



**Law  
Commission**  
Reforming the law

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# Sentencing law in England and Wales Legislation currently in force

## Part 6 – Appeals

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9 October 2015

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## Part 6. Appeals

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## 6.1 From the magistrates' courts

### 6.1.1. Right of appeal

#### General power

#### ***MCA 1980 s.108<sup>2021</sup> : Right of appeal to the Crown Court***

s.108(1) - a person convicted by a magistrates' court may appeal to the Crown Court—

- (a) if he pleaded guilty, against his sentence;
- (b) if he did not, against the conviction or sentence.

s.108(1A) - Section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (under which a conviction of an offence for which an order for conditional or 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.

s.108(2) - a person sentenced by a magistrates' court for an offence in respect of which an order for conditional discharge has been previously made may appeal to the Crown Court against the sentence.

s.108(4) - subsection (3)(d) above does not prevent an appeal against a surcharge imposed under section 161A of the Criminal Justice Act 2003.

s.108(3) - in this section “*sentence*” includes any order made on conviction by a magistrates' court, not being—

- (b) an order for the payment of costs;
- (c) an order under section 37(1) of the Animal Welfare Act 2006 (which enables a court to order the destruction of an animal); or
- (d) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or its terms

and also includes a declaration of relevance, within the meaning of section 23 of the Football Spectators Act 1989.

#### **Mental Health Act 1983**

#### ***MHA 1983 s.45<sup>2022</sup> : Appeals from magistrates' courts***

s.45(1) - where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.

s.45(2) - an appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

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<sup>2021</sup> Commencement: 6 July 1981, SI 1981/457 art. 2

<sup>2022</sup> Commencement: 30 September 1983, MHA 1983 s.149(2).

## Re-sentencing after revocation of community order etc.

### **CJA 2003 Sch.8 para.9<sup>2023</sup>: Powers of magistrates' court**

para.9(1) - if it is proved to the satisfaction of a magistrates' court before which an offender appears or is brought under paragraph 7 that he has failed without reasonable excuse to comply with any of the requirements of the community order, the court must deal with him in respect of the failure in any one of the following ways—

- (a) by amending the terms of the community order so as to impose more onerous requirements which the court could include if it were then making the order;
- (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
- (b) where the community order was made by a magistrates' court, by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence;
- (c) where—
  - (i) the community order was made by a magistrates' court,
  - (ii) the offence in respect of which the order was made was not an offence punishable by imprisonment,
  - (iii) the offender is aged 18 or over, and
  - (iv) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months.

para.9(8) - a person sentenced under sub-paragraph (1)(b) or (c) for an offence may appeal to the Crown Court against the sentence.

### **CJA 2003 Sch.8 para.13<sup>2024</sup>: Revocation of order with or without re-sentencing: powers of magistrates' court**

para.13(1) - this paragraph applies where a community order, other than an order made by the Crown Court and falling within paragraph 14(1)(a), is in force and on the application of the offender or an officer of a provider of probation services it appears to the appropriate magistrates' court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) for the order to be revoked, or
- (b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.

para.13(2) - the appropriate magistrates' court may—

- (a) revoke the order, or
- (b) both—

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<sup>2023</sup> Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect in relation to an offence committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

<sup>2024</sup> Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect in relation to an offence committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

- (i) revoke the order, and
- (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.

para.13(5) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

### **Vagrancy Act 1824**

Vagrancy Act 1824 s.14: any person aggrieved by any Act or determination of any justice or justices of the peace out of sessions, in or concerning the execution of this Act, may appeal to the Crown Court.

### **Other appeals to the Crown Court**

*Note: Where a specific right of appeal is provided for by statute, that provision has been included in the relevant section, e.g. for the power to appeal against a bind over, see the bind overs section. However, the Criminal Procedure Rules rule 34.1 provides a useful list of other powers:*

#### **Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.34.1(1) This Part applies where—

- (a) a defendant wants to appeal under—
  - (i) section 108 of the Magistrates' Courts Act 1980,
  - (ii) section 45 of the Mental Health Act 1983,
  - (iii) paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, or paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003,
  - (iv) section 42 of the Counter Terrorism Act 2008;
- (b) the Criminal Cases Review Commission refers a defendant's case to the Crown Court under section 11 of the Criminal Appeal Act 1995(f);
- (c) a prosecutor wants to appeal under—
  - (i) section 14A(5A) of the Football Spectators Act 1989, or
  - (ii) section 147(3) of the Customs and Excise Management Act 1979; or
- (d) a person wants to appeal under—
  - (i) section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956,
  - (ii) section 12(5) of the Contempt of Court Act 1981,
  - (iii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986,
  - (iv) section 22 of the Football Spectators Act 1989, or
  - (v) section 10(4) or (5) of the Crime and Disorder Act 1998.

rule.34.1(2) A reference to an 'appellant' in this Part is a reference to such a party or person.

*Note.*<sup>2025</sup> An appeal to the Crown Court is by way of re-hearing: see section 79(3) of the Senior Courts Act 1981. For the powers of the Crown Court on an appeal, see section 48 of that Act.

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<sup>2025</sup> The note is contained within the Crim PR.

*A defendant may appeal from a magistrates' court to the Crown Court—*

- (a) under section 108 of the Magistrates' Courts Act 1980, against sentence after a guilty plea and after a not guilty plea against conviction, against a finding of guilt or against sentence;*
- (b) under section 45 of the Mental Health Act 1983, where the magistrates' court makes a hospital order or guardianship order without convicting the defendant;*
- (c) under paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, or under paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003, where the magistrates' court revokes a community order and deals with the defendant in another way;*
- (d) under section 42 of the Counter Terrorism Act 2008, where the magistrates' court decides that an offence has a terrorist connection.*

*See section 13 of the Criminal Appeal Act 1995 for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.*

*Under section 14A(5A) of the Football Spectators Act 1989, a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order.*

*Under section 147(3) of the Customs and Excise Management Act 1979, a prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under any Act relating to customs or excise.*

*Under section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956, a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court.*

*Under section 12(5) of the Contempt of Court Act 1981, a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court.*

*Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court.*

*Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court.*

*Under section 22 of the Football Spectators Act 1989, any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court.*

*Under section 10(4) or (5) of the Crime and Disorder Act 1998, a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court.*

### **Football Banning Orders**

Football Spectators Act 1989 s.14A(5A): a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order

Football Spectators Act 1989 s.22: any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court

### **Customs and Excise Management Act 1979**

s.147(3) - the prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under the customs and excise Acts

### **Bind overs**

Magistrates' Courts (Appeals from Binding Over Orders) Act 1956 s.1: a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court

### **Contempt of court**

Contempt of Court Act 1981 s.12(5): a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court

### **Wasted costs**

Costs in Criminal Cases (General) Regulations 1986 reg.3C: a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court

### **Third party costs**

Costs in Criminal Cases (General) Regulations 1986 reg.3H: a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court

### **Parenting order**

Crime and Disorder Act 1998 s.10(4) and (5): a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court

### **Power of the CCRC to refer a case to the Crown Court:**

#### **CAA 1995 s.13<sup>2026</sup>: *Conditions for making of references***

- s.13(1) - a reference of a conviction, verdict, finding or sentence shall not be made under any of section 9 to 12B unless—
- (a) the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,
  - (b) the Commission so consider—
    - (i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or
    - (ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
  - (c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
- s.13(2) - nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.

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<sup>2026</sup> Commencement: 31 March 1997, SI 1997/402 art.3(c) and art.4



## 6.1.2. Abandonment

### **MCA 1980 s.109<sup>2027</sup>: Abandonment of appeal**

- s.109(1) - where notice to abandon an appeal has been duly given by the appellant—
- (a) the court against whose decision the appeal was brought may issue process for enforcing that decision, subject to anything already suffered or done under it by the appellant; and
  - (b) the said court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given to that party.
- s.109(2) - in this section “*appeal*” means an appeal from a magistrates’ court to the Crown Court, and the reference to a notice to abandon an appeal is a reference to a notice shown to the satisfaction of the magistrates’ court to have been given in accordance with rules of court.

### **Criminal Procedure Rules 2015 (SI 2015/1490)**

- rule.34.9(1) - The appellant—
- (a) may abandon an appeal without the Crown Court’s permission, by serving a notice of abandonment on—
    - (i) the magistrates’ court officer,
    - (ii) the Crown Court officer, and
    - (iii) every other partybefore the hearing of the appeal begins; but
  - (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court’s permission.
- (2) - A notice of abandonment must be signed by or on behalf of the appellant. (3) Where an appellant who is on bail pending appeal abandons an appeal—
- (a) the appellant must surrender to custody as directed by the magistrates’ court officer; and
  - (b) any conditions of bail apply until then.

*Note.*<sup>2028</sup> *The Practice Direction sets out a form of notice of abandonment for use in connection with this rule.*

*Where an appellant abandons an appeal to the Crown Court, both the Crown Court and the magistrates’ court have power to make a costs order against that appellant in favour of the respondent: see section 52 of the Senior Courts Act 1981 and section 109 of the Magistrates’ Courts Act 1980. Part 45 contains rules about costs on abandoning an appeal.*

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<sup>2027</sup> Commencement: 6 July 1981, SI 1981/457 art. 2

<sup>2028</sup> The note is contained within the Crim PR.

### 6.1.3. Applications, time limits and appeal notices

#### **Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.34.2(1) - An appellant must serve an appeal notice on—

- (a) the magistrates' court officer; and
- (b) every other party.

rule.34.2(2) - The appellant must serve the appeal notice—

- (a) as soon after the decision appealed against as the appellant wants; but
- (b) not more than 21 days after—
  - (i) sentence or the date sentence is deferred, whichever is earlier, if the appeal is against conviction or against a finding of guilt,
  - (ii) sentence, if the appeal is against sentence, or
  - (iii) the order or failure to make an order about which the appellant wants to appeal, in any other case.

rule.34.2(3) - The appellant must serve with the appeal notice any application for the following, with reasons—

- (a) an extension of the time limit under this rule, if the appeal notice is late;
- (b) bail pending appeal, if the appellant is in custody;
- (c) the suspension of any disqualification imposed in the case, where the magistrates' court or the Crown Court can order such a suspension pending appeal.

rule.34.2(4) - Where both the magistrates' court and the Crown Court can suspend a disqualification pending appeal, an application for its suspension must indicate by which court the appellant wants the application determined.

*Note.*<sup>2029</sup> Under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(a), a magistrates' court may defer passing sentence for up to 6 months.

*Under section 39 of the Road Traffic Offenders Act 1988(b), a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. Under section 40 of the 1988 Act(c), the appeal court may do so. See also rule 29.2.*

#### **Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.34.3 - The appeal notice must be in writing and must—

- (a) specify—
  - (i) the conviction or finding of guilt,
  - (ii) the sentence, or
  - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
- (b) summarise the issues;
- (c) in an appeal against conviction—

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<sup>2029</sup> The note is contained within the Crim PR.

- (i) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence, and
- (ii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;
- (d) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—
  - (i) the magistrates' court's written findings of fact, and
  - (ii) the appellant's response to those findings;
- (e) say whether the appellant has asked the magistrates' court to reconsider the case; and
- (f) include a list of those on whom the appellant has served the appeal notice.

*Note.*<sup>2030</sup> *The Practice Direction sets out a form of appeal notice for use in connection with this rule. In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980. See also rule 3.11 (Conduct of a trial or an appeal).*

### **Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.34.4 - The magistrates' court officer must—

- (a) as soon as practicable serve on the Crown Court officer—
  - (i) the appeal notice and any accompanying application served by the appellant,
  - (ii) details of the parties including their addresses,
  - (iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail pending appeal, and
  - (iv) any report received for the purposes of sentencing;
- (b) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—
  - (i) 6 weeks after the conclusion of those proceedings, or
  - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks;
- (c) provide the Crown Court with any document, object or information for which the Crown Court officer asks, within such period as the Crown Court officer may require; and
- (d) arrange for the magistrates' court to hear as soon as practicable any application to that court under rule 34.2(3)(c) (suspension of disqualification pending appeal).

### **Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.34.5 - A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

- (a) keep that exhibit until—
  - (i) 6 weeks after the conclusion of those proceedings, or

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<sup>2030</sup> The note is contained within the Crim PR.

- (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks,  
unless the magistrates' court or the Crown Court otherwise directs; and
- (b) provide the Crown Court with any such document or object for which the Crown Court officer asks, within such period as the Crown Court officer may require.

***Criminal Procedure Rules 2015 (SI 2015/1490)***

rule.34.6(1) - The Crown Court officer must, as soon as practicable, serve a reference by the Criminal Cases Review Commission on—

- (a) the appellant;
- (b) every other party; and
- (c) the magistrates' court officer.

rule.34.6(2) - The appellant may serve an appeal notice on—

- (a) the Crown Court officer; and
- (b) every other party,  
not more than 21 days later.

rule.34.6(3) - The Crown Court must treat the reference as the appeal notice if the appellant does not serve an appeal notice.

***Criminal Procedure Rules 2015 (SI 2015/1490)***

rule.34.10 - The Crown Court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow an appellant to vary an appeal notice that that appellant has served;
- (c) direct that an appeal notice be served on any person;
- (d) allow an appeal notice or a notice of abandonment to be in a different form to one set out in the Practice Direction, or to be presented orally.

**6.1.4. Bail**

***MCA 180 s.113<sup>2031</sup> : Bail on appeal or case stated***

s.113(1) - where a person has given notice of appeal to the Crown Court against the decision of a magistrates' court or has applied to a magistrates' court to state a case for the opinion of the High Court, then, if he is in custody, the magistrates' court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant him bail.

s.113(2) - if a person is granted bail under subsection (1) above, the time and place at which he is to appear (except in the event of the determination in respect of which the case is stated being reversed by the High Court) shall be—

- (a) if he has given notice of appeal, the Crown Court at the time appointed for the hearing of the appeal;

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<sup>2031</sup> Commencement: 6 July 1981, SI 1981/457 art. 2

- (b) if he has applied for the statement of a case, the magistrates' court at such time within 10 days after the judgment of the High Court has been given as may be specified by the magistrates' court;

and any recognizance that may be taken from him or from any surety for him shall be conditioned accordingly.

s.113(3) - subsection (1) above shall not apply where the accused has been committed to the Crown Court for sentence under section 37 above or section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.

s.113(4) - Section 37(6) of the Criminal Justice Act 1948 (which relates to the currency of a sentence while a person is released on bail by the High Court) shall apply to a person released on bail by a magistrates' court under this section pending the hearing of a case stated as it applies to a person released on bail by the High Court under section 22 of the Criminal Justice Act 1967.

