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## STATUTORY INSTRUMENTS

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# 2004 No. 1500

## The Criminal Justice (Northern Ireland) Order 2004

### PART IV

#### PROSECUTION APPEALS

##### *Introduction*

##### **Introduction**

**16.**—(1) In relation to a trial on indictment, the prosecution is to have the rights of appeal for which provision is made by this Part.

- (2) But the prosecution is to have no right of appeal under this Part in respect of—
- (a) a ruling that a jury be discharged; or
  - (b) a ruling from which an appeal lies to the Court of Appeal by virtue of any other statutory provision.
- (3) An appeal under this Part is to lie to the Court of Appeal.
- (4) Such an appeal may be brought only with the leave of the judge or the Court of Appeal.

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##### **Modifications etc. (not altering text)**

- C1** Art. 16(4) excluded (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 5(9), 53(4) (with s. 8(1)(3)); S.I. 2007/2045, art. 2(2), (with transitional provisions in art. 3)

##### *General right of appeal in respect of rulings*

##### **General right of appeal in respect of rulings**

**17.**—(1) This Article applies where a judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.

- (2) The prosecution may appeal in respect of the ruling in accordance with this Article.
- (3) The ruling is to have no effect whilst the prosecution is able to take any steps under paragraph (4).
- (4) The prosecution may not appeal in respect of the ruling unless, following the making of the ruling—
- (a) it informs the court that it intends to appeal; or
  - (b) it requests an adjournment to consider whether to appeal and if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.

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(5) If the prosecution requests an adjournment under paragraph (4)(b), the judge may grant such an adjournment.

(6) Where the ruling relates to two or more offences—

- (a) any one or more of those offences may be the subject of the appeal; and
- (b) if the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.

(7) Where—

- (a) the ruling is a ruling that there is no case to answer; and
- (b) the prosecution, at the same time that it informs the court in accordance with paragraph (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time and which relate to the offence or offences which are the subject of the appeal,

that other ruling, or those other rulings, are also to be treated as the subject of the appeal.

(8) The prosecution may not inform the court in accordance with paragraph (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions mentioned in paragraph (9) is fulfilled.

(9) Those conditions are—

- (a) that leave to appeal to the Court of Appeal is not obtained; and
- (b) that the appeal is abandoned before it is determined by the Court of Appeal.

(10) If the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, the ruling mentioned in paragraph (1) is to continue to have no effect in relation to the offence or offences which are the subject of the appeal whilst the appeal is pursued.

(11) If and to the extent that a ruling has no effect in accordance with this Article—

- (a) any consequences of the ruling are also to have no effect;
- (b) the judge may not take any steps in consequence of the ruling; and
- (c) if he does so, any such steps are also to have no effect.

(12) Where the prosecution has informed the court of its agreement under paragraph (8) and either of the conditions mentioned in paragraph (9) is fulfilled, the judge or the Court of Appeal must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence.

(13) In this Article “applicable time”, in relation to a trial on indictment, means any time (whether before or after the commencement of the trial) before the time when the judge starts his summing-up to the jury.

(14) The reference in paragraph (13) to the time when the judge starts his summing-up to the jury includes the time when the judge would start his summing-up if there were a jury.

### **Expedited and non-expedited appeals**

**18.—**(1) Where the prosecution informs the court in accordance with Article 17(4) that it intends to appeal, the judge must decide whether or not the appeal should be expedited.

(2) If the judge decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge decides that the appeal should not be expedited, he may—

- (a) order an adjournment; or
- (b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in paragraph (3)(a) or (b).

### **Continuation of proceedings for offences not affected by ruling**

**19.**—(1) This Article applies where the prosecution informs the court in accordance with Article 17(4) that it intends to appeal.

(2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

### **Determination of appeal by Court of Appeal**

**20.**—(1) On an appeal under Article 17, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) Paragraphs (3) to (5) apply where the appeal relates to a single ruling.

