.

(2) The proceedings from which an appeal against sentence lies under this section are those where an offender convicted of an offence by a magistrates' court—

(a) is committed by the court to be dealt with for his offence before the Crown Court; or

(b) having been made the subject of a probation order[, a community service order]<sup>2</sup> or an order for conditional discharge or an attendance centre order or given a [wholly or partly]<sup>2</sup> suspended sentence, appears or is brought before the Crown Court to be further dealt with for his offence.

(3) An offender dealt with for an offence before the Crown Court in a proceeding to which subsection (2) of this section applies may appeal to the Court of Appeal against sentence in any of the following cases:—

(a) where either for that offence alone or for that offence and other offences for which sentence is passed in the same proceeding, he is sentenced to imprisonment or to youth custody under section 6 of the Criminal Justice Act 1982 for a term of six months or more; or

(b) where the sentence is one which the court convicting him had not power to pass; or

(c) where the court in dealing with him for the offence makes in respect of him—

(i) a recommendation for deportation; or

(ii) an order disqualifying him for holding or obtaining a licence to drive a motor vehicle under Part II of the Road Traffic Act 1960; or

(iii) an order under section 23 of the Powers of Criminal Courts Act 1973 (orders as to existing suspended sentence when person subject to the sentence is again convicted); or

<sup>1</sup> Subsection (2) added w.e.f. 12 October 1988 by Criminal Justice Act 1988 Sch. 15 and Commencement No. 2 Order (S.I. 1988 No. 1676).

<sup>2</sup> Words in square brackets inserted w.e.f. 12 October 1988, *ibid.*



(iv) a restriction order under section 15 of the Football Spectators Act 1989;<sup>1</sup> or

(v) a declaration of relevance under the Football Spectators Act 1989;<sup>1</sup>

(d) *Repealed*.<sup>2</sup>

(4) For purposes of subsection (3)(a) of this section [and section 11 of this Act],<sup>3</sup> any two or more sentences are to be treated as passed in the same proceeding 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;

and consecutive terms of imprisonment and terms which are wholly or partly concurrent are to be treated as a single term.

(5) If by virtue of an order made under section 14 of the Criminal Justice Act 1982, the term of 4 months specified in section 4 of that Act is increased to a term of 6 months or more, subsection (3)(a) above shall have effect, for so long as the term so specified is 6 months or more, as if after the word “more” there were inserted the words “or an order for his detention in a detention centre for a term of 6 months or more has been made under section 4 of the Criminal Justice Act 1982”.

### **Supplementary provisions as to appeal against sentence**

11.—(1) Subject to subsection (1A) below, an appeal against sentence, whether under section 9 or under section 10 of this Act, lies only with the leave of the Court of Appeal.

(1A) If the judge who passed the sentence grants a certificate that the case is fit for appeal under section 9 or 10 or this Act, an appeal lies under this section without the leave of the Court of Appeal.

(2) Where the Crown Court, in dealing with an offender either on his conviction on indictment or in a proceeding to which section 10(2) of this Act applies, has passed on him two or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 10), being sentences against which an appeal lies under section [9(1)]<sup>4</sup> or section 10, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.

<sup>1</sup> Sub-paragraphs (iv) and (v) inserted by the Football Spectators Act 1989, sections 15(7) and 23(3)(a) respectively.

<sup>2</sup> Subsection 10(3)(d) repealed w.e.f. 12 October 1988 by Criminal Justice Act 1988, Sch. 16 and Commencement No. 2 Order (S.I. 1988 No. 1676).

<sup>3</sup> Words in square brackets inserted w.e.f. 12 October 1988, *ibid*, Sch. 15.

<sup>4</sup> Number in square brackets substituted w.e.f. 12 October 1988 by Criminal Justice Act 1988 Sch. 15 and Commencement Order No. 2 (S.I. 1988 No. 1676).