### 6.1.5. The hearing

#### ***Criminal Procedure Rules 2015 (SI 2015/1490)***

rule.34.8(1) - The Crown Court as a general rule must hear in public an appeal or reference to which this Part applies, but—

- (a) may order any hearing to be in private; and
- (b) where a hearing is about a public interest ruling, must hold that hearing in private.

(2) - The Crown Court officer must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;
- (b) any party' s custodian; and
- (c) any other person whom the Crown Court requires to be notified.

(3) - The Crown Court officer must serve every decision on—

- (a) the parties;
- (b) any other person whom the Crown Court requires to be served; and
- (c) the magistrates' court officer and any party's custodian, where the decision determines an appeal.

(4) - But where a hearing or decision is about a public interest ruling, the Crown Court officer must not—

- (a) give notice of that hearing to; or
- (b) serve that decision on,  
anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

*Note.*<sup>2032</sup> See also Part 15 (Disclosure).

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<sup>2032</sup> The note is contained within the Crim PR.

**Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.34.11 - On the hearing of an appeal—

- (a) the general rule is that the Crown Court must comprise—
  - (i) a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate, and
  - (ii) no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal; and
- (b) if the appeal is from a youth court—
  - (i) each justice of the peace must be qualified to sit as a member of a youth court, and
  - (ii) the Crown Court must include a man and a woman; but
- (c) the Crown Court may include only one justice of the peace and need not include both a man and a woman if—
  - (i) the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably, or
  - (ii) one or more of the justices of the peace who started hearing the appeal is absent.

*Note.*<sup>2033</sup> See sections 73 and 74 of the Senior Courts Act 1981(a), section 45 of the Children and Young Persons Act 1933(b) and section 9 of the Courts Act 2003(c). Under section 8(1A) of the Senior Courts Act 1981(d), a qualifying judge advocate may not exercise the jurisdiction of the Crown Court on an appeal from a youth court.

**SCA 1981 s.79: Practice and procedure in connection with indictable offences and appeals**

- s.79(1) - all enactments and rules of law relating to procedure in connection with indictable offences shall continue to have effect in relation to proceedings in the Crown Court.
- s.79(2) - without prejudice to the generality of subsection (1), that subsection applies in particular to—
  - (a) the practice by which, on any one indictment, the taking of pleas, the trial by jury and the pronouncement of judgment may respectively be by or before different judges;
  - (b) the release, after respite of judgment, of a convicted person on recognizance to come up for judgment if called on, but meanwhile to be of good behaviour;
  - (c) the manner of trying any question relating to the breach of a recognizance;
  - (d) the manner of execution of any sentence on conviction, or the manner in which any other judgment or order given in connection with trial on indictment may be enforced.
- s.79(3) - the customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case, shall continue to be observed.

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<sup>2033</sup> The note is contained within the Crim PR.

## 6.1.6. Power of Crown Court on appeal

### General jurisdiction

#### **SCA 1981 s.45<sup>2034</sup>: General jurisdiction of Crown Court**

- s.45(1) - the Crown Court shall be a superior court of record.
- s.45(2) - subject to the provisions of this Act, there shall be exercisable by the Crown Court—
- (a) all such appellate and other jurisdiction as is conferred on it by or under this or any other Act; and
  - (b) all such other jurisdiction as was exercisable by it immediately before the commencement of this Act.
- s.45(3) - without prejudice to subsection (2), the jurisdiction of the Crown Court shall include all such powers and duties as were exercisable or fell to be performed by it immediately before the commencement of this Act.
- s.45(4) - subject to section 8 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (substitution in criminal cases of procedure in that Act for procedure by way of subpoena) and to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority as the High Court.
- s.45(5) - the specific mention elsewhere in this Act of any jurisdiction covered by subsections (2) and (3) shall not derogate from the generality of those subsections.

### Application of powers

#### **SCA 1981 s.48: Appeals to Crown Court**

- s.48(5) - this section applies whether or not the appeal is against the whole of the decision.

### Meaning of “sentence”

#### **SCA 1981 s.48: Appeals to Crown Court**

- s.48(6) - in this section “sentence” includes any order made by a court when dealing with an offender, including—
- (a) a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order, and an *interim* hospital order under that Act; and
  - (b) a recommendation for deportation made when dealing with an offender.

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<sup>2034</sup> Commencement: 1 January 1982, SCA 1981 s.153(2).

## Powers

### **SCA 1981 s.48: Appeals to Crown Court**

- s.48(1) - the Crown Court may, in the course of hearing any appeal, correct any error or mistake in the order or judgment incorporating the decision which is the subject of the appeal.
- s.48(2) - on the termination of the hearing of an appeal the Crown Court—
- (a) may confirm, reverse or vary the decision appealed against any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence; or
  - (b) may remit the matter with its opinion thereon to the authority whose decision is appealed against; or
  - (c) may make such other order in the matter as the court thinks just, and by such order exercise any power which the said authority might have exercised.
- s.48(3) - subsection (2) has effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the court on the appeal.

### **Sentence may increase on appeal**

- s.48(4) - subject to section 11(6) of the Criminal Appeal Act 1995, if the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the magistrates' court whose decision is appealed against, if that is a punishment which that magistrates' court might have awarded.

### **Effect of pending appeal on interim hospital order**

### **SCA 1981 s.48: Appeals to Crown Court**

- s.48(7) - the fact that an appeal is pending against an *interim* hospital order under the said Act of 1983 shall not affect the power of the magistrates' court that made it to renew or terminate the order or to deal with the appellant on its termination; and where the Crown Court quashes such an order but does not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by that magistrates' court.
- s.48(8) - where the Crown Court makes an *interim* hospital order by virtue of subsection (2)—
- (a) the power of renewing or terminating the order and of dealing with the appellant on its termination shall be exercisable by the magistrates' court whose decision is appealed against and not by the Crown Court; and
  - (b) that magistrates' court 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.

## Costs

*Note: There is a power to make a costs order under POA 1985 s. 16. See the costs section for details. See also Crim PR Part 45.*



### 6.1.7. Effect of Crown Court determination etc.

#### ***MCA 1980 s.110: Enforcement of decision of the Crown Court***

- s.110 - after the determination by the Crown Court of an appeal from a magistrates' court the decision appealed against as confirmed or varied by the Crown Court, or any decision of the Crown Court substituted for the decision appealed against, may, without prejudice to the powers of the Crown Court to enforce the decision, be enforced—
- (a) by the issue by the court by which the decision appealed against was given of any process that it could have issued if it had decided the case as the Crown Court decided it;
  - (b) so far as the nature of any process already issued to enforce the decision appealed against permits, by that process;
- and the decision of the Crown Court shall have effect as if it had been made by the magistrates' court against whose decision the appeal is brought.

## 6.2 From the Crown Court

### 6.2.1. General

#### Jurisdiction of the Criminal Division of the Court of Appeal

##### **SCA 1981 s.53<sup>2035</sup>: Distribution of business between civil and criminal divisions**

- s.53(1) - rules of court may provide for the distribution of business in the Court of Appeal between the civil and criminal divisions, but subject to any such rules business shall be distributed in accordance with the following provisions of this section.
- s.53(2) - the criminal division of the Court of Appeal shall exercise—
- (a) all jurisdiction of the Court of Appeal under Parts I and II of the Criminal Appeal Act 1968;
  - (b) the jurisdiction of the Court of Appeal under section 13 of the Administration of Justice Act 1960 (appeals in cases of contempt of court) in relation to appeals from orders and decisions of the Crown Court;
  - (c) all other jurisdiction expressly conferred on that division by this or any other Act; and
  - (d) the jurisdiction to order the issue of writs of *venire de novo*.
- s.53(3) - the civil division of the Court of Appeal shall exercise the whole of the jurisdiction of that court not exercisable by the criminal division.
- s.53(4) - where any class of proceedings in the Court of Appeal is by any statutory provision assigned to the criminal division of that court, rules of court may provide for any enactment relating to—
- (a) appeals to the Court of Appeal under Part I of the Criminal Appeal Act 1968; or
  - (b) any matter connected with or arising out of such appeals,
- to apply in relation to proceedings of that class or, as the case may be, to any corresponding matter connected with or arising out of such proceedings, as it applies in relation to such appeals or, as the case may be, to the relevant matter within paragraph (b), with or without prescribed modifications in either case.

#### Meaning of “sentence”

##### **CAA 1968 s.50<sup>2036</sup>: Meaning of “sentence”**

- s.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;
  - (bb) a hospital direction and a limitation direction under that Part;
  - (c) a recommendation for deportation;

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<sup>2035</sup> Commencement: 1 January 1982, SCA 1981 s.153(2).

<sup>2036</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (ca) a confiscation order under Part 2 of the Proceeds of Crime Act 2002 (but not a determination under section 10A of that Act);
- (cb) an order which varies a confiscation order made under Part 2 of the Proceeds of Crime Act 2002 if the varying order is made under section 21, 22 or 29 of that Act (but not otherwise);
- (d) a confiscation order under the Drug Trafficking Act 1994 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 19 of the Act of 1994; and
- (h) a declaration of relevance, within the meaning of section 23 of the Football Spectators Act 1989; and
- (i) an order under section 129(2) of the Licensing Act 2003 (forfeiture or suspension of personal licence).

s.50(1A) - Section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (under which a conviction of an offence for which an order for a conditional or 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.

s.50(2) - any power of the criminal division of the Court of Appeal to pass a sentence includes a power to make a recommendation for deportation in cases where the court from which the appeal lies had power to make such a recommendation.

s.50(3) - an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not a sentence for the purposes of this Act.

## 6.2.2. Specific sentencing orders

### Sentencing orders that may be appealed

General: For a discussion of the meaning of “sentence” in the 1968 Act, see *R. v Hayden* (1974) 60 Cr. App. R. 304. Sentence includes a compensation order and an order for prosecution costs. It does not include an order that the defendant make a contribution towards legal aid costs incurred.

“The essential key to the meaning of “sentence” in this context in our opinion is that it is an order, and it is an order made by a court when dealing with an offender, and we think that means when dealing with someone who has offended in respect of this offence. Those then are the features to which one must look in deciding whether a particular direction, to use a neutral word, made by a court is a sentence for the purposes of the Act of 1968.” (Lord Widgery CJ at [853])

Absolute discharge: CAA 1968 s.50(1A)

Bind over to come up for judgment: *R. v Williams* (1982) 75 Cr. App. R. 378

Bind over to keep the peace: *R. v Atkinson* (1988) 10 Cr. App. R. (S.) 470

Compensation order: *R. v Thebith* (1970) 54 Cr. App. R. 35; *R. v Hayden* (1974) 60 Cr. App. R. 304

Conditional discharge: CAA 1968 s.50(1A)

Confiscation (under 2002, 1994 and 1988 Acts): CAA 1968 s.50(1)(ca), (cb), (d), (e), (f) and (g)

Costs (except under LASPOA 2012 ss.23 or 24): *R. v Hayden* (1974) 60 Cr. App. R. 304 and CA 1968 s.50(3)

Deferred sentence<sup>2037</sup>: *R. v L* (Deferred sentence) [1999] 2 Cr. App. R. (S.) 7

Deportation, Recommendation for: CAA 1968 s.50(1)(c)

FBO (declaration of relevance under FSA 1989): FSA 1989 s.23(3) and CAA 1968 s.50(1)(h)

FBO (failure to make): FSA 1989 s.14A(5A)<sup>2038</sup>

Financial Reporting Order: *R. v Adams* [2008] EWCA Crim 914

Forfeiture order: *R. v Menocal* (1979) 69 Cr. App. R. 148<sup>2039</sup>

Hospital order, interim hospital order, hospital order with restriction order, hospital direction with limitation direction: CAA 1968 s.50(a), (b) and (bb).

Life sentence (discretionary): CAA 1968 s.9(1)

Minimum sentence following quashing of previous conviction under PCC(S)A 2000 ss.110 or 111: PCC(S)A 2000 s.112

Minimum term of mandatory life sentence: CAA 1968 s.9(1) and (1A)

Minimum term of mandatory life sentence set or reviewed by High Court judge: CJA 2003 Sch.22 para.14

Minimum term of mandatory life sentence for transferred life prisoner: CJA 2003 s.274(3)

Parent/Guardian to enter into recognizance or pay a fine: PCC(S)A 2000 s.150(9)

Parental order (financial): PCC(S)A 2000 s.137(7)

Parenting order (appeal by parent or guardian): CDA 1998 s.10(4)

Restitution order: *R. v Hayden* (1974) 60 Cr. App. R. 304 and PCC(S)A 2000 s.149(3)(b)<sup>2040</sup>

Restraining order on acquittal: PHA 1997 s.5A(5)

Review of sentence under SOCPA 2005 s.74: SOCPA 2005 s.74(8)

Sentence of IPP/DPP/extended sentence following quashing of previous CJA 2003 Sch.15A conviction: CJA 2003 s.231

SCPO: SCA 2007 s.24(1)

SOPOs/SHPOs and interim SOPOs/SHPOs: SOA 2003 ss.110 or 103H

SOPOs/SHPOs variations, renewals or discharges: SOA 2003 ss.110 or 103H

Terrorist connection, determination that offence has: CTA 2008 s.42

Victim surcharge: *R v Stone* [2013] EWCA Crim 723 (see [14])

### **Sentencing orders that may not be appealed**

Mandatory life sentence: CAA 1968 s.9(1)

Notification requirement: *R. v Longworth* [2006] UKHL 1

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<sup>2037</sup> A deferred sentence may also be referred to the Court by the Attorney General under the unduly lenient sentence scheme, see *Attorney General's Reference (No. 22 of 1992)* (*R. v Thomas*) (1993) 14 Cr. App. R. (S.) 435

<sup>2038</sup> Note that the appeal is to the Civil Division of the Court of Appeal, see *R. v Boggild* [2011] EWCA Crim 1928.

<sup>2039</sup> This concerned an order expressed to be under the MDA 1971 s.27 “or alternatively” under the PCCA 1973 s.43 (the predecessor to the current forfeiture order).

<sup>2040</sup> However *R. v Thebith* (1970) 54 Cr. App. R. 35 suggests that the order could not be appealed.

