

2006 No. 487

SUPREME COURT, NORTHERN IRELAND

The Criminal Appeal (Trial without jury where danger of jury tampering and Trial by jury of sample counts only) Rules (Northern Ireland) 2006

Made - - - - *30th November 2006*

Coming into operation - *8th January 2007*

To be laid before Parliament

The Northern Ireland Supreme Court Rules Committee makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978(a), section 49 of the Criminal Justice Act 2003(b) and section 20 of the Domestic Violence Crime and Victims Act 2004(c).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Appeal (Trial without jury where danger of jury tampering and Trial by jury of sample counts only) Rules (Northern Ireland) 2006 and shall come into operation on 8th January 2007.

(2) In these Rules—

“Court” means the Court of Appeal of Northern Ireland;

“the 2003 Act” means the Criminal Justice Act 2003;

“the 2004 Act” means the Domestic Violence, Crime and Victims Act 2004;

“appeal” means—

(a) an appeal under section 47 of the 2003 Act from—

(i) the refusal by a judge at a hearing mentioned in section 45(2)(b) of an application to which section 45 applies or from an order of a judge at such a hearing under section 44 which is made on the determination of such an application, or

(ii) an order under section 46(3) or (5) of the 2003 Act; or

(b) an appeal under section 18A of the 2004 Act from the refusal by a judge at a hearing mentioned in section 18(1)(b) of an application under section 17 or from an order of a judge at such a hearing under section 17(2) which is made on the determination of such an application,

and “application for leave to appeal” shall be construed accordingly;

(a) 1978 c.23 to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 (c.4)

(b) 2003 c.44

(c) 2004 c.28

“chief clerk” means the chief clerk of the Crown Court which made the order or ruling which is the subject of the appeal;

“judge of the Crown Court” means the judge of the Crown Court who has conduct of the proceedings;

“proper officer” means the Master (Queen’s Bench and Appeals) and includes any other officer of the Supreme Court directed by the Lord Chief Justice to exercise the powers and duties of the Master (Queen’s Bench and Appeals).

Forms

2. Any reference in these Rules to a form means a reference to a form set out in the Schedule or a form to the same effect.

Notice of appeal or application for leave to appeal

3.—(1) A notice of appeal (where the judge of the Crown Court has granted leave) or of an application for leave to appeal to the Court shall be given by completing Form 1 and serving it on—

- (a) the proper officer;
- (b) the chief clerk;
- (c) every other party to the proceedings directly affected by the order or ruling which is the subject of the appeal.

(2) The notice of appeal or application for leave to appeal shall be served within 7 days of the date of the order or ruling which is the subject of the appeal.

(3) The Court may, on application of the appellant, extend the time within which notice of appeal or of an application for leave to appeal shall be given either before or after that period expires.

(4) The notice of appeal or application for leave to appeal shall be accompanied by any documents necessary for the proper determination of the appeal or application for leave to appeal including—

- (a) a transcript of the ruling or a copy of the order which is the subject of the appeal; and
- (b) any skeleton arguments or submissions provided to the judge of the Crown Court by the parties in respect of the issue which gave rise to the ruling or order.

(5) The notice of appeal or application for leave to appeal shall be accompanied by Form 2 for a respondent to complete if he wishes to oppose the appeal or the application for leave to appeal.

Respondent’s notice

4.—(1) A respondent may oppose the appeal or application for leave to appeal by serving a response in Form 2 on—

- (a) the proper officer;
- (b) the chief clerk; and
- (c) the appellant and any other party to the proceedings directly affected by the order or ruling.

(2) Subject to paragraph (3), the respondent shall serve the response within 7 days of the date on which the notice of appeal or application for leave to appeal was served on him.

(3) The Court may, on application of the respondent, extend the time within which the response shall be served either before or after that period expires.

Persons in custody

5.—(1) A person in custody is not entitled to be present in person at the hearing of an appeal or application for leave to appeal, unless the Court so directs.