(3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

- (a) order that proceedings for that offence may be resumed in the Crown Court;
- (b) order that a fresh trial may take place in the Crown Court for that offence;
- (c) order that the defendant in relation to that offence be acquitted of that offence.

(5) But the Court of Appeal may not make an order under paragraph (4)(a) or (b) in respect of an offence unless it considers it necessary in the interests of justice to do so.

(6) Paragraphs (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.

(7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in paragraph (4)(a) to (c) (but subject to paragraph (5)).

### *Right of appeal in respect of evidentiary rulings*

### **Right of appeal in respect of evidentiary rulings**

**21.**—(1) The prosecution may, in accordance with this Article and Article 22, appeal in respect of—

- (a) a single qualifying evidentiary ruling; or
- (b) two or more qualifying evidentiary rulings.

(2) A “qualifying evidentiary ruling” is an evidentiary ruling of a judge in relation to a trial on indictment which is made at any time (whether before or after the commencement of the trial) before the opening of the case for the defence.

(3) The prosecution may not appeal in respect of a single qualifying evidentiary ruling unless the ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

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(4) The prosecution may not appeal in respect of two or more qualifying evidentiary rulings unless each ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(5) If the prosecution intends to appeal under this Article, it must before the opening of the case for the defence inform the court—

- (a) of its intention to do so; and
- (b) of the ruling or rulings to which the appeal relates.

(6) In respect of the ruling, or each ruling, to which the appeal relates—

- (a) the qualifying offence, or at least one of the qualifying offences, to which the ruling relates must be the subject of the appeal; and
- (b) any other offence to which the ruling relates may, but need not, be the subject of the appeal.

(7) The prosecution must, at the same time that it informs the court in accordance with paragraph (5), inform the court of the offence or offences which are the subject of the appeal.

(8) For the purposes of this Article, the case for the defence opens when, after the conclusion of the prosecution evidence, the earliest of the following events occurs—

- (a) evidence begins to be adduced by or on behalf of a defendant;
- (b) it is indicated to the court that no evidence will be adduced by or on behalf of a defendant;
- (c) a defendant's case is opened, as permitted by section 2 of the Criminal Procedure Act 1865 (c. 18).

(9) In this Article—

“evidentiary ruling” means a ruling which relates to the admissibility or exclusion of any prosecution evidence;

“qualifying offence” means—

- (a) an offence described in Schedule 2;
- (b) an offence of aiding, abetting, counselling or procuring the commission of an offence described in Schedule 2.

(10) The Secretary of State may by order amend that Schedule by doing any one or more of the following—

- (a) adding a description of offence;
- (b) removing a description of offence for the time being included;
- (c) modifying a description of offence for the time being included.

(11) Nothing in this Article affects the right of the prosecution to appeal in respect of an evidentiary ruling under Article 17.

### **Condition that evidentiary ruling significantly weakens prosecution case**

**22.**—(1) Leave to appeal may not be given in relation to an appeal under Article 21 unless the judge or, as the case may be, the Court of Appeal is satisfied that the relevant condition is fulfilled.

(2) In relation to an appeal in respect of a single qualifying evidentiary ruling, the relevant condition is that the ruling significantly weakens the prosecution's case in relation to the offence or offences which are the subject of the appeal.

(3) In relation to an appeal in respect of two or more qualifying evidentiary rulings, the relevant condition is that the rulings taken together significantly weaken the prosecution's case in relation to the offence or offences which are the subject of the appeal.

### **Expedited and non-expedited appeals**

**23.**—(1) Where the prosecution informs the court in accordance with Article 21(5), the judge must decide whether or not the appeal should be expedited.

(2) If the judge decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge decides that the appeal should not be expedited, he may—

- (a) order an adjournment; or
- (b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in paragraph (3)(a) or (b).