*Note: The issue is determined by whether the specific order is considered to be “a sentence” imposed for the offence in question (see CAA 1968 s.9(1)). Accordingly, many of the sentencing orders available have been omitted from this list as the issue is uncontroversial (e.g. a Restraining Order or a fine, community order, sentence of imprisonment etc).*

### 6.2.3. Right to ask for leave to appeal

#### General

##### **CAA 1968 s.9<sup>2041</sup>: Appeal against sentence following conviction on indictment**

s.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.

#### Murder

##### **CAA 1968 s.9<sup>2042</sup>: Appeal against sentence following conviction on indictment**

s.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.

s.9(1A) - in subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.

#### Summary offences convicted on indictment

##### **CAA 1968 s.9<sup>2043</sup>: Appeal against sentence following conviction on indictment**

s.9(2) - a person who on conviction on indictment has also been convicted of a summary offence under paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998 (power of Crown Court to deal with summary offence where person sent for trial for indictable-only offence) 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 or sub-paragraph (4) of that paragraph.

#### Committals for sentence etc.

##### **CAA 1968 s.10<sup>2044</sup>: Appeal against sentence in other cases dealt with at assizes or quarter sessions**

s.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.

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<sup>2041</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2042</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2043</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2044</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1. Note: I have been unable to find a copy of the 1968 SI to verify the commencement.

- s.10(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 given a suspended sentence or made the subject of—
    - (i) an order for conditional discharge,
    - (ii) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, or
    - (iii) a community order within the meaning of Part 12 of the Criminal Justice Act 2003,appears or is brought before the Crown Court to be further dealt with for the offence.
- s.10(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 any sentence passed on him for the offence by the Crown Court.
- s.10(4) - for purposes of subsection (3)(a) of this section and section 11 of this Act, 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 or detention and terms which are wholly or partly concurrent are to be treated as a single term.

### **Insanity and unfitness to plead**

#### ***CAA 1968 s.16A<sup>2045</sup>: Right of appeal against hospital order etc.***

- s.16A(1) - a person in whose case the Crown Court—
- (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
  - (b) makes a supervision order under section 5 of that Act,
- may appeal to the Court of Appeal against the order.
- s.16A(2) - an appeal under this section lies only—
- (a) with the leave of the Court of Appeal; or
  - (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

### **Contempt of court**

#### ***BA 1976 s.6<sup>2046</sup>: Offence of absconding by person released on bail***

- s.6(1) - if a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

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<sup>2045</sup> Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

<sup>2046</sup> Commencement: 17 April 1978, SI 1978/132 art.2.

- s.6(2) - if a person who—
- (a) has been released on bail in criminal proceedings, and
  - (b) having reasonable cause therefor, has failed to surrender to custody,
- fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.
- s.6(3) - it shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.
- s.6(4) - a failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.
- s.6(5) - an offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

***AJA 1960 s.13<sup>2047</sup>: Appeal in cases of contempt of court***

- s.13(1) - subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.
- s.13(2) - an appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
- (a) from an order or decision of any inferior court not referred to in the next following paragraph, to the High Court;
  - (b) from an order or decision of the county court or any other inferior court from which appeals generally lie to the Court of Appeal, and from an order or decision (other than a decision on an appeal under this section) of a single judge of the High Court, or of any court having the powers of the High Court or of a judge of that court, to the Court of Appeal;
  - (bb) from an order or decision of the Crown Court to the Court of Appeal
  - (c) from a decision of a single judge of the High Court on an appeal under this section, from an order or decision of a Divisional Court or the Court of Appeal (including a decision of either of those courts on an appeal under this section), and from an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial Appeal Court, to the Supreme Court.
- s.13(2A) - paragraphs (a) to (c) of subsection (2) of this section do not apply in relation to appeals under this section from an order or decision of the family court, but (subject to any provision made under section 56 of the Access of Justice Act 1999 or by or under any other enactment) such an appeal shall lie to the Court of Appeal.
- s.13(3) - the court to which an appeal is brought under this section may reverse or vary the order or decision of the court below, and make such other order as may be just; and without prejudice to the inherent powers of any court referred to in subsection (2) of this section, provision may be made by rules of court rules made under section seven

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<sup>2047</sup> Commencement: 27 October 1960.



of the Northern Ireland Act 1962 for authorising the release on bail of an appellant under this section.

- s.13(4) - Subsections (2) to (4) of section one and section two of this Act shall apply to an appeal to the Supreme Court under this section as they apply to an appeal to the Supreme Court under the said section one, except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section.
- s.13(5) - in this section “court” includes any tribunal or person having power to punish for contempt; and references in this section to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references—
- (a) to an order or decision of the High Court, the family court, the Crown Court or the county court under any enactment enabling that court to deal with an offence as if it were contempt of court;
  - (b) to an order or decision of [the county court, or of any court having the powers of [the county court, under section 14, 92 or 118 of the County Courts Act 1984;
  - (c) to an order or decision of a magistrates’ court under subsection (3) of section 63 of the Magistrates’ Courts Act 1980;
  - (d) to an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial, the Summary Appeal Court or the Service Civilian Court under section 309 of the Armed Forces Act 2006,
- but do not include references to order under section five of the Debtors Act 1869, or under any provision of the Magistrates’ Courts Act 1980, or the County Courts Act 1984, except those referred to in paragraphs (b) and (c) of this subsection and except sections 38 and 142 of the last mentioned Act so far as those sections confer jurisdiction in respect of contempt of court.
- s.13(6) - this section does not apply to a conviction or sentence in respect of which an appeal lies under Part I of the Criminal Appeal Act 1968, or to a decision of the criminal division of the Court of Appeal under that Part of that Act.

*Note: The effect of this is that there is no need to apply for leave; an appeal is as of right. This is distinct from those sentenced for failure to surrender at the magistrates’ court and who appeal against sentence to the Crown Court. In such cases, leave is required (see CAA 1968 s.10(2)).*

#### 6.2.4. CCRC referrals

##### Power to refer sentences

##### **CAA 1995 s.9<sup>2048</sup>: Cases dealt with on indictment in England and Wales**

- s.9(1) - where a person has been convicted of an offence on indictment in England and Wales, the Commission—
- (a) may at any time refer the conviction to the Court of Appeal, and
  - (b) (whether or not they refer the conviction) may at any time refer to the Court of Appeal any sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction.

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<sup>2048</sup> Commencement: 31 March 1997, SI 1997/402 art.3(c) and 4



- s.9(2) - a reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1968 Act against the conviction.
- s.9(3) - a reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction on an indictment shall be treated for all purposes as an appeal by the person under section 9 of the 1968 Act against—
- (a) the sentence, and
  - (b) any other sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction or any other conviction on the indictment.

### **Powers of the court**

CAA 1968 s.16C<sup>2049</sup>: Power to dismiss certain appeals following references by the CCRC

s.16C(1) - this section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 9(1)(a), (5) or (6) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.

s.16C(2) - notwithstanding anything in section 2, 13 or 16 of this Act, the Court of Appeal may dismiss the appeal if—

- (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
- (b) the condition in subsection (3) is met.

s.16C(3) - the condition in this subsection is that if—

- (a) the reference had not been made, but
- (b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,

the Court would not think it appropriate to grant the application by exercising the power conferred by section 18(3).

### **6.2.5. Applications and time limits**

#### **Must give notice of appeal within 28 days of sentence**

**CAA 1968 s.18<sup>2050</sup>: Initiating procedure**

- s.18(1) - a person who wishes to appeal under this Part of this Act to the Court of Appeal, or to obtain the leave of that court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as may be directed by rules of court.
- s.18(2) - notice of appeal, or of application for leave to appeal, shall be given within twenty-eight days from the date of the conviction, verdict or finding appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the

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<sup>2049</sup> Commencement: 14 July 2008, as inserted by CJIA 2008 s.42, SI 2008/1586 art.2(1) and Sch.1 para.21. Subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.14.

<sup>2050</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

case of an order made or treated as made on conviction, from the date of the making of the order.

**PCC(S)A 2000 s.155<sup>2051</sup>: Alteration of Crown Court sentence**

s.155(6) - for the purposes of—

- (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or of application for leave to appeal), and
- (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act),

the sentence or other order shall be regarded as imposed or made on the day on which it is varied under this section.

**Power to extend time limits**

**CAA 1968 s.18<sup>2052</sup>: Initiating procedure**

s.18(3) - the time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

**Contempt of court**

**CAA 1968 s.18A<sup>2053</sup>: Appeals in cases of contempt of court**

s.18A(1) - a person who wishes to appeal under section 13 of the Administration of Justice Act 1960 from any order or decision of the Crown Court in the exercise of jurisdiction to punish for contempt of court shall give notice of appeal in such manner as may be directed by rules of court.

s.18A(2) - notice of appeal shall be given within twenty-eight days from the date of the order or decision appealed against.

s.18A(3) - the time for giving notice under this section may be extended, either before or after its expiry, by the Court of Appeal.

**6.2.6. Powers of the single judge**

*Note: This subsection lists the powers of the single judge exercisable under the CAA 1968. There are other powers pertaining to particular sentencing orders contained within the relevant legislation. Those provisions are contained within the relevant sections.*

**CAA 1968 s.31<sup>2054</sup>: Powers of Court which are exercisable by single judge**

s.31(1) - there may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

- (a) the powers of the Court of Appeal under this Part of this Act specified in subsection (2) below;
- (aa) the power to give leave under section 14(4B) of the Criminal Appeal Act 1995;

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<sup>2051</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>2052</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2053</sup> Commencement: 31 July 1989, as inserted by CJA 1988 s.170(1) and Sch.15 para.25, SI 1989/1085 art.2(1) and Sch.1.

<sup>2054</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (b) the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976; and
  - (c) the powers to make orders for the payment of costs under sections 16 to 18 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act.
- s.31(2) - the powers mentioned in subsection (1)(a) above are the following:—
- (a) to give leave to appeal;
  - (b) to extend the time within which notice of appeal or of application for leave to appeal may be given;
  - (c) to allow an appellant to be present at any proceedings;
  - (ca) to give a live link direction under section 22(4);
  - (d) to order a witness to attend for examination;
  - (e) to exercise the powers conferred by section 19 of this Act;
  - (f) to make orders under section 8(2) of this Act and discharge or vary such orders;
  - (g) (repealed)
  - (h) to give directions under section 29(1) of this Act;
  - (i) to make orders under section 23(1)(a).
- s.31(2ZA) - the power of the Court of Appeal to renew an interim hospital order made by them by virtue of any provision of this Part may be exercised by a single judge in the same manner as it may be exercised by the Court.
- s.31(2A) - the power of the Court of Appeal to suspend a person's disqualification under section 40(2) of the Road Traffic Offenders Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.
- s.31(2B) - the power of the Court of Appeal to grant leave of appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.
- s.31(2C) - the power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge in the same manner as it may be exercised by the Court.
- s.31(2D) - the power of the Court of Appeal to grant leave to appeal under section 9(11) of the Criminal Justice Act 1987 may be exercised by a single judge in the same manner as it may be exercised by the Court.
- s.31(2E) - the power of the Court of Appeal to grant leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996 may be exercised by a single judge in the same manner as it may be exercised by the Court.
- s.31(2F) - the powers of the Court of Appeal to make, discharge or vary a witness anonymity order under Chapter 2 of Part 3 of the Coroners and Justice Act 2009 may be exercised by a single judge in the same manner as they may be exercised by the Court.
- s.31(3) - if the single judge refuses an application on the part of an appellant to exercise in his favour any of the powers above specified, the appellant shall be entitled to have the application determined by the Court of Appeal.

## 6.2.7. Powers of the Registrar

### **CAA 1968 s.31A<sup>2055</sup>: Powers of Court under Part I which are exercisable by registrar**

- s.31A(1) - the powers of the Court of Appeal under this Part of this Act which are specified in subsection (2) below may be exercised by the registrar.
- s.31A(2) - the powers mentioned in subsection (1) above are the following—
- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given;
  - (aa) to give a live link direction under section 22(4);
  - (b) to order a witness to attend for examination;
  - (c) to vary the conditions of bail granted to an appellant by the Court of Appeal or the Crown Court; and
  - (d) to make orders under section 23(1)(a).
- s.31A(3) - no variation of the conditions of bail granted to an appellant may be made by the registrar unless he is satisfied that the respondent does not object to the variation; but, subject to that, the powers specified in that subsection are to be exercised by the registrar in the same manner as by the Court of Appeal and subject to the same provisions.
- s.31A(4) - if the registrar refuses an application on the part of an appellant to exercise in his favour any of the powers specified in subsection (2) above, the appellant shall be entitled to have the application determined by a single judge.
- s.31A(5) - in this section “*respondent*” includes a person who will be a respondent if leave to appeal is granted.

## 6.2.8. Procedural directions

### **Power to make directions**

### **CAA 1968 s.31B<sup>2056</sup>: Procedural directions: powers of single judge and registrar**

- s.31B(1) - the power of the Court of Appeal to determine an application for procedural directions may be exercised by—
- (a) a single judge, or
  - (b) the registrar.
- s.31B(2) - “*Procedural directions*” means directions for the efficient and effective preparation of—
- (a) an application for leave to appeal, or
  - (b) an appeal,
- to which this section applies.

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<sup>2055</sup> Commencement: 1 January 1996, as inserted by CAA 1995 s.6, SI 1995/3061 art.3(a). The insertion is subject to savings specified in SI 1995/3061 art.4.

<sup>2056</sup> Commencement: 1 May 2004, as inserted CA 2003 s.87(3), SI 2004/1104 art.3(b).

- s.31B(3) - a single judge may give such procedural directions as he thinks fit–
- (a) when acting under subsection (1);
  - (b) on a reference from the registrar;
  - (c) of his own motion, when he is exercising, or considering whether to exercise, any power of his in relation to the application or appeal.
- s.31B(4) - the registrar may give such procedural directions as he thinks fit–
- (a) when acting under subsection (1);
  - (b) of his own motion.
- s.31B(5) - this section applies to an appeal, and an application to the Court of Appeal for leave to appeal, under–
- (a) this Part,
  - (b) section 9 of the Criminal Justice Act 1987, or
  - (c) section 35 of the Criminal Procedure and Investigations Act 1996.