(2A) Where following conviction on indictment a person has been convicted under section 41 of the Criminal Justice Act 1988 of a summary offence an appeal or application for leave to appeal against any sentence for the offence triable either way shall be treated also as an appeal or application in respect of any sentence for the summary offence and an appeal or application for leave to appeal against any sentence for the summary offence shall be treated also as an appeal or application in respect of the offence triable either way.<sup>1</sup>

(2B) If the appellant or applicant was convicted on indictment of two or more offences triable either way, the references to the offence triable either way in subsection (2A) above are to be construed, in relation to any summary offence of which he was convicted under section 41 of the Criminal Justice Act 1988 following the conviction on indictment, as references to the offence triable either way specified in the notice relating to that summary offence which was given under subsection (2) of that section.<sup>1</sup>

(3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—

- (a) quash any sentence or order which is the subject of the appeal; and
- (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;

but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.

(4) The power of the Court of Appeal under subsection (3) of this section to pass a sentence which the court below had power to pass for an offence shall, notwithstanding that the court below made no order under section 23(1) of the Powers of Criminal Courts Act 1973 or section 47(4) of the Criminal Law Act 1977 in respect of a suspended or partly suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that sentence where the court below made no order in respect of it.<sup>2</sup>

(5) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or to

<sup>1</sup> Subsections (2A) and (3B) inserted w.e.f. 12th October 1988 by Criminal Justice Act 1988 Sch. 15 and Commencement Order No. 2 (S.I. 1988 No. 1676).

<sup>2</sup> Subsection (4) substituted w.e.f. 12th October 1988, *ibid.*

deal with the appellant on its termination; and where the Court of Appeal quash such an order but do not pass any sentence or make any other order in its place the court may [subject to section 25 of the Criminal Justice and Public Order Act 1994]<sup>1</sup> direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.

(6) Where the Court of Appeal make an interim hospital order by virtue of subsection (3) of this section—

- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
- (b) the court below shall be treated for the purposes of section 38(7) of the said Act of 1983 (absconding offenders) as the court that made the order.

*Appeal in cases of insanity*

**Appeal against verdict of not guilty by reason of insanity**

12. A person in whose case there is returned a verdict of not guilty by reason of insanity may appeal to the Court of Appeal against the verdict—

- (a) on any ground or appeal which involves a question of law alone; and
- (b) with the leave of the Court of Appeal, 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 of Appeal 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 the ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

**Disposal of appeal under s. 12**

13.—(1) Subject to the provisions of this section, the Court of Appeal shall allow an appeal under section 12 of this Act if they are of opinion—

- (a) that the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the order of the court giving effect to the verdict 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.

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<sup>1</sup> Words in square brackets inserted w.e.f. 10th April 1995 by the Criminal Justice and Public Order Act 1994, s. 168(2) and Sch. 10 para. 20, and Commencement Order No. 6, S.I. 1995 No. 721.

(2) The Court of Appeal may dismiss an appeal under section 12 of this Act 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.

(3) Where apart from this subsection—

(a) an appeal under section 12 of this Act would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Appeal may dismiss the appeal if they are 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.

(4) Where an appeal under section 12 of this Act is allowed, the following provisions apply:—

(a) 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 and the Court of Appeal are 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—

(i) shall substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and

(ii) shall, subject to subsection (5) below, have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if the jury had come to the substituted verdict; and

(b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal.

(5) The Court of Appeal shall not by virtue of subsection (4)(a) above sentence any person to death; but where under that paragraph they substitute a verdict of guilty of an offence for which apart from this subsection they would be required to sentence the appellant to death, their sentence shall (whatever the circumstances) be one of imprisonment for life.

(6) An order of the Court of Appeal allowing an appeal in accordance with this section shall operate as a direction to the court of trial to amend the record to conform with the order.

**Substitution of findings of unfitness to plead etc.<sup>1</sup>**

14.—(1) This section applies where, on an appeal under section 12 of this Act, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—

- (a) the case is not one where there should have been a verdict of acquittal; but
- (b) there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.

(2) Subject to subsection (3) below, the Court of Appeal shall either—

- (a) make an order that the appellant be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or
- (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the appellant such one of the following orders as they think most suitable in all the circumstances of the case, namely—
  - (i) a guardianship order within the meaning of the Mental Health Act 1983;
  - (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
  - (iii) an order for his absolute discharge.