### **Continuation of proceedings for offences not affected by ruling**

**24.**—(1) This Article applies where the prosecution informs the court in accordance with Article 21(5).

(2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

### **Determination of appeal by Court of Appeal**

**25.**—(1) On an appeal under Article 21, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) In addition, the Court of Appeal must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

- (a) order that proceedings for that offence be resumed in the Crown Court;
- (b) order that a fresh trial may take place in the Crown Court for that offence;
- (c) order that the defendant in relation to that offence be acquitted of that offence.

(3) But no order may be made under paragraph (2)(c) in respect of an offence unless the prosecution has indicated that it does not intend to continue with the prosecution of that offence.

### **Reversal of rulings**

**26.** The Court of Appeal may not reverse a ruling on an appeal under this Part unless it is satisfied—

- (a) that the ruling was wrong in law;
- (b) that the ruling involved an error of law or principle; or
- (c) that the ruling was a ruling that it was not reasonable for the judge to have made.

### *Miscellaneous and supplemental*

### **Appeals to the House of Lords**

**27.**—(1) The Criminal Appeal (Northern Ireland) Act 1980 (c. 47) is amended as follows.

(2) In the heading to Part II (appeal to the House of Lords from decision under Part I) for “from decision under Part I” substitute “ from Court of Appeal ”.

(3) In section 31(1) (right of appeal to the House of Lords) after “Order 1988” insert “ or Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) ”.

(4) In section 35 (bail on appeal by the defendant) after “preparatory hearings” insert “ or Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) ”.

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## Costs

**28.**—(1) The Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10) is amended as follows.

(2) After section 4(1) (prosecution costs on appeal to be met by the accused) insert—

“(1A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) it may, subject to rules made pursuant to section 7, make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

(1B) Costs ordered to be paid under subsection (1A) may include the cost of any transcript of a record of proceedings made in accordance with rules of court under section 21 of the Criminal Appeal (Northern Ireland) Act 1980.” .

(3) In section 4(2A) (defence costs on an appeal to be met by the Secretary of State) after “Order 1988” insert “ or under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) ”.

## Effect on time limits in relation to preliminary stages

**29.**—(1) In Article 12 of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings) after paragraph (6) insert—

“(7) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned.” .

(2) In section 72 of the Terrorism Act 2000 (c. 11) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings for scheduled offences) after subsection (6) insert—

“(7) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned” .

## Restrictions on reporting

**30.**—(1) Except as provided by this Article no publication shall include a report of—

- (a) anything done under Article 17, 18, 21, 22 or 23;
- (b) an appeal under this Part;
- (c) an appeal under Part II of the 1980 Act in relation to an appeal under this Part; or
- (d) an application for leave to appeal in relation to an appeal mentioned in sub-paragraph (b) or (c).

(2) The judge may order that paragraph (1) is not to apply, or is not to apply to a specified extent, to a report of—

- (a) anything done under Article 17, 18, 21, 22 or 23; or
- (b) an application to the judge for leave to appeal to the Court of Appeal under this Part.

(3) The Court of Appeal may order that paragraph (1) is not to apply, or is not to apply to a specified extent, to a report of—

- (a) an appeal to the Court of Appeal under this Part;
  - (b) an application to that Court for leave to appeal to it under this Part; or
  - (c) an application to that Court for leave to appeal to the House of Lords under Part II of the 1980 Act.
- (4) The House of Lords may order that paragraph (1) is not to apply, or is not to apply to a specified extent, to a report of—
- (a) an appeal to that House under Part II of the 1980 Act; or
  - (b) an application to that House for leave to appeal to it under Part II of that Act.
- (5) Where there is only one defendant and he objects to the making of an order under paragraph (2), (3) or (4)—
- (a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of the defendant, that it is in the interests of justice to do so; and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (6) Where there are two or more defendants and one or more of them object to the making of an order under paragraph (2), (3) or (4)—
- (a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of each of the defendants, that it is in the interests of justice to do so; and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (7) Paragraph (1) does not apply to the inclusion in a publication of a report of—
- (a) anything done under Article 17, 18, 21, 22 or 23;
  - (b) an appeal under this Part;
  - (c) an appeal under Part II of the 1980 Act in relation to an appeal under this Part; or
  - (d) an application for leave to appeal in relation to an appeal mentioned in sub-paragraph (b) or (c),
- at the conclusion of the trial of the defendant or the last of the defendants to be tried.
- (8) Paragraph (1) does not apply to a report which contains only one or more of the following matters—
- (a) the identity of the court and the name of the judge;
  - (b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses;
  - (c) the offence or offences, or a summary of them, with which the defendant or defendants are charged;
  - (d) the names of the legal representatives in the proceedings;
  - (e) where the proceedings are adjourned, the date and place to which they are adjourned;
  - (f) any arrangements as to bail;
  - (g) whether—
    - (i) the Northern Ireland Legal Services Commission funded a right to representation as part of the costs of criminal defence services provided by the Commission under the Access to Justice (Northern Ireland) Order 2003 (NI 10); or