### Appeals against procedural directions

#### **CAA 1968 s.31C<sup>2057</sup>: Appeals against procedural directions**

- s.31C(3) - subsection (4) applies if the registrar gives, or refuses to give, procedural directions.
- s.31C(4) - a single judge may, on an application to him under subsection (5):
- (a) confirm, set aside or vary any procedural directions given by the registrar, and
  - (b) give such procedural directions as he thinks fit.
- s.31C(5) - an application under this subsection may be made by–
- (a) an appellant;
  - (b) a respondent, if the directions–
    - (i) relate to an application for leave to appeal and appear to need the respondent's assistance to give effect to them,
    - (ii) relate to an application for leave to appeal which is to be determined by the Court of Appeal, or
    - (iii) relate to an appeal.
- s.31C(6) - in this section–
- “appellant”* includes a person who has given notice of application for leave to appeal under any of the provisions mentioned in section 31B(5);
- “respondent”* includes a person who will be a respondent if leave to appeal is granted.

*Note: The effect of the provision is that there is no appeal against a procedural direction made by the single judge. Such directions are final.*

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<sup>2057</sup> Commencement: 1 May 2004, as inserted CA 2003 s.87(3), SI 2004/1104 art.3(b).

### 6.2.9. Bail pending outcome of appeal

#### **CAA 1968 s.19<sup>2058</sup>: Bail**

- s.19(1) - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if they think fit,—
- (a) grant an appellant bail pending the determination of his appeal; or
  - (b) revoke bail granted to an appellant by the Crown Court under paragraph (f) of section 81(1) of the Senior Courts Act 1981 or paragraph (a) above; or
  - (c) vary the conditions of bail granted to an appellant in the exercise of the power conferred by either of those paragraphs
- s.19(2) - the powers conferred by subsection (1) above may be exercised—
- (a) on the application of an appellant; or
  - (b) if it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as “*the registrar*”) that any of them ought to be exercised, on a reference to the court by him.

*Note: The CJPOA 1994 s.25 prohibits the granting of bail to those accused or convicted of rape or murder after a previous conviction for such an offence unless there are exceptional circumstances.*

#### **CAA 1968 s.29<sup>2059</sup>: Effect of appeal on sentence**

- s.29(3) - when an appellant is granted bail under section 19 of this Act, the time during which he is released on bail shall be disregarded in computing the term of any sentence to which he is for the time being subject.

### 6.2.10. Summary determination

#### **CAA 1968 s.20<sup>2060</sup>: Disposal of groundless appeal or application for leave to appeal**

- s.20 - if it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.

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<sup>2058</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2059</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2060</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

## 6.2.11. Pre-appeal matters

### Leave granted by Court of Appeal

#### **CAA 1968 s.11<sup>2061</sup>: Supplementary provisions as to appeal against sentence**

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

### Sentencing judge grants certificate for appeal

#### **CAA 1968 s.11<sup>2062</sup>: Supplementary provisions as to appeal against sentence**

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

s.11(1A) - if, within 28 days from the date on which the sentence was passed, the judge who passed it grants a certificate that the case is fit for appeal under section 9 or 10 of this Act, an appeal lies under this section without the leave of the Court of Appeal.

### More than one sentence: Appeal is against all sentences

#### **CAA 1968 s.11<sup>2063</sup>: Supplementary provisions as to appeal against sentence**

s.11(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) 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.

### Summary and either way offences: Appeal is against all

#### **CAA 1968 s.11<sup>2064</sup>: Supplementary provisions as to appeal against sentence**

s.11(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.

s.11(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.

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<sup>2061</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2062</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2063</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2064</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.



## Preparation for the hearing

### **CAA 1968 s.21<sup>2065</sup>: Preparation of case for hearing**

- s.21(1) - the registrar shall—
- (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to him and which is not referred and dismissed summarily under the foregoing section; and
  - (b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the appeal or application.
- s.21(2) - rules of court may enable an appellant to obtain from the registrar any documents or things, including copies or reproductions of documents, required for his appeal and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.

## Abandonment

### **Criminal Procedure Rules 2015 (SI 2015/1490)**

- rule.36.13(1) - This rule applies where an appellant wants to—
- (a) abandon—
    - (i) an application to the court for permission to appeal, or
    - (ii) an appeal; or
  - (b) reinstate such an application or appeal after abandoning it.
- rule.36.13(2) - The appellant—
- (a) may abandon such an application or appeal without the court's permission by serving a notice of abandonment on—
    - (i) the Registrar, and
    - (ii) any respondentbefore any hearing of the application or appeal; but
  - (b) at any such hearing, may only abandon that application or appeal with the court's permission.
- rule.36.13(3) - A notice of abandonment must be in the form set out in the Practice Direction, signed by or on behalf of the appellant.
- rule.36.13(4) - On receiving a notice of abandonment the Registrar must—
- (a) date it;
  - (b) serve a dated copy on—
    - (i) the appellant,
    - (ii) the appellant's custodian, if any,
    - (iii) the Crown Court officer, and

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<sup>2065</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.



- (iv) any other person on whom the appellant or the Registrar served the appeal notice; and
- (c) treat the application or appeal as if it had been refused or dismissed by the Court of Appeal.

rule.36.13(5) - An appellant who wants to reinstate an application or appeal after abandoning it must—

- (a) apply in writing, with reasons; and
- (b) serve the application on the Registrar.

*Note.*<sup>2066</sup> *The Court of Appeal has power only in exceptional circumstances to allow an appellant to reinstate an application or appeal that has been abandoned.*

## 6.2.12. Evidence

### **CAA 1968 s.23<sup>2067</sup>: Evidence**

- s.23(1) - for the purposes of an appeal, or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—
- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
  - (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
  - (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.
- s.23(1A) - the power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—
- (a) the Court;
  - (b) the appellant;
  - (c) the respondent.
- s.23(2) - the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
- (a) whether the evidence appears to the Court to be capable of belief;
  - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
  - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
  - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
- s.23(3) - subsection (1)(c) above applies to any evidence of a witness (including the appellant) who is competent but not compellable.

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<sup>2066</sup> The note is contained within the Crim PR.

<sup>2067</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- s.23(4) - for the purposes of an appeal, or an application for leave to appeal, under this Part of this Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) above to be conducted, in manner provided by rules of court, before any judge or officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.
- s.23(5) - a live link direction under section 22(4) does not apply to the giving of oral evidence by the appellant at any hearing unless that direction, or any subsequent direction of the court, provides expressly for the giving of such evidence through a live link.
- s.23(6) - in this section, “*respondent*” includes a person who will be a respondent if leave to appeal is granted.

### 6.2.13. The hearing

#### Composition of the court

##### **SCA 1981 s.55<sup>2068</sup>: Court of criminal division**

- s.55(1) - this section relates to the criminal division of the Court of Appeal; and in this section “*court*” means a court of that division.
- s.55(2) - subject to subsection (6), a court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of judges not less than three.
- s.55(3) - where—
- (a) part of any proceedings before a court has been heard by an uneven number of judges greater than three; and
  - (b) one or more members of the court are unable to continue,
- the court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three.
- s.55(4) - subject to subsection (6), a court shall, if it consists of two judges, be duly constituted for every purpose except—
- (a) determining an appeal against—
    - (i) conviction; or
    - (ii) a verdict of not guilty by reason of insanity; or
    - (iii) a finding under section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead) that a person is under a disability;
  - (aa) reviewing sentencing under Part IV of the Criminal Justice Act 1988;
  - (b) determining an application for leave to appeal to the Supreme Court; and
  - (c) refusing an application for leave to appeal to the criminal division against conviction or any such verdict or finding as is mentioned in paragraph (a)(ii) or (iii), other than an application which has been refused by a single judge.
- s.55(5) - where an appeal has been heard by a court consisting of an even number of judges and the members of the court are equally divided, the case shall be re-argued before and determined by an uneven number of judges not less than three.

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<sup>2068</sup> Commencement: 1 January 1982, SCA 1981 s.153(2).

s.55(6) - a court shall not be duly constituted if it includes more than one Circuit judge acting as a judge of the court under section 9.

**SCA 1981 s.56<sup>2069</sup>: Judges not to sit on appeal from their own judgments, etc.**

s.56(1) - no judge shall sit as a member of the civil division of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal from a judgment or order made in any case by himself or by any court of which he was a member.

s.56(2) - no judge shall sit as a member of the criminal division of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal against—

- (a) a conviction before himself or a court of which he was a member; or
- (b) a sentence passed by himself or such a court.

**Appellant has right to be present**

**CAA 1968 s.22<sup>2070</sup>: Right of appellant to be present**

s.22(1) - except as provided by this section, an appellant shall be entitled to be present, if he wishes it, on the hearing of his appeal, although he may be in custody.

s.22(2) - a person in custody shall not be entitled to be present—

- (a) where his appeal is on some ground involving a question of law alone; or
- (b) on an application by him for leave to appeal; or
- (c) on any proceedings preliminary or incidental to an appeal; or
- (d) where he is in custody in consequence of a verdict of not guilty by reason of insanity or of a finding of disability,

unless the Court of Appeal give him leave to be present.

s.22(3) - the power of the Court of Appeal to pass sentence on a person may be exercised although he is for any reason not present.

s.22(4) - the Court of Appeal may give a live link direction in relation to a hearing at which the appellant is expected to be in custody but is entitled to be present (by virtue of subsection (1) or leave given under subsection (2)) at any time before the beginning of that hearing.

s.22(5) - for this purpose—

- (a) a “live link direction” is a direction that the appellant (if he is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which he is held; and
- (b) “live link” means an arrangement by which the appellant is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded).

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<sup>2069</sup> Commencement: 1 January 1982, SCA 1981 s.153(2).

<sup>2070</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.22(6) - the Court of Appeal—

- (a) must not give a live link direction unless the parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
- (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a party).

#### **Powers: General**

##### **CAA 1968 s.11<sup>2071</sup>: Supplementary provisions as to appeal against sentence**

s.11(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.

#### **Powers: Confiscation**

##### **CAA 1968 s.11<sup>2072</sup>: Supplementary provisions as to appeal against sentence**

s.11(3A) - where the Court of Appeal exercise their power under paragraph (a) of subsection (3) to quash a confiscation order, the Court may, instead of proceeding under paragraph (b) of that subsection, direct the Crown Court to proceed afresh under the relevant enactment.

s.11(3B) - when proceeding afresh pursuant to subsection (3A), the Crown Court shall comply with any directions the Court of Appeal may make.

s.11(3C) - the Court of Appeal shall exercise the power to give such directions so as to ensure that any confiscation order made in respect of the appellant by the Crown Court does not deal more severely with the appellant than the order quashed under subsection (3)(a).

s.11(3D) - for the purposes of this section—

*“confiscation order”* means a confiscation order made under—

- (a) section 1 of the Drug Trafficking Offences Act 1986,
- (b) section 71 of the Criminal Justice Act 1988,
- (c) section 2 of the Drug Trafficking Act 1994, or
- (d) section 6 of the Proceeds of Crime Act 2002;

*“relevant enactment”*, in relation to a confiscation order quashed under subsection (3)(a), means the enactment under which the order was made.

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<sup>2071</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2072</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

## **Powers: Appeal pending against interim hospital order**

### **CAA 1968 s.11<sup>2073</sup>: Supplementary provisions as to appeal against sentence**

- s.11(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 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, direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.

## **Powers: Interpretation**

### **CAA 1968 s.11<sup>2074</sup>: Supplementary provisions as to appeal against sentence**

- s.11(7) - for the purposes of this section, 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.

## **Reconstitution of court**

*Note: Where the CACD lacks jurisdiction to quash some orders, it may reconstitute itself as an Administrative Court where the constitution of the court satisfies the requirements for a valid Administrative Court bench. An example would be where a Crown Court judge has sat as a District Judge (Magistrates' Court) under CA 2003 s.66 and the Court wishes to deal with an order made by the Crown Court judge in those circumstances. C v Winchester Crown Court [2014] EWCA Crim 339 is an example of the Div Ct sitting in place of the CoA.*

## **6.2.14. Transcripts**

### **CAA 1968 s.32<sup>2075</sup>: Transcripts**

- s.32(1) - rules of court may provide—
- (a) for the making of a record (whether by means of shorthand notes, by mechanical means or otherwise) of any proceedings in respect of which an appeal lies (with or without leave) to the Court of Appeal; and
  - (b) for the making and verification of a transcript of any such record and for supplying the transcript (on payment of such charge, if any, as may be fixed for the time being by the Treasury) to the registrar for the use of the Court of Appeal or any judge exercising the powers of a judge of the Court, and to such other persons and in such circumstances as may be prescribed by the rules.
- s.32(2) - without prejudice to subsection (1) above, the Secretary of State may, if he thinks fit, in any case direct that a transcript shall be made of any such record made in pursuance of the rules and be supplied to him.

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<sup>2073</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2074</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2075</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.32(3) - the cost—

- (a) of making any such record in pursuance of the rules; and
- (b) of making and supplying in pursuance of this section any transcript ordered to be supplied to the registrar or the Secretary of State,

shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament; and the cost of providing and installing at a court any equipment required for the purpose of making such a record or transcript shall also be defrayed out of moneys so provided.

## 6.2.15. Effect of appeal against sentence

### Sentence runs from date of original sentence

#### **CAA 1968 s.29<sup>2076</sup>: Effect of appeal on sentence**

s.29(4) - the term of any sentence passed by the Court of Appeal under section 3, 4, 5, 11 or 13(4) of this Act shall, unless the Court otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

#### **CAA 1968 s.30A<sup>2077</sup>: Effect of interim hospital orders**

s.30A(1) - this section applies where the Court of Appeal—

- (a) make an interim hospital order by virtue of any provision of this Part, or
- (b) renew an interim hospital order so made.

s.30A(2) - the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.

## 6.2.16. Directions for loss of time

#### **CAA 1968 s.29<sup>2078</sup>: Effect of appeal on sentence**

s.29(1) - the time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

s.29(2) - where the Court of Appeal give a contrary direction under subsection (1) above, they shall state their reasons for doing so; and they shall not give any such direction where—

- (a) leave to appeal has been granted; or
- (b) a certificate has been given by the judge of the court of trial; or under:
  - (i) section 1 or 11(1A) of this Act; or
  - (ii) section 81(1B) of the Senior Courts Act 1981

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<sup>2076</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2077</sup> Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.8 para.8, SI 2008/1586 art.2 and Sch.1 para.26. The insertion is subject to transitional and saving provisions specified in SI 2008/1586 art.2(3) and Sch.2 para.5.

<sup>2078</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (c) the case has been referred to them under section 9 of the Criminal Appeal Act 1995.