(3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the appeal relates is an offence the sentence for which is fixed by law.

**Substitution of verdict of acquittal**

14A.—(1) This section applies where, in accordance with section 13(4)(b) of this Act, the Court of Appeal substitute a verdict of acquittal and the Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—

- (a) that the appellant is suffering from mental disorder of a

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<sup>1</sup> Sections 14 and 14A substituted w.e.f. 1st January 1992 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, section 4 and Commencement Order 1991 S.I. No. 2488).

nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and

- (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(2) The Court of Appeal shall make an order that the appellant be admitted for assessment, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State.

### *Unfitness to stand trial*

#### **Right of appeal against finding of disability**

15.—(1) Where there has been a determination under section 4 of the Criminal Procedure (Insanity) Act 1964 of the question of a person's fitness to be tried, and the jury has returned [findings that he is under a disability and that he did the act or made the omission charged against him, the person may appeal to the Court of Appeal against either or both of those findings].<sup>1</sup>

(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 of Appeal, 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 of Appeal 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 a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

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<sup>1</sup> Words in square brackets inserted w.e.f. 1st January 1992 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, Sched. 3, para. 2, and Commencement Order 1991 (S.I. No. 2488).

**Disposal of appeal under s. 15<sup>1</sup>**

16.—(1) The Court of Appeal shall allow an appeal under section 15 of this Act [against a finding that the appellant is under a disability or that he did the act or made the omission charged against him] if they are of opinion—

- (a) that the finding of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;
- (b) that the order of the court 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 relevant question];

and in any other case . . . shall dismiss the appeal; but they may dismiss the appeal 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.

**(2) [Repealed]**

(3) Where the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant is under a disability—

- (a) the appellant may be tried accordingly for the offence with which he was charged; and
- (b) the Court may [subject to section 25 of the Criminal Justice and Public Order Act 1994]<sup>2</sup> make such orders as appear to them necessary or expedient pending any such trial for his custody, release on bail or continued detention under the Mental Health Act 1983;

and Schedule 3 to this Act has effect for applying provisions in Part III of that Act to persons in whose case an order is made by the Court under this subsection.

(4) Where, otherwise than in a case falling within subsection (3) above, the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).

<sup>1</sup> In this section the words in square brackets and subsections (3) and (4) were inserted w.e.f. 1st January 1991 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, Sched. 3, para. 3, and Commencement Order 1991 (S.I. No. 2488).

<sup>2</sup> Words in square brackets inserted w.e.f. 10th April 1995 by the Criminal Justice and Public Order Act 1994 and Commencement Order No. 6, S.I. 1995 No. 721.

*Review of Court of Appeal of cases tried on indictment***Reference by Home Secretary**

17.—(1) Where a person has been convicted on indictment, or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability [and to have done the act or made the omission charged against him],<sup>1</sup> the Secretary of State may, if he thinks fit, as any time either—

- (a) 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
- (b) if he desires the assistance of the Court on any point arising in the case, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with their opinion thereon accordingly.

(2) A reference by the Secretary of State under this section may be made by him either on an application by the person referred to in subsection (1), or without any such application.

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<sup>1</sup> Words in square brackets inserted w.e.f. 1st January 1992 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, Sched. 3, para. 4, and Commencement Order 1991 (S.I. No. 2488).



## PART II

APPEAL TO HOUSE OF LORDS FROM COURT OF APPEAL  
(CRIMINAL DIVISION)*Matters preliminary to Hearing*

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**Detention of defendant on appeal by the Crown**

37.—(1) The following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the House of Lords, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.

(2) If, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal 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 36 above), so long as an appeal to the House of Lords is pending.

(3) An order under this section 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 of Appeal.

(4) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—

- (a) an order or direction under Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act) (admission to hospital of persons convicted by criminal courts); or
- (b) an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 (admission to hospital following verdict of insanity or unfitness to stand trial),

the order under this section shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) and (b) of this subsection; and the provisions of the Mental Health Act 1983 with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

(4A) Where an order is made under this section in the case of a defendant who, but for the decision of the Court of Appeal,

would be liable to be detained in pursuance of a remand under section 36 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—

- (a) subsection (3) of this section shall not apply to the order;
  - (b) Part III of the said Act of 1983 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, subsection (2) of the said section 38 (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.
- (5) Where the Court of Appeal have 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 (3), (4) or (4A) of this section, 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.

