

*Status: Point in time view as at 31/10/2009.*

**Changes to legislation:** Criminal Justice and Immigration Act 2008, Part 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 25

#### AMENDMENTS TO ARMED FORCES LEGISLATION

##### PART 1

##### COURTS-MARTIAL (APPEALS) ACT 1968

- 1 The Courts-Martial (Appeals) Act 1968 (c. 20) has effect subject to the following amendments.

##### Commencement Information

- II** Sch. 25 para. 1 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

*Power to dismiss certain appeals following references by the CCRC*

- 2 After section 25B insert—

*“Appeals following references by the CCRC*

##### **25C Power to dismiss certain appeals following references by the CCRC**

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 12A(1)(a), (7) or (8) of the Criminal Appeal Act 1995.
- (2) Notwithstanding anything in section 12, 21 or 25 of this Act, the Appeal Court 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 or finding that is the subject of the appeal, and
  - (b) the condition in subsection (3) is met.
- (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 9(3).”

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**Commencement Information**

**I2** Sch. 25 para. 2 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

*Interim hospital orders*

3 Section 16(5) (effect of interim hospital order made by Appeal Court) is omitted.

**Commencement Information**

**I3** Sch. 25 para. 3 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

4 Section 25B(3) (as substituted by the Armed Forces Act 2006) (effect of interim hospital order made by Appeal Court) is omitted.

**Commencement Information**

**I4** Sch. 25 para. 4 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

5 Before section 36 (but after the cross-heading preceding it) insert—

**Effect of interim hospital orders**

“35A(1) This section applies where the Appeal Court—

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

(2) The Court Martial 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.”

**Commencement Information**

**I5** Sch. 25 para. 5 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

6 In section 36 (powers of Court under Part 2 which are exercisable by single judge), in subsection (1) after paragraph (h) insert—

“(ha) to renew an interim hospital order made by them by virtue of any provision of this Part;”.

**Commencement Information**

**I6** Sch. 25 para. 6 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

*Evidence*

7 (1) Section 28 (evidence) is amended as follows.

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- (2) In subsection (1), at the beginning insert “ For the purposes of an appeal or an application for leave to appeal, ”.
- (3) In that subsection, for paragraph (b) substitute—
  - “(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”.
- (4) After subsection (1) insert—
  - “(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 Appeal Court;
    - (b) the appellant;
    - (c) the respondent.”
- (5) In subsection (4), at the beginning insert “ For the purposes of an appeal or an application for leave to appeal, ”.
- (6) After subsection (4) insert—
  - “(5) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.”

**Commencement Information**

**I7** Sch. 25 para. 7 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

*Appeals against procedural directions*

- 8 In section 36C (appeals against procedural directions), subsections (1) and (2) are omitted.

**Commencement Information**

**I8** Sch. 25 para. 8 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

*Detention of accused pending appeal to Supreme Court*

- 9
- (1) Section 43 (as amended by the Armed Forces Act 2006) (detention of accused on appeal by Crown) is amended as follows.
  - (2) In subsection (1) for “may make an order under this section” substitute “ shall make one of the orders specified in subsection (1A) ”.
  - (3) In subsection (1A)—
    - (a) for “An order under this section is” substitute “ The orders specified in this subsection are ”,
    - (b) the word “or” at the end of paragraph (a) is omitted, and
    - (c) after paragraph (b) insert—
      - “(c) an order that the accused be released without bail.”

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(4) After subsection (1B) insert—

“(1C) The Appeal Court may make an order within subsection (1A)(c) only if they think that it is in the interests of justice that the accused should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.”

(5) In subsection (2) for “under this section” substitute “ within subsection (1A)(a) or (b) ”.

(6) For subsection (5) substitute—

“(5) The accused shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—

- (a) the Appeal Court have made an order within subsection (1A)(c), or
- (b) the Appeal Court have made an order within subsection (1A)(a) or (b) but the order has ceased to have effect by virtue of subsection (2) or the accused has been released or discharged by virtue of subsection (3).”

**Commencement Information**

**19** Sch. 25 para. 9 in force at 31.10.2009 by S.I. 2009/1028, art. 2(a)

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