## 6.2.17. Sentencing powers of the Court of Appeal otherwise than on appeal against sentence

### Conviction

#### **CAA 1968 s.3<sup>2079</sup>: Power to substitute conviction of alternative offence**

- s.3(1) - this section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty 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.
- s.3(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.

### Substitution of conviction after guilty plea

#### **CAA 1968 s.3A<sup>2080</sup>: Power to substitute conviction of alternative offence after guilty plea**

- s.3A(1) - this section applies on an appeal against conviction where—
  - (a) an appellant has been convicted of an offence to which he pleaded guilty,
  - (b) if he had not so pleaded, he could on the indictment have pleaded, or been found, guilty of some other offence, and
  - (c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.
- s.3A(2) - the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea 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.

### Re-sentencing where conviction appeal allowed but appellant remains convicted of other offences

#### **CAA 1968 s.4<sup>2081</sup>: Power to re-sentence where appellant remains convicted of related offences**

- s.4(1) - this section applies where—
  - (a) two or more related sentences are passed,
  - (b) the Court of Appeal allow an appeal against conviction in respect of one or more of the offences for which the sentences were passed (“the related offences”), but
  - (c) the appellant remains convicted of one or more of those offences.

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<sup>2079</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2080</sup> Commencement: 1 September 2004, as inserted by CJA 2003 s.316(3), SI 2004/1629 art.3(2)(c).

<sup>2081</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.



- s.4(2) - except as provided by subsection (3) below, the Court may in respect of any related offence of 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.
- s.4(3) - the Court shall not under this section pass any sentence such that the appellant's sentence (taken as a whole) for all the related offences of which he remains convicted 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 the related offences.
- s.4(4) - for the purposes of subsection (1)(a), two or more sentences are related if—
- (a) they are passed on the same day,
  - (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, or
  - (c) they are passed on different days but in respect of counts on the same indictment.
- s.4(5) - where—
- (a) two or more sentences are related to each other by virtue of subsection (4)(a) or (b), and
  - (b) any one or more of those sentences is related to one or more other sentences by virtue of subsection (4)(c),
- all the sentences are to be treated as related for the purposes of subsection (1)(a).

### Special verdicts

#### **CAA 1968 s.5<sup>2082</sup>: Disposal of appeal against conviction on special verdict**

- s.5(1) - this section applies on an appeal against conviction in a case where the jury have found a special verdict.
- s.5(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.

### Verdict of not guilty by reason of insanity

#### **CAA 1968 s.13<sup>2083</sup>: Disposal of appeal under s.12**

- s.13(1) - subject to the provisions of this section, the Court of Appeal—
- (a) shall allow an appeal under section 12 of this Act if they think that the verdict is unsafe; and
  - (b) shall dismiss such an appeal in any other case.
- s.13(3) - where apart from this subsection—
- (a) an appeal under section 12 of this Act would fall to be allowed; and

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<sup>2082</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2083</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.



- (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.

- s.13(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.
- s.13(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.
- s.13(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.

### **Insanity and unfitness to plead**

#### **CAA 1968 s.16<sup>2084</sup>: Disposal of appeal under s. 15**

- s.16(1) - the Court of Appeal—
  - (a) shall allow an appeal under section 15 of this Act against a finding if they think that the finding is unsafe; and
  - (b) shall dismiss such an appeal in any other case.
- s.16(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 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.

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<sup>2084</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.16(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).

**CAA 1968 Sch.3 para.2<sup>2085</sup>**

para.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 direction.

**CAA 1968 s.16B<sup>2086</sup>: Disposal of appeal under s.16A**

s.16B(1) - if on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him—

- (a) they may quash any order which is the subject of the appeal; and
- (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.

s.16B(2) - 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 deal with the appellant on its termination.

s.16B(4) - the fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.

s.16B(5) - where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.

## 6.2.18. Interpretation

**CAA 1968 s.45<sup>2087</sup>: Construction of references in Parts I and II to Court of Appeal and a single judge**

s.45(1) - references in Parts I and II and sections 44A and 51 of this Act to the Court of Appeal shall be construed as references to the criminal division of the Court.

s.45(2) - the references in sections 23A, 31 to 31C, 44 and 44A of this Act to a single judge are to any judge of the Court of Appeal or the High Court.

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<sup>2085</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2086</sup> Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

<sup>2087</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

**CAA 1968 s.51<sup>2088</sup>: Interpretation**

- s.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;
- “*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, or by another person by virtue of section 12ZA or 12ZB of that Act, as having special experience in the diagnosis or treatment of mental disorder;
- “*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 who holds a licence to practise;
- “*under disability*” has the meaning assigned to it by section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and
- s.51(1A) - in Part 2 of this Act “*the defendant*”—
- (a) in relation to an appeal under section 33(1) of this Act against a decision of the Court of Appeal on an appeal under Part 1 of this Act, means the person who was the appellant before the Court of Appeal,
  - (b) in relation to an appeal under section 33(1) of this Act against any other decision, means a defendant in the proceedings before the Crown Court who was a party to the proceedings before the Court of Appeal, and
  - (c) in relation to an appeal under section 33(1B) of this Act, shall be construed in accordance with section 33(4) of this Act;
- and “*prosecutor*” shall be construed accordingly.
- s.51(2) - any expression used in this Act which is defined in section 145(1) and (1AA) of the Mental Health Act 1983 has the same meaning in this Act as in that Act.
- s.51(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 or 14 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.

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<sup>2088</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

## 6.3 From the Court of Appeal

### 6.3.1. Right of appeal

#### **CAA 1968 s.33<sup>2089</sup>: Right of appeal to Supreme Court**

- s.33(1) - an appeal lies to the Supreme Court, at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under Part I of this Act or Part 9 of the Criminal Justice Act 2003 or section 9 (preparatory hearings) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 or section 47 of the Criminal Justice Act 2003.
- s.33(1B) - an appeal lies to the Supreme Court, 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).
- s.33(2) - the appeal lies only with the leave of the Court of Appeal or the the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.
- s.33(3) - except as provided by this Part of this Act and section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), no appeal shall lie from any decision of the criminal division of the Court of Appeal.
- s.33(4) - in relation to an appeal under subsection (1B), references in this Part to a defendant are references to the acquitted person.

### 6.3.2. Applications and right to appeal

#### **General**

#### **CAA 1968 s.34<sup>2090</sup>: Application for leave to appeal**

- s.34(1) - an application to the Court of Appeal for leave to appeal to the Supreme Court shall be made within the period of 28 days beginning with the relevant date; and an application to the Supreme Court for leave shall be made within the period of 28 days beginning with the date on which the application for leave is refused by the Court of Appeal.
  - (1A) In subsection (1), “*the relevant date*” means—
    - (a) the date of the Court of Appeal’s decision, or
    - (b) if later, the date on which the Court of Appeal gives reasons for its decision.
- s.34(2) - the Supreme Court or the Court of Appeal may, upon application made at any time by the defendant or, in the case of an appeal under section 33(1B), by the prosecutor, extend the time within which an application may be made by him to the Supreme Court or the Court of Appeal under subsection (1) above.
- s.34(3) - an appeal to the Supreme Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for purposes of this Part of this Act an application for leave to appeal

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<sup>2089</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2090</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

### Contempt of court

#### **BA 1976 s.6<sup>2091</sup>: Offence of absconding by person released on bail**

- s.6(1) - if a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.
- s.6(2) - if a person who—
  - (a) has been released on bail in criminal proceedings, and
  - (b) having reasonable cause therefore, has failed to surrender to custody, fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.
- s.6(3) - it shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.
- s.6(4) - a failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.
- s.6(5) - an offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

#### **AJA 1960 s.13<sup>2092</sup>: Appeal in cases of contempt of court**

- s.13(1) - subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.
- s.13(2) - an appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
  - [...]
  - (c) from a decision of a single judge of the High Court on an appeal under this section, from an order or decision of a Divisional Court or the Court of Appeal (including a decision of either of those courts on an appeal under this section), and from an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial Appeal Court, to the Supreme Court.
- s.13(2A) - paragraphs (a) to (c) of subsection (2) of this section do not apply in relation to appeals under this section from an order or decision of the family court, but (subject to any provision made under section 56 of the Access of Justice Act 1999 or by or under any other enactment) such an appeal shall lie to the Court of Appeal.
- s.13(3) - the court to which an appeal is brought under this section may reverse or vary the order or decision of the court below, and make such other order as may be just; and

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<sup>2091</sup> Commencement: 17 April 1978, SI 1978/132 art.2.

<sup>2092</sup> Commencement: 27 October 1960.

without prejudice to the inherent powers of any court referred to in subsection (2) of this section, provision may be made by rules of court rules made under section seven of the Northern Ireland Act 1962 for authorising the release on bail of an appellant under this section.

- s.13(4) - Subsections (2) to (4) of section one and section two of this Act shall apply to an appeal to the Supreme Court under this section as they apply to an appeal to the Supreme Court under the said section one, except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section.
- s.13(5) - in this section “court” includes any tribunal or person having power to punish for contempt; and references in this section to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references—
- (a) to an order or decision of the High Court, the family court, the Crown Court or the county court under any enactment enabling that court to deal with an offence as if it were contempt of court;
  - (b) to an order or decision of [the county court, or of any court having the powers of [the county court, under section 14, 92 or 118 of the County Courts Act 1984;
  - (c) to an order or decision of a magistrates’ court under subsection (3) of section 63 of the Magistrates’ Courts Act 1980;
  - (d) to an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial, the Summary Appeal Court or the Service Civilian Court under section 309 of the Armed Forces Act 2006,
- but do not include references to order under section five of the Debtors Act 1869, or under any provision of the Magistrates’ Courts Act 1980, or the County Courts Act 1984, except those referred to in paragraphs (b) and (c) of this subsection and except sections 38 and 142 of the last mentioned Act so far as those sections confer jurisdiction in respect of contempt of court.
- s.13(6) - this section does not apply to a conviction or sentence in respect of which an appeal lies under Part I of the Criminal Appeal Act 1968, or to a decision of the criminal division of the Court of Appeal under that Part of that Act.

### Minimum term review decisions

#### ***Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 (SI 2005/2798) art.12<sup>2093</sup>: Right of appeal to the Supreme Court***

- art.12(1) - an appeal lies to the Supreme Court at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under paragraph 14(1) of Schedule 22 to the 2003 Act.
- art.12(2) - the appeal lies only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

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<sup>2093</sup> Commencement: 3 November 2005, SI 2005/2798 art.1



***Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 (SI 2005/2798) art.14<sup>2094</sup>: Hearing and disposal of appeal***

art.14(3) - for the purpose of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court of Appeal

**Sentence review under SOCPA**

***Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (SI 2006/2135) art.15<sup>2095</sup>: Right of appeal to the Supreme Court***

art.15(1) - an appeal lies to the Supreme Court at the instance of the offender or a specified prosecutor, from any decision of the Court of Appeal on an appeal to that court under section 74(8) of the Act.

art.15(2) - the appeal lies only with the leave of the Court of Appeal or the Supreme Court.

art.15(3) - leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

**Serious Crime Prevention Order**

***SCA 2007 s.24<sup>2096</sup>: Appeals from Crown Court***

s.24(6) - an appeal against a decision of the Court of Appeal on an appeal to that court under subsection (1) or (2) may be made to the Supreme Court by any person who was a party to the proceedings before the Court of Appeal.

**Attorney General's References**

***CJA 1988 s.36<sup>2097</sup>: Reviews of sentencing***

s.36(5) - where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the Supreme Court for its opinion, and the Supreme Court shall consider the point and give its opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or itself deal with the case.

s.36(6) - a reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

s.36(7) - for the purpose of dealing with a case under this section the Supreme Court may exercise any powers of the Court of Appeal.

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<sup>2094</sup> Commencement: 3 November 2005, SI 2005/2798 art.1

<sup>2095</sup> Commencement: 28 August 2006, SI 2006/2135 art.1

<sup>2096</sup> Commencement: Subsections (9) and (10) in force 1 March 2008, SI 2008/219 art.3(a). Subsections (1) to (8) and (11) and (12) in force 6 April 2008, SI 2008/755 art.15(1)(d).

<sup>2097</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).



### 6.3.3. The hearing

#### **CAA 1968 s.35<sup>2098</sup>: Hearing and disposal of appeal**

- s.35(3) - for the purpose of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court.

### 6.3.4. Bail

#### **CAA 1968 s.36<sup>2099</sup>: Bail on appeal by defendant**

- s.36 - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if it seems fit, on the application of a person appealing or applying for leave to appeal to the Supreme Court, other than a person appealing or applying for leave to appeal from a decision on an appeal under Part 9 of the Criminal Justice Act 2003 or section 9(11) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 (appeals against orders or rulings at preparatory hearings) or section 47 of the Criminal Justice Act 2003, grant him bail pending the determination of his appeal.

### 6.3.5. Appeals by the Crown

#### **Appeals by the Crown: Detention of defendant**

#### **CAA 1968 s.37<sup>2100</sup>: Detention of defendant on appeal by the Crown**

- s.37(1) - the following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.
- s.37(2) - if, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal shall make—
- (a) 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 the appeal is pending, or
  - (b) an order that he be released without bail.
- s.37(2A) - the Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the [Supreme Court] on the appeal.
- s.37(3) - an order under subsection (2)(a) 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.
- s.37(4) - where an order is made under subsection (2)(a) 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

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<sup>2098</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2099</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2100</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc),

the order under subsection (2)(a) shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) or (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.

s.37(4A) - where an order is made under subsection (2)(a) 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 Supreme Court 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 31 (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.

s.37(5) - the defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—

- (a) the Court of Appeal have made an order under subsection (2)(b), or
- (b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).

### **Community orders: Appeals by the Crown**

#### **CAA 1968 s.37A<sup>2101</sup>: Continuation of community treatment order on appeal by the Crown**

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

s.37A(2) - if, but for the decision of the Court of Appeal, the defendant would be liable to recall, the Court of Appeal may make an order under this section.

s.37A(3) - for the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.

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<sup>2101</sup> Commencement: 3 November 2008, as inserted by MHA 1983 Sch.4 para.2(3), SI 2008/1900 art.2(i).

- s.37A(4) - an order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as an appeal to the Supreme Court is pending.
- s.37A(5) - where an order is made under this section the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- s.37A(6) - 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, but for the decision of the Court of Appeal, have been–
- (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- s.37A(7) - 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 discharged, by virtue of subsection (5) or (6) 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 Supreme Court on the appeal.