### PART III MISCELLANEOUS AND GENERAL

\* \* \*

#### Meaning of “sentence”

**50.**—[(1) In this Act “sentence”, in relation to an offence, includes any order made by a court when dealing with an offender including, in particular—

- (a) a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order;
- (b) an interim hospital order under that Part;
- (c) a recommendation for deportation;
- (d) a confiscation order under the Drug Trafficking Offences Act 1986 other than one made by the High Court;
- (e) a confiscation order under Part VI of the Criminal Justice Act 1988;
- (f) an order varying a confiscation order of a kind which is included by virtue of paragraph (d) or (e) above;
- (g) an order made by the Crown Court varying a confiscation order which was made by the High Court by virtue of section 4A of the Act of 1986; and

(h) a declaration of relevance under the Football Spectators Act 1989).<sup>1</sup>

(1A) [Section 1C] of the Powers of Criminal Courts Act 1973 (under which a conviction of an offence for which . . . an order for conditional for absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Act, whether against conviction or otherwise.<sup>2</sup>

### Interpretation

51.—(1) In this Act, except where the context otherwise requires—

“appeal”, where used in Part I or II of this Act, means appeal under that Part, and “appellant” has a corresponding meaning and in Part I includes a person who has given notice of application for leave to appeal;

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

“the defendant”, in Part II of this Act, means, in relation to an appeal, the person who was the appellant before the criminal division of the Court of Appeal, and references to the prosecutor shall be construed accordingly;

“duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;<sup>3</sup>

“the judge of the court of trial” means where the Crown Court comprises justices of the peace, the judge presiding;

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;<sup>3</sup>

“under disability” has the meaning assigned to it by section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and

(2) Any expression used in this Act which is defined in section 145(1) of the Mental Health Act 1983 has the same meaning in this Act as in that Act.

(2A) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof of the appellant’s mental condition for the purposes of section 6, 14 or 14A of this Act as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.<sup>3</sup>

<sup>1</sup> Subsection (1) substituted w.e.f. 14th August 1995 by the Criminal Justice Act 1993, s. 79(13) and Sch. 5, para. 1, and Commencement Order No. 9, S.I. 1995 No. 1958.

<sup>2</sup> Subsection (1A) inserted by Criminal Justice Act 1982, s. 66 and words in square brackets substituted and words omitted w.e.f. 1 October 1992 by the Criminal Justice Act 1991, Sch. 11, para. 4.

<sup>3</sup> Additional definitions and subsection (2A) inserted w.e.f. 1st January 1992 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, Sched. 3, para. 5, and Commencement Order 1991 (S.I. No. 2488).

## SCHEDULE 1

CONSEQUENCES AND EFFECT OF ORDER FOR ADMISSION  
TO HOSPITAL UNDER S. 6 OR S. 14

*[Repealed w.e.f. 1st January 1992 by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, Sched. 4.]*

## SCHEDULE 3

APPLICATION OF PROVISIONS IN PART III OF MENTAL HEALTH  
ACT 1983 WHERE ORDER MADE UNDER SECTION 16(3) OF THIS ACT*Order for custody pending trial*

1. Where an order is made by the Court of Appeal under section 16(3) of this Act for a person to be kept in custody pending trial, the following sections of the Mental Health Act 1959, that is to say—

section 73 (transfer of persons in custody to hospital for treatment);

section 74 (special restrictions on discharge); and

section 76 (cases in which a direction for a person's transfer to hospital may lapse),

shall apply to him as they apply to the persons listed in paragraphs (a) to (c) of section 73(2) of the said Act of 1959.

*Order for continued detention under Act of 1983*

2. Where an order is made by the Court of Appeal under section 16(3) of this Act for a person's continued detention under the Mental Health Act 1983, Part III of that Act (patients concerned in criminal proceedings or under sentence) shall apply to him as if he had been ordered under the said section 16(3) to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a restriction order.