

CRIMINAL APPEALS – LAW COMMISSION REVIEW

Terms of Reference

- 1.1 The Law Commission will conduct a review of the law governing appeals in criminal cases and consider the need for reform with a view to ensuring that the courts have powers that enable the effective, efficient and appropriate resolution of appeals. The review will be particularly concerned with inconsistencies, uncertainties and gaps in the law. It will consider, but is not limited to, the following:

Appeals against conviction and sentence in the Court of Appeal (Criminal Division) ('CACD')

- (1) Whether the CACD has adequate and appropriate powers to:
 - (a) order a re-trial, substitute a conviction, or substitute a sentence; and
 - (b) make directions regarding time spent in custody pending appeal.
- (2) Whether there is evidence which suggests that the test for allowing an appeal on the grounds that a conviction is unsafe may hinder the correction of miscarriages of justice, including with regard to:
 - (a) the approach to fresh evidence;
 - (b) the approach to “lurking doubt” or grounds not attributable to fresh evidence or a material irregularity; and
 - (c) the test of “substantial injustice”, which applies in cases where there is an appeal on the basis of a subsequent change in the common law
- (3) Whether the law in relation to grounds of appeal provides sufficient certainty to allow a convicted person to receive clear advice about the prospects of an appeal.
- (4) Whether the Attorney-General's powers to refer a matter to the CACD are adequate and appropriate.
- (5) Whether codification of common law tests in relation to grounds for appeal against conviction and sentence may be warranted.
- (6) Whether the composition of judicial panels in the CACD is an efficient and effective use of court resources and judicial time, while serving the interests of justice.

Appeals against matters other than conviction and sentence in the CACD

- (7) Whether the CACD has adequate and appropriate powers to deal with appeals relating to findings on fitness to plead.

Appeals against conviction and sentence in the Magistrates' Court and Crown Court

- (8) Whether the rights to appeal and processes for appeals in summary matters are an efficient and effective use of court resources and judicial time, while serving the interests of justice.
- (9) Whether the Crown Court has adequate and appropriate sentencing powers in a new trial that is a result of an appeal.

Referral of matters from the Criminal Cases Review Commission

- (10) Whether the conditions for referring cases to the CACD under the Criminal Appeal Act 1995 allow the CCRC to fulfil its functions.

Evidence and records of proceedings

- (11) Whether appeals (both from CCRC referrals and generally) are hampered by inadequate laws governing the retention and disclosure of evidence, including post-conviction, and retention and access to records of proceedings.

Consolidation of statutory provisions

- (12) Whether consolidation of rights to appeal, which are currently spread across a number of statutes, may make the law clearer and more consistent.