### 6.3.6. Presence of defendant at appeal

#### **CAA 1968 s.38<sup>2102</sup>: Presence of defendant at hearing**

- s.38 - a defendant who 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 is detained pending an appeal to the Supreme Court shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto, except where an order of the Supreme Court authorises him to be present, or where the Supreme Court or the Court of Appeal, as the case may be, give him leave to be present.

### 6.3.7. Effect of appeal on sentence

#### **CAA 1968 s.43<sup>2103</sup>: Effect of appeal on sentence**

- s.43(1) - where a person subject to a sentence is granted bail under section 36 or 37 of this Act, the time during which he is released on bail shall be disregarded in computing the term of his sentence.
- s.43(2) - subject to the foregoing subsection, any sentence passed on an appeal to the Supreme Court in substitution for another sentence shall, unless the Supreme Court or the Court of Appeal otherwise direct, begin to run from the time when the other sentence would have begun to run.

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<sup>2102</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2103</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

### 6.3.8. Powers of single judge

#### **CAA 1968 s.44<sup>2104</sup>: Powers of Court of Appeal under Part II which are exercisable by single judge**

- s.44(1) - there may be exercised by a single judge—
- (a) the powers of the Court of Appeal under this Part of the Act—
    - (i) to extend the time for making an application for leave to appeal;
    - (ii) to make an order for or in relation to bail; and
    - (iii) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal; and
  - (b) their powers to make orders for the payment of costs under sections 16 and 17 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act, [but where the judge refuses an application to exercise any of the said powers the applicant shall be entitled to have the application determined by the Court of Appeal.]
- s.44(2) - the power of the Court of Appeal to suspend a person's disqualification under section 40(3) of the Road Traffic Offenders Act 1988 may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.
- s.44(3) - the power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.

### 6.3.9. Cases involving death

#### **CAA 1968 s.44A<sup>2105</sup>: Appeals in cases of death**

- s.44A(1) - where a person has died—
- (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal; and
  - (b) where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (a) above or by a reference by the Criminal Cases Review Commission, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.
- s.44A(2) - in this section “*relevant appeal*” means —
- (a) an appeal section 1, 9, 12 or 15 of this Act; or
  - (b) an appeal under section 33 of this Act from any decision of the Court of Appeal on an appeal under any of those sections.

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<sup>2104</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2105</sup> Commencement: 1 January 1996 as inserted by CAA 1995 s.7, except to the extent that it related to references by the Criminal Cases Review Commission, SI 1995/3061 art.3(b). In force 31 March 1997 otherwise, SI 1997/402 art.3(b).

- s.44A(3) - approval for the purposes of this section may only be given to:
- (a) the widow or widower or surviving civil partner of the dead person;
  - (b) a person who is the personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925) of the dead person; or
  - (c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.
- s.44A(4) - except in the case of an appeal begun by a reference by the Criminal Cases Review Commission, an application for such approval may not be made after the end of the period of one year beginning with the date of death.
- s.44A(5) - where this section applies, any reference in this Act to the appellant shall, where appropriate, be construed as being or including a reference to the person approved under this section.
- s.44A(6) - the power of the Court of Appeal to approve a person under this section may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions; but if the single judge refuses the application, the applicant shall be entitled to have the application determined by the Court of Appeal.

### 6.3.10. Interpretation

#### **CAA 1968 s.45<sup>2106</sup>: Construction of references in Parts I and II to Court of Appeal and a single judge**

- s.45(1) - references in Parts I and II and sections 44A and 51 of this Act to the Court of Appeal shall be construed as references to the criminal division of the Court.
- s.45(2) - the references in sections 23A, 31 to 31C, 44 and 44A of this Act to a single judge are to any judge of the Court of Appeal or the High Court.

#### **CAA 1968 s.51<sup>2107</sup>: Interpretation**

- s.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;
  - “*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, or by another person by virtue of section 12ZA or 12ZB of that Act, as having special experience in the diagnosis or treatment of mental disorder;
  - “*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 who holds a licence to practise;
  - “*under disability*” has the meaning assigned to it by section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and

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<sup>2106</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

<sup>2107</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.51(1A) - in Part 2 of this Act "*the defendant*"—

- (a) in relation to an appeal under section 33(1) of this Act against a decision of the Court of Appeal on an appeal under Part 1 of this Act, means the person who was the appellant before the Court of Appeal,
- (b) in relation to an appeal under section 33(1) of this Act against any other decision, means a defendant in the proceedings before the Crown Court who was a party to the proceedings before the Court of Appeal, and
- (c) in relation to an appeal under section 33(1B) of this Act, shall be construed in accordance with section 33(4) of this Act;

and "*prosecutor*" shall be construed accordingly.

s.51(2) - any expression used in this Act which is defined in section 145(1) and (1AA) of the Mental Health Act 1983 has the same meaning in this Act as in that Act.

s.51(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 or 14 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.

## 6.4 Attorney General's references

### 6.4.1. At the Crown Court

#### **Goodyear indications: Advocate must warn defendant**

**R. v Goodyear [2005] EWCA Crim 888; [2006] 1 Cr. App. R. (S.) 6 (p.23)**

...the advocate is personally responsible for ensuring that his client fully appreciates that...any sentence indication given by the judge remains subject to the entitlement of the Attorney General (where it arises) to refer an unduly lenient sentence to the Court of Appeal... (Lord Woolf CJ, at [65])

#### **Attorney General's Reference (No.40 of 1996) [1997] 1 Cr. App. R. (S.) 357**

An indication of sentence at the Crown Court is a matter to be taken into account but it does not preclude the court from increasing the sentence.

### 6.4.2. Power to refer sentences

#### **Power to refer**

**CJA 1988 s.36<sup>2108</sup>: Reviews of sentencing**

- s.36(1) - if it appears to the Attorney General—
- (a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and
  - (b) that the case is one to which this Part of this Act applies,
- he may, with the leave of the Court of Appeal, refer the case to them for them to review the sentencing of that person; and on such a reference the Court of Appeal may—
- (i) quash any sentence passed on him in the proceeding; and
  - (ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him.

#### **What does 'unduly lenient' mean?**

**CJA 1988 s.36<sup>2109</sup>: Reviews of sentencing**

- s.36(2) - without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that the judge;
- (a) erred in law as to his powers of sentencing; or
  - (b) failed to impose a sentence required by—
    - (zi) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
    - (i) section 51A(2) of the Firearms Act 1968;
    - (ia) section 139(6B), 139A(5B) or 139AA(7) of this Act;

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<sup>2108</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2109</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).



- (ii) section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000;
- (iii) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003; or
- (iv) under section 29(4) or (6) of the Violent Crime Reduction Act 2006.

### Cases which may be referred

#### ***CJA 1988 s.35<sup>2110</sup>: Scope of Part IV***

- s.35(1) - a case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below.
- s.35(2) - subject to Rules of Court, the jurisdiction of the Court of Appeal under section 36 below shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this Part of this Act shall be construed as references to that division.
- s.35(3) - this Part of this Act applies to any case —
  - (a) of a description specified in an order under this section; or
  - (b) in which sentence is passed on a person—
    - (i) for an offence triable only on indictment; or
    - (ii) for an offence of a description specified in an order under this section.
- s.35(4) - the Secretary of State may by order made by statutory instrument provide that this Part of this Act shall apply to any case of a description specified in the order or to any case in which sentence is passed on a person for an offence triable either way of a description specified in the order.
- s.35(5) - a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.35(6) - in this Part of this Act “*sentence*” has the same meaning as in the Criminal Appeal Act 1968, except that it does not include an interim hospital order under Part III of the Mental Health Act 1983, and “*sentencing*” shall be construed accordingly.

#### ***Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (SI 2006/1116)<sup>2111</sup>***

- art.2 - Part IV of the Criminal Justice Act 1988 (reviews of sentencing) shall apply to any case of a description specified in Schedule 1.

#### ***Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (SI 2006/1116)<sup>2112</sup> Sch.1***

- para.1 - any case tried on indictment—
  - (a) following a notice of transfer given under section 4 of the Criminal Justice Act 1987 (notices of transfer and designated authorities) by an authority designated for that purpose under subsection (2) of that section; or

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<sup>2110</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2111</sup> Commencement: 16 May 2006, SI 2006/1116 art.1(1). Note that this SI replaced earlier SIs setting out cases to which Part 4 of the 1988 Act applied.

<sup>2112</sup> Commencement: 16 May 2006, SI 2006/1116 art.1(1). Note that this SI replaced earlier SIs setting out cases to which Part 4 of the 1988 Act applied. Para.1A in force 6 August 2012 as inserted by SI 2012/1833 art.2(2)(a).

- (b) in which one or more of the counts in respect of which sentence is passed relates to a charge which was dismissed under section 6(1) of the Criminal Justice Act 1987 (applications for dismissal) and on which further proceedings were brought by means of preferment of a voluntary bill of indictment.

para.1A - any case tried on indictment—

- (a) following a notice given under section 51B of the Crime and Disorder Act 1998 (notices in serious or complex fraud cases); or
- (b) following such a notice, in which one or more of the counts in respect of which sentence is passed relates to a charge—
  - (i) which was dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal); and
  - (ii) on which further proceedings were brought by means of the preferment of a voluntary bill of indictment.

para.2 - any case in which sentence is passed on a person for one of the following offences:

- (a) an offence under section 16 of the Offences against the Person Act 1861 (threats to kill);
- (b) an offence under section 5(1) of the Criminal Law Amendment Act 1885 (defilement of a girl between 14 and 17);
- (c) an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16) or section 20 of the Children and Young Persons Act (Northern Ireland) 1968 (cruelty to persons under 16);
- (d) an offence under section 6 of the Sexual Offences Act 1956 (unlawful sexual intercourse with a girl under 16), section 14 or 15 of that Act (indecent assault on a woman or on a man), section 52 of the Offences against the Person Act 1861 (indecent assault upon a female), or Article 21 of the Criminal Justice (Northern Ireland) Order 2003 (indecent assault on a male);
- (e) an offence under section 1 of the Indecency with Children Act 1960 or section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecent conduct with a child);
- (f) an offence under section 4(2) or (3) (production or supply of a controlled drug), section 5(3) (possession of a controlled drug with intent to supply) or section 6(2) (cultivation of cannabis plant) of the Misuse of Drugs Act 1971;
- (g) an offence under section 54 of the Criminal Law Act 1977 or Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting a girl under 16 to have incestuous sexual intercourse);
- (h) an offence under section 50(2) or (3), section 68(2) or section 170(1) or (2) of the Customs and Excise Management Act 1979, insofar as those offences are in connection with a prohibition or restriction on importation or exportation of either:
  - (i) a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971, such prohibition or restriction having effect by virtue of section 3 of that Act; or
  - (ii) an article prohibited by virtue of section 42 of the Customs Consolidation Act 1876 but only insofar as it relates to or depicts a person under the age of 16;
- (i) offences under sections 29 to 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated assaults; racially or religiously aggravated criminal damage; racially or religiously aggravated public order offences; racially or religiously aggravated harassment etc);

- (j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation);
- (k) an offence under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour);
- (l) an offence under section 1 (slavery, servitude and forced or compulsory labour), 2 (human trafficking) or 4 (committing an offence with intent to commit a human trafficking offence) of the Modern Slavery Act 2015.

para.3 - to the extent that Part IV of the Criminal Justice Act 1988 does not apply by virtue of section 35(3)(b)(i), any case in which sentence is passed on a person for an offence under one of the following sections of the Sexual Offences Act 2003:

- (a) section 3 (sexual assault);
- (b) section 4 (causing a person to engage in sexual activity without consent);
- (c) section 7 (sexual assault of a child under 13);
- (d) section 8 (causing or inciting a child under 13 to engage in sexual activity);
- (e) section 9 (sexual activity with a child);
- (f) section 10 (causing or inciting a child to engage in sexual activity);
- (g) section 11 (engaging in sexual activity in the presence of a child);
- (h) section 12 (causing a child to watch a sexual act);
- (i) section 14 (arranging or facilitating commission of a child sex offence);
- (j) section 15 (meeting a child following sexual grooming etc);
- (k) section 25 (sexual activity with a child family member);
- (l) section 47 (paying for sexual services of a child);
- (m) section 48 (causing or inciting child prostitution or pornography);
- (n) section 49 (controlling a child prostitute or a child involved in pornography);
- (o) section 50 (arranging or facilitating child prostitution or pornography);
- (p) section 52 (causing or inciting prostitution for gain);
- (q) section 57 (trafficking into the UK for sexual exploitation);
- (r) section 58 (trafficking within the UK for sexual exploitation);
- (s) section 59 (trafficking out of the UK for sexual exploitation);
- (sa) section 59A (trafficking people for sexual exploitation);<sup>2113</sup>
- (t) section 61 (administering a substance with intent).

para.4(1) - any case in which sentence is passed on a person for—

- (a) attempting to commit a relevant offence;
- (b) inciting the commission of a relevant offence; or
- (c) an offence under section 44 or 45 of the Serious Crime Act 2007 (encouraging or assisting an offence) in relation to a relevant offence.

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<sup>2113</sup> SI 2015/1472 made amendments to the 2006 order (see regs.2 and 3). The references to SOA 2003 ss.59 and 59A were not removed. SI 2015/1472 reg.3 contains a saving provision for the repeal of SOA 2003 s.59A for offences committed wholly or partly prior to 31 July 2015. For that reason it remains in the 2006 Order enabling a) offences of trafficking committed pre-31 July 2015 to be charged under the 2003 Act and b) the AG to refer any sentences imposed for that offence to the CACD.

para.4(2) - In this paragraph, “a relevant offence” means an offence set out in paragraph 2(a) to (h), (j) or (k) or paragraph 3.

### Deferred sentences

#### **Attorney General’s reference (No.22 of 1992) (1993) 14 Cr. App. R. (S.) 435**

A deferred sentence is within the meaning of the statute. It can therefore be referred under s.36.

### 6.4.3. Pre-hearing matters

#### **Notices of application for leave to refer**

##### ***CJA 1988 s.36<sup>2114</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

##### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.1 - notice of an application for leave to refer a case to the Court of Appeal under section 36 above shall be given within 28 days from the day on which the sentence, or the last of the sentences, in the case was passed.

para.2 - if the registrar of criminal appeals is given notice of a reference or application to the Court of Appeal under section 36 above, he shall—

- (a) take all necessary steps for obtaining a hearing of the reference or application; and
- (b) obtain and lay before the Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the reference or application.