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- (ii) legal aid under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) (which was repealed by the Access to Justice (Northern Ireland) Order 2003) was granted to the defendant or any of the defendants.
- (9) The addresses that may be included in a report by virtue of paragraph (8) are addresses—
  - (a) at any relevant time; and
  - (b) at the time of their inclusion in the publication.
- (10) Nothing in this Article affects any prohibition or restriction by virtue of any other statutory provision on the inclusion of any matter in a publication.
- (11) In this Article—
  - “programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42);
  - “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings;
  - “relevant time” means a time when events giving rise to the charges to which the proceedings relate are alleged to have occurred;
  - “relevant programme” means a programme included in a programme service;
  - “the 1980 Act” means the Criminal Appeal (Northern Ireland) Act 1980 (c. 47).

### **Offences in connection with reporting**

- 31.**—(1) This Article applies if a publication includes a report in contravention of Article 30.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme—
- (a) any body corporate engaged in providing the programme service in which the programme is included; and
  - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
- is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) For the purposes of this Article, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (6) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) Proceedings for an offence under this Article may not be instituted otherwise than by or with the consent of—
- (a) before the relevant date, the Attorney General for Northern Ireland; or
  - (b) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.
- (8) In paragraph (7) “the relevant date” means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.



## **Rules of court**

**32.**—(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Without limiting paragraph (1), rules of court may in particular make provision—

- (a) for time limits which are to apply in connection with any provisions of this Part;
- (b) as to procedures to be applied in connection with this Part;
- (c) enabling a single judge of the Court of Appeal to give leave to appeal under this Part or to exercise the power of the Court of Appeal under Article 17(12).

(3) Nothing in this Article is to be taken as affecting the generality of any statutory provision conferring powers to make rules of court.

## **Interpretation of Part IV**

**33.**—(1) In this Part—

“programme service” has the meaning given by Article 30(11);

“publication” has the meaning given by Article 30(11);

“qualifying evidentiary ruling” is to be construed in accordance with Article 21(2);

“the relevant condition” is to be construed in accordance with Article 22(2) and (3);

“relevant programme” has the meaning given by Article 30(11);

“rules of court” means—

- (a) Crown Court rules; and
- (b) rules made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23);

“ruling” includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement.

(2) Any reference in this Part (other than Article 32(2)(c)) to a judge is a reference to a judge of the Crown Court.

(3) There is to be no right of appeal under this Part in respect of a ruling in relation to which the prosecution has previously informed the court of its intention to appeal under either Article 17(4) or 21(5).

(4) Where a ruling relates to two or more offences but not all of those offences are the subject of an appeal under this Part, nothing in this Part is to be regarded as affecting the ruling so far as it relates to any offence which is not the subject of the appeal.

(5) Where two or more defendants are charged jointly with the same offence, the provisions of this Part are to apply as if the offence, so far as relating to each defendant, were a separate offence (so that, for example, any reference in this Part to a ruling which relates to one or more offences includes a ruling which relates to one or more of those separate offences).

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