#### **Defendant obtaining documents**

##### ***CJA 1988 s.36<sup>2115</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

##### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.3 - rules of court may enable a person to whose sentencing such a reference or application relates to obtain from the registrar any documents or things, including copies or reproductions of documents, required for the reference or application and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.

#### **Rules of court**

##### ***Criminal Appeal (Reviews of Sentencing) Rules 1989 (SI 1989/19)<sup>2116</sup>***

r.1 - these Rules may be cited as the Criminal Appeal (Reviews of Sentencing) Rules 1989 and shall come into force on 1st February 1989.

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<sup>2114</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2115</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2116</sup> Commencement: 1 February 1989, SI 1989/19

- r.2 - in these Rules–
- “*the Act*” means the Criminal Justice Act 1988;
- “*application*” means an application by the Attorney General to the Court for leave to make a reference;
- “*the Court*” means the Criminal Division of the Court of Appeal;
- “*reference*” means a reference under section 36 of the Act by the Attorney General of a case to the Court for them to review the sentencing of a person (in these Rules called “*the offender*”) in a proceeding in the Crown Court;
- “*the registrar*” means the registrar of criminal appeals.
- r.3(1) - every application shall be in writing and shall–
- (a) specify–
- (i) the name of the offender;
  - (ii) the date on which, and the offence of which, he was convicted;
  - (iii) the sentence passed on him in respect of that offence;
  - (iv) the date on which the sentence was passed (if later than the date under sub-paragraph (ii) above); and
  - (v) the judge by whom, and the location of the Crown Court at which, the sentence was passed; and
- (b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient.
- r.3(2) - an application shall be entitled “Reference under section 36 of the Criminal Justice Act 1988” together with the year and number of the application and the name of the offender.
- r.4 - the sending of the application to the registrar shall constitute the giving of notice of the application for the purpose of paragraph 1 of Schedule 3 to the Act (notice to be given within 28 days of passing of sentence).
- r.5(1) - the registrar shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of it together with a notice which–
- (a) informs him that the result of any reference could be that the Court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);
  - (b) informs him of the effect of paragraphs 6 (entitlement of offender to be present at hearing of reference, although he may be in custody), 7 (offender in custody requires leave of Court to be present at hearing of application), 8 (power of Court to pass sentence on offender who is not present) and 11 (entitlement of offender to reasonable costs out of central funds) of Schedule 3 to the Act;
  - (c) invites him, within such period as the registrar may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the registrar if he wishes–
    - (i) to apply to the Court for leave to be present under paragraph 7 of Schedule 3 to the Act;
    - (ii) to present any argument to the Court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;

- (d) draws to his attention the effect of rule 9 below (supply of documentary and other exhibits); and
  - (e) advises him to consult a solicitor as to his position as soon as possible.
- r.5(2) - the Court shall not hear argument by or on behalf of the Attorney General until the period specified by the registrar has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.
- r.6(1) - every reference shall be in writing and shall–
  - (a) contain the information required by paragraph (a) of rule 3(1) above to be specified in an application;
  - (b) summarise the arguments intended to be put to the Court; and
  - (c) specify the authorities intended to be cited.
- r.6(2) - the reference shall bear the same title as the application.
- r.6(3) - subject to paragraph (4) below, the reference shall be sent on behalf, of the Attorney General to the registrar, who shall, as soon as practicable after receiving it, cause to be served a copy of it on the offender.
- r.6(4) - where the Court give leave for a case to be referred to them and are satisfied that the document comprising the application also contains the material required by paragraph (1) above to be contained in a reference, the Court may order that the document be treated for the purpose of these Rules as the reference; and in that case paragraph (3) above shall not apply.
- r.7 - the Attorney General may withdraw or amend an application or reference at any time before the Court have begun the hearing of the application or reference as the case may be, or, after that, and until the Court have given their decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the registrar and on the offender on behalf of the Attorney General.
- r.8 - the registrar may require the court of trial to furnish the Court with any assistance or information which they may require for the purpose of exercising their jurisdiction.
- r.9(1) - the registrar shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by the Treasury.
- r.9(2) - the registrar shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.
- r.9(3) - this rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.
- r.10(1) - for the purpose of these Rules service of a document on the offender may be effected–
  - (a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and
  - (b) in the case of a document to be served on any other person–
    - (i) by delivering it to the person to whom it is directed;



- (ii) by leaving it for him with some person at his last known or usual place of abode; or
- (iii) by sending it by post addressed to him at his last known or usual place of abode.

r.10(2) - for the purpose of these Rules service of a document on the registrar may be effected—

- (a) in the case of an offender who is in custody, by delivering it to the person having custody of him;
- (b) by delivering it to the registrar;
- (c) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London WC2; or
- (d) by sending it by post addressed to him at the said office.

r.10(3) - a person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) above shall endorse on it the date of delivery and cause it to be forwarded to the registrar.

#### 6.4.4. The hearing

##### **Sentencing judge may not hear reference**

##### ***CJA 1988 s.36<sup>2117</sup>: Reviews of sentencing***

s.36(4) - no judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by himself.

##### **Presence of defendant at reference**

##### ***CJA 1988 s.36<sup>2118</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

##### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.6 - except as provided by paragraphs 7 and 8 below, a person whose sentencing is the subject of a reference to the Court of Appeal under section 36 above shall be entitled to be present, if he wishes it, on the hearing of the reference, although he may be in custody.

para.7 - a person in custody shall not be entitled to be present—

- (a) on an application by the Attorney General for leave to refer a case; or
- (b) on any proceedings preliminary or incidental to a reference, unless the Court of Appeal give him leave to be present.

para.8 - the power of the Court of Appeal to pass sentence on a person may be exercised although he is not present.

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<sup>2117</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2118</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).



## Two or more sentences

### **CJA 1988 s.36<sup>2119</sup>: Reviews of sentencing**

s.36(3) - for the purposes of this Part of this Act any two or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of section 11 of the Criminal Appeal Act 1968.

## Power of the court

### **R. v Hughes [2010] EWCA Crim 1026**

At the hearing of the Attorney General's Reference this court had, at least in theory, the power not only to uphold or increase the original sentence, but also to reduce it or to impose a different form of sentence. (David Clarke J, at [6])

## Test to apply

### **Attorney General's Reference (No.4 of 1989) (1989) 11 Cr. App. R. (S.) 517**

The first thing to be observed is that it is implicit in the section that this Court may only increase sentences which it concludes were *unduly* lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased—with all the anxiety that that naturally gives rise to—merely because in the opinion of this Court the sentence was less than this Court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must of course be had to reported cases, and in particular to the guidance given by this Court from time to time in the so-called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature.

The second thing to be observed about the section is that, even where it considers that the sentence was unduly lenient, this Court has a discretion as to whether to exercise its powers. Without attempting an exhaustive definition of the circumstances in which this Court might refuse to increase an unduly lenient sentence, we mention one obvious instance: where in the light of events since the trial it appears either that the sentence can be justified or that to increase it would be unfair to the offender or detrimental to others for whose well-being the Court ought to be concerned. (Lord Lane CJ, at p.521)

## Court will consider only material available at the Crown Court

### **Attorney General's Reference (No. 19 of 2005) (R. v WB) [2006] EWCA Crim 785**

The Court stated that it was not the function of the Court of Appeal to substitute, in light of new material, its own view of what the sentence ought now to be. Rather, its task was to decide whether the judge's sentence, in light of the material before him (or her) could properly be characterised as having been unduly lenient.

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<sup>2119</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

### **Murder minimum terms: Don't take account of double jeopardy**

s.36(3A) - where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.

### **Costs**

#### ***CJA 1988 s.36<sup>2120</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

#### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.11(1) - where on a reference to the Court of Appeal under section 36 above or a reference to the Supreme Court under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court of Appeal or the Supreme Court, he shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, under Supreme Court Rules.

para.11(2) - sub-paragraph (1) has effect subject to—

- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).

para.11(3) - a person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.

para.11(4) - subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

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<sup>2120</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

### 6.4.5. Appeals from the Court of Appeal

#### Power to refer case to Supreme Court

##### ***CJA 1988 s.36<sup>2121</sup>: Reviews of sentencing***

s.36(5) - where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the Supreme Court for its opinion, and the Supreme Court shall consider the point and give its opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or itself deal with the case.

#### Time limits

##### ***CJA 1988 s.36<sup>2122</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

##### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.4 - an application to the Court of Appeal for leave to refer a case to the Supreme Court under section 36(5) above shall be made within the period of 14 days beginning with the date on which the Court of Appeal conclude their review of the case; and an application to the Supreme Court for leave shall be made within the period of 14 days beginning with the date on which the Court of Appeal conclude their review or refuse leave to refer the case to the Supreme Court.

#### Requirement to have leave to appeal

##### ***CJA 1988 s.36<sup>2123</sup>: Reviews of sentencing***

s.36(6) - a reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

#### Time in custody

##### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.5 - the time during which a person whose case has been referred for review under section 36 above is in custody pending its review and pending any reference to the Supreme Court under subsection (5) of that section shall be reckoned as part of the term of any sentence to which he is for the time being subject.

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<sup>2121</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2122</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2123</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

## Defendant not entitled to be present

### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.9 - a person whose sentencing is the subject of a reference to the Supreme Court under section 36(5) above and who is detained pending the hearing of that reference shall not be entitled to be present on the hearing of the reference or of any proceeding preliminary or incidental thereto except where an order of the Supreme Court authorises him to be present, or where the Supreme Court or the Court of Appeal, as the case may be, give him leave to be present.

## Supreme Court powers

### ***CJA 1988 s.36<sup>2124</sup>: Reviews of sentencing***

s.36(7) - for the purpose of dealing with a case under this section the Supreme Court may exercise any powers of the Court of Appeal.

## Costs

### ***CJA 1988 s.36<sup>2125</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

### ***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.11(1) - where on a reference to the Court of Appeal under section 36 above or a reference to the Supreme Court under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court of Appeal or the Supreme Court, he shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, under Supreme Court Rules.

para.11(2) - sub-paragraph (1) has effect subject to—

- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).

para.11(3) - a person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.

para.11(4) - Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

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<sup>2124</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

<sup>2125</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

### 6.4.6. Effect of the sentence imposed by Court of Appeal/Supreme Court

**When does the sentence run from?**

***CJA 1988 s.36<sup>2126</sup>: Reviews of sentencing***

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

***CJA 1988 Sch.3: Reviews of sentencing - Supplementary***

para.10 - the term of any sentence passed by the Court of Appeal or Supreme Court under section 36 above shall, unless they otherwise direct, begin to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made.

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<sup>2126</sup> Commencement: 1 February 1989, SI 1989/1 art.2(a).

## 6.5 Royal prerogative of mercy

### **CAA 1968 s.49<sup>2127</sup>: Saving for prerogative of mercy**

s.49 - nothing in this Act is to be taken as affecting Her Majesty's prerogative of mercy.

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<sup>2127</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

## 6.6 Sentencing on conviction after a re-trial

### **CAA 1968 Sch.2 para.2<sup>2128</sup>**

- para.2(1) - where a person ordered to be retried is again convicted on retrial, the court before which he is convicted may pass in respect of the offence any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction.
- para.2(2) - without prejudice to its power to impose any other sentence, the court before which an offender is convicted on retrial may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.
- para.2(3) - where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded—
- (a) any time before his conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed; and
  - (b) any time during which he was released on bail under section 8(2) of this Act.
- para.2(4) - Sections 240ZA and 240A of the Criminal Justice Act 2003 (crediting of periods of remand in custody or on bail subject to certain types of condition: terms of imprisonment and detention) shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

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<sup>2128</sup> Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.



## 6.7 Case stated

### 6.7.1. From the Magistrates' Court

#### ***MCA 1980 s.111<sup>2129</sup>: Statement of case by magistrates' court***

- s.111(1) - any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved; but a person shall not make an application under this section in respect of a decision against which he has a right of appeal to the High Court or which by virtue of any enactment passed after 31st December 1879 is final.
- s.111(2) - an application under subsection (1) above shall be made within 21 days after the day on which the decision of the magistrates' court was given.
- s.111(3) - for the purpose of subsection (2) above, the day on which the decision of the magistrates' court is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.
- s.111(4) - on the making of an application under this section in respect of a decision any right of the applicant to appeal against the decision to the Crown Court shall cease.
- s.111(5) - if the justices are of opinion that an application under this section is frivolous, they may refuse to state a case, and, if the applicant so requires, shall give him a certificate stating that the application has been refused; but the justices shall not refuse to state a case if the application is made by or under the direction of the Attorney General.
- s.111(6) - where justices refuse to state a case, the High Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case.

#### ***MCA 1980 s.112<sup>2130</sup>: Effect of decisions made on case stated or on appeal***

- s.112(1) - any conviction, order, determination or other proceeding of a magistrates' court varied by the High Court on an appeal by case stated, and any judgment or order of the High Court on such an appeal, may be enforced as if it were a decision of the magistrates' court from which the appeal was brought.
- s.112(2) - any order, determination or other proceeding of a magistrates' court varied by the family court on an appeal under section 111A, and any judgment or order of the family court on such an appeal, may be enforced as if it were a decision of the magistrates' court from which the appeal was brought.

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<sup>2129</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

<sup>2130</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

**MCA 1980 s.113<sup>2131</sup>: Bail on appeal or case stated**

- s.113(1) - where a person has given notice of appeal to the Crown Court against the decision of a magistrates' court or has applied to a magistrates' court to state a case for the opinion of the High Court, then, if he is in custody, the magistrates' court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant him bail.
- s.113(2) - if a person is granted bail under subsection (1) above, the time and place at which he is to appear (except in the event of the determination in respect of which the case is stated being reversed by the High Court) shall be—
- (a) if he has given notice of appeal, the Crown Court at the time appointed for the hearing of the appeal;
  - (b) if he has applied for the statement of a case, the magistrates' court at such time within 10 days after the judgment of the High Court has been given as may be specified by the magistrates' court;
- and any recognizance that may be taken from him or from any surety for him shall be conditioned accordingly.
- s.113(3) - subsection (1) above shall not apply where the accused has been committed to the Crown Court for sentence under section 37 above or section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
- s.113(4) - Section 37(6) of the Criminal Justice Act 1948 (which relates to the currency of a sentence while a person is released on bail by the High Court) shall apply to a person released on bail by a magistrates' court under this section pending the hearing of a case stated as it applies to a person released on bail by the High Court under section 22 of the Criminal Justice Act 1967.

**MCA 1980 s.114: Recognizances and fees on case stated**

- s.114 - justices to whom application has been made to state a case for the opinion of the High Court on any proceeding of a magistrates' court shall not be required to state the case until the applicant has entered into a recognizance, with or without sureties, before the magistrates' court, conditioned to prosecute the appeal without delay and to submit to the judgment of the High Court and pay such costs as that Court may award; and (except in any criminal matter) a justices' clerk shall not be required to deliver the case to the applicant until the applicant has paid the fees payable for the case and for the recognizances to the designated officer for the court.

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<sup>2131</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

## 6.7.2. From the Crown Court

### **SCA 1981 s.28<sup>2132</sup>: Appeals from Crown Court and inferior courts**

- s.28(1) - subject to subsection (2), any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.
- s.28(2) - subsection (1) shall not apply to—
- (a) a judgment or other decision of the Crown Court relating to trial on indictment; or
  - (b) any decision of that court under the Local Government (Miscellaneous Provisions) Act 1982 which, by any provision of any of those Acts, is to be final.
- s.28(3) - subject to the provisions of this Act and to rules of court, the High Court shall, in accordance with section 19(2), have jurisdiction to hear and determine—
- (a) any application, or any appeal (whether by way of case stated or otherwise), which it has power to hear and determine under or by virtue of this or any other Act; and
  - (b) all such other appeals as it had jurisdiction to hear and determine immediately before the commencement of this Act.
- s.28(4) - in subsection (2)(a) the reference to a decision of the Crown Court relating to trial on indictment does not include a decision relating to [a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### **SCA 1981 s.28A<sup>2133</sup>: Proceedings on case stated by magistrates' court or Crown Court**

- s.28A(1) - this section applies where a case is stated for the opinion of the High Court—
- (a) by a magistrates' court under section 111 of the Magistrates' Courts Act 1980; or
  - (b) by the Crown Court under section 28(1) of this Act.
- s.28A(2) - the High Court may, if it thinks fit, cause the case to be sent back for amendment and, where it does so, the case shall be amended accordingly.
- s.28A(3) - the High Court shall hear and determine the question arising on the case (or the case as amended) and shall—
- (a) reverse, affirm or amend the determination in respect of which the case has been stated; or
  - (b) remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court,
- and may make such other order in relation to the matter (including as to costs) as it thinks fit.
- s.28A(4) - except as provided by the Administration of Justice Act 1960 (right of appeal to Supreme Court in criminal cases), a decision of the High Court under this section is final.

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<sup>2132</sup> Commencement: 1 January 1982, SCA 1981 s.153(2).

<sup>2133</sup> Commencement: 5 November 1993, as inserted by Statute Law (Repeals) Act 1993 Sch.2 para.9.

### 6.7.3. From the High Court

*Note: This section applies to any decision of the High Court in a criminal cause or matter, and is not restricted to case stated appeals.*

#### Right of appeal

##### **AJA 1960 s.1<sup>2134</sup>: Right of appeal**

- s.1(1) - subject to the provisions of this section, an appeal shall lie to the Supreme Court, at the instance of the defendant or the prosecutor,—
  - (a) from any decision of the High Court in a criminal cause or matter;
- s.1(2) - no appeal shall lie under this section except with the leave of the court below or of the Supreme Court; and such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the Supreme Court, as the case may be, that the point is one which ought to be considered by the Supreme Court.
- s.1(4) - for the purpose of disposing of an appeal under this section the Supreme Court may exercise any powers of the court below or may remit the case to that court.
- s.1(5) - in this Act, unless the context otherwise requires, “*leave to appeal*” means leave to appeal to the Supreme Court under this section.

#### Applications to be made within 28 days

##### **AJA 1960 s.2<sup>2135</sup>: Application for leave to appeal**

- s.2(1) - subject to the provisions of this section, an application to the court below for leave to appeal shall be made within the period of 28 days beginning with the relevant date; and an application to the Supreme Court for such leave shall be made within the period of 28 days beginning with the date on which the application is refused by the court below.
  - (1A) - In subsection (1), “*the relevant date*” means—
    - (a) the date of the decision of the court below, or
    - (b) if later, the date on which that court gives reasons for its decision.
- s.2(3) - the Supreme Court or the court below may, upon application made at any time by the defendant, extend the time within which an application may be made by him to the Supreme Court or the court below under subsection (1) of this section.

#### Bail pending appeal

##### **AJA 1960 s.4<sup>2136</sup>: Admission of appellant to bail.**

- s.4(2) - the power of the High Court under any enactment or rule of law to grant bail in connection with proceedings pending before [the High Court shall, subject to section 25 of the Criminal Justice and Public Order Act 1994, include power to grant bail to [an appellant under section 1 of this Act, or a person applying for leave to appeal thereunder, pending the appeal, and in relation to [the time and place of appearance

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<sup>2134</sup> Commencement: 27 October 1960.

<sup>2135</sup> Commencement: 27 October 1960.

<sup>2136</sup> Commencement: 27 October 1960.

appointed and any recognizance to be entered into by any surety under section thirty-seven of the Criminal Justice Act 1948 as applied by this subsection, any reference in that section to the judgment of the High Court shall be construed as a reference to the judgment of the Supreme Court or, if the case is remitted by the Supreme Court to the court below, to the judgment of that court on the case as so remitted.

- s.4(3) - where application is made to the High Court for leave to appeal, that court may give such directions as it thinks fit for discharging or enlarging any recognizances entered into by any surety, under any enactment or otherwise, with reference to the proceedings of that court.

**AJA 1960 s.5<sup>2137</sup>: Power to order detention or admission to bail of defendant**

- s.5(1) - where the defendant in any proceedings from which an appeal lies under section one of this Act would, but for the decision of the court below, be liable to be detained, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court shall make—
- (a) an order providing for the detention of the defendant, or directing that he shall not be released except on bail (which may be granted by the court as under section 4 above), so long as the appeal is pending, or
  - (b) an order that the defendant be released without bail.
- s.5(1A) - the court may make an order under subsection (1)(b) only if it thinks that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the House of Lords on the appeal.
- s.5(3) - an order under subsection (1)(a) of 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 below.
- s.5(4) - any order made under the said subsection (1)(a) for the detention of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an order or direction under Part III of the Mental Health Act 1983 (other than under section 35, 36 or 38), shall be an order authorising his continued detention in pursuance of the order or direction under the said Part III, and the provisions of the said Act with respect to persons so liable (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- s.5(4A) - where an order is made under the said subsection (1)(a) in the case of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an interim hospital order under section 38 of the Mental Health Act 1983, the order may, if the court 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 as if he had been ordered under this section to be detained in custody so long as any appeal under section 1 of this Act is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
  - (c) if the defendant is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 38 (power of court to

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<sup>2137</sup> Commencement: 27 October 1960.

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.

- s.5(5) - the defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
- (a) the court has made an order under subsection (1)(b), or
  - (b) the court has made an order under subsection (1)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).

**AJA 1960 s.6<sup>2138</sup>: Computation of sentence where bail granted**

- s.6(1) - where a person subject to a sentence is granted admitted to bail pending an appeal under section one of this Act, the time during which he is at large after being so admitted released on bail shall be disregarded in computing the term of his sentence.
- s.6(3) - subject to the foregoing provisions of this section, any sentence passed on an appeal under section one of this Act in substitution for another sentence shall, unless the Supreme Court or the court below otherwise directs, begin to run from the time when that other sentence would have begun to run.

**AJA 1960 s.5A<sup>2139</sup>: Power to order continuation of community treatment order**

- s.5A(1) - where the defendant in any proceedings from which an appeal lies under section 1 of this Act would, but for the decision of the court below, be liable to recall, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order under this section.
- s.5A(2) - for the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- s.5A(3) - an order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal under section 1 of this Act is pending.
- s.5A(4) - where the court makes an order under this section, the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- s.5A(5) - 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, but for the decision of the court below, have been—
- (a) liable to recall; or
  - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.

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<sup>2138</sup> Commencement: 27 October 1960.

<sup>2139</sup> Commencement: 3 November 2008, as inserted by Mental Health Act 2007 Sch.4 para.1, SI 2008/1900 art.2(i).



- s.5A(6) - where the court below has power to make an order under this section, and either no such order is made or the defendant is discharged by virtue of subsection (4) or (5) 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 Supreme Court on the appeal.

#### **Procedure etc.**

##### ***AJA 1960 s.9<sup>2140</sup>: Procedure***

- s.9(2) - Subsection (4) of section thirty-seven of the Criminal Justice Act 1948 (which enables rules of court to be made with respect to the security given for the purposes of that section and the recommitment of persons admitted to bail thereunder) shall have effect as if references to that section included references to sections four and five of this Act so far as they relate to the High Court.
- s.9(3) - a defendant who is detained pending an appeal under section one of this Act shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto except where an order of the Supreme Court authorises or rules of court, as the case may be, authorise him to be present or where the Supreme Court or the court below, as the case may be, gives him leave to be present.

#### **Reporting restrictions**

##### ***AJA 1960 s.12<sup>2141</sup>: Publication of information relating to proceedings in private***

- s.12(1) - the publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—
- (a) where the proceedings—
    - (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
    - (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or
    - (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
  - (b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;
  - (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
  - (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
  - (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.
- s.12(2) - without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be

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<sup>2140</sup> Commencement: 27 October 1960.

<sup>2141</sup> Commencement: 27 October 1960.



contempt of court except where the court (having power to do so) expressly prohibits the publication.

- s.12(3) - in this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
- s.12(4) - nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

**AJA 1960 s.17: Interpretation.**

- s.17(1) - in this Act any reference to the defendant shall be construed—
  - (a) in relation to proceedings for an offence, and in relation to an application for an order of mandamus, prohibition or certiorari in connection with such proceedings, as a reference to the person who was or would have been the defendant in those proceedings;
  - (b) in relation to any proceedings or order for or in respect of contempt of court, as a reference to the person against whom the proceedings were brought or the order was made;
  - (c) in relation to a criminal application for *habeas corpus*, as a reference to the person by or in respect of whom that application was made,and any reference to the prosecutor shall be construed accordingly.
- s.17(2) - in this Act “*application for habeas corpus*” means an application for a writ of *habeas corpus ad subjiciendum* and references to a criminal application or civil application shall be construed according as the application does or does not constitute a criminal cause or matter.
- s.17(3) - in this Act any reference to the court below shall, in relation to any function of a Divisional Court, be construed as a reference to the Divisional Court or to a judge according as the function is by virtue of rules of court rules made under section seven of the Northern Ireland Act 1962 exercisable by the Divisional Court or a judge.
- s.17(4) - an appeal under section one of this Act shall be treated for the purposes of this Act as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this Act an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.
- s.17(6) - any reference in this Act to any other enactment is a reference thereto as amended by or under any other enactment, including this Act.

## 6.8 Costs

*Note: The powers are set out in the costs section, contained within **Part 3**, however the excerpt from the Criminal Procedure Rules below gives a brief overview of the powers of the courts to make costs orders on appeal.*

### **Criminal Procedure Rules 2015 (SI 2015/1490)**

rule.45.6(1) This rule—

- (a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;
  - (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—
    - (i) section 108 of the Magistrates' Courts Act 1980(a), or
    - (ii) section 45 of the Mental Health Act 1983(b).
- (2) In this rule, costs include—
- (a) costs incurred in the court that made the decision under appeal; and
  - (b) costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
  - (b) on its own initiative.
- (4) A person who wants the court to make an order must—
- (a) apply as soon as practicable;
  - (b) notify each other party;
  - (c) specify—
    - (i) the amount claimed, and
    - (ii) against whom; and
  - (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—
    - (i) apply in writing not more than 14 days later, and
    - (ii) serve the application on the appellant and on the Crown Court officer.
- (5) A party who wants to oppose an order must—
- (a) make representations as soon as practicable; and
  - (b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.
- (6) Where the application was under paragraph (4)(d), the Crown Court officer may—
- (a) submit it to the Crown Court; or
  - (b) serve it on the magistrates' court officer, for submission to the magistrates' court.

- (7) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself where—
- (a) the appellant abandons an appeal to the Crown Court;
  - (b) the Crown Court decides an appeal, except an appeal under—
    - (i) section 108 of the Magistrates’ Courts Act 1980, or
    - (ii) section 45 of the Mental Health Act 1983; or
  - (c) the Court of Appeal decides an appeal to which Part 40 applies (Appeal to the Court of Appeal about reporting or public access restriction).
- (8) If the court makes an order in any other case, it must assess the amount itself.

*Note.*<sup>2142</sup> See also rule 45.2.

*A magistrates’ court can order an appellant to pay a respondent’s costs on abandoning an appeal to the Crown Court.*

*The Crown Court can order—*

- (a) *the defendant to pay the prosecutor’s costs on dismissing a defendant’s appeal—*
  - (i) *against conviction or sentence, under section 108 of the Magistrates’ Courts Act 1980, or*
  - (ii) *where the magistrates’ court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and*
- (b) *one party to pay another party’s costs on deciding any other appeal to which Part 34 (Appeal to the Crown Court) applies.*

*The Court of Appeal can order—*

- (a) *the defendant to pay another person’s costs on dismissing a defendant’s appeal or application to which Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 39 (Appeal to the Court of Appeal about conviction or sentence) or Part 43 (Appeal or reference to the Supreme Court) applies;*
- (b) *the defendant to pay another person’s costs on allowing a prosecutor’s appeal to which Part 38 (Appeal to the Court of Appeal against ruling adverse to the prosecution) applies;*
- (c) *the appellant to pay another person’s costs on dismissing an appeal or application by a person affected by a serious crime prevention order;*
- (d) *one party to pay another party’s costs on deciding an appeal to which Part 40 (Appeal to the Court of Appeal about reporting or public access restriction) applies.*

*See section 109 of the Magistrates’ Courts Act 1980; section 52 of the Senior Courts Act 1981 (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988; and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.*

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<sup>2142</sup> The note is contained within the Crim PR.

## 6.9 Other sources

See also A Guide to Commencing Proceedings in the Court of Appeal (Criminal Division), HMCTS (2008)<sup>2143</sup>

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<sup>2143</sup> See <[https://www.justice.gov.uk/downloads/courts/court-of-appeal/criminal-division/proc\\_guide.pdf](https://www.justice.gov.uk/downloads/courts/court-of-appeal/criminal-division/proc_guide.pdf)>