(2) A person in custody will be entitled to participate in such a hearing, without a direction of the Court, by live television link.

(3) In directing whether a person in custody shall be present in person under paragraph (1) the Court shall take into account—

- (a) any representations made to it by the parties to the proceedings;
- (b) the availability and reliability of live television link facilities; and
- (c) any practical difficulties with the physical attendance of the person.

(4) In this rule, “live television link” means an arrangement whereby a person, while absent from the courtroom, is able to see and hear the Court and to be seen and heard by it.

Supply of documentary and other exhibits

6.—(1) The proper officer shall, on request, supply to any party to the proceedings copies of documents or other exhibits required for the appeal or application for leave to appeal and in such case may make charges in accordance with scales and charges fixed for the time being by the Treasury.

(2) The proper officer shall, on request, make arrangements for any party to the proceedings to inspect any document or other exhibit required for the appeal.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part thereof.

Abandonment of proceedings

7. An appeal or an application for leave to appeal (including an application for leave to appeal the House of Lords) may be abandoned before the hearing of the appeal or application by serving on the proper officer notice thereof in Form 3.

Applications which may be determined by the proper officer

8.—(1) The following applications may be determined by the proper officer, namely—

- (a) an application to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 3(3); and
- (b) an application to extend the time for service of the respondent’s notice under rule 4(3).

(2) As soon as practicable after the proper officer determines an application set out in paragraph (1), he shall serve notice of his decision in Form 4 on—

- (a) the appellant;
- (b) the respondent
- (c) any other party to the proceedings directly affected by the order or ruling; and
- (d) the chief clerk.

(3) Where the proper officer has refused an application referred to in paragraph (1), the party making the application may have the application determined by a single judge of the Court by serving notice of renewal in Form 4 on the proper officer within 7 days, or such longer period as the single judge of the Court may fix, from the date on which notice of the refusal was served on him.

Applications which may be determined by a single judge

9.—(1) The following applications may be determined by a single judge of the Court—

- (a) an application for leave to appeal;

- (b) an application to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 3(3);
- (c) an application to extend the time for service of the respondent's notice under rule 4(3);
- (d) an application for a direction that a person in custody be present in person at the hearing of the appeal or application for leave to appeal under rule 5(1).

(2) Where a single judge of the Court determines an application referred to in paragraph (1), the proper officer shall, as soon as practicable, serve notice of the Judge's decision in Form 4 on—

- (a) the appellant;
- (b) the respondent;
- (c) any other party to the proceedings directly affected by the order or ruling; and
- (d) the chief clerk.

Determination by full Court

10.—(1) Where a single judge of the Court has refused an application referred to in rule 9, the party making the application may have the application determined by the Court by serving a notice of renewal in Form 4 on the proper officer within seven days from the date on which notice of the refusal was served on him, or such longer period as the single judge of the Court may fix.

(2) If an application under paragraph (1) is not served within the prescribed period, or such extended period as the single judge of the Court has allowed, the application shall be treated as having been refused by the Court.

Assistance from the Crown Court

11. The proper officer may require the chief clerk to furnish the Court with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 7 of the 2003 Act, sections 17 to 18B of the 2004 Act, or these Rules.

Notice of hearing and determination of the Court

12.—(1) The proper officer shall, as far in advance as reasonably practicable, give notice of the date fixed for the hearing by the Court of an appeal or application to—

- (a) the appellant;
- (b) the respondent;
- (c) any other party to the proceedings directly affected by the order or ruling; and
- (d) the chief clerk

(2) As soon as reasonably practicable after the determination of an appeal or application for leave to appeal, the proper officer shall serve notice of the decision of the Court on those parties listed in paragraph (1).

Appeal to the House of Lords

13. An application to the Court for leave to appeal to the House of Lords shall either be made—

- (a) orally, immediately after the decision of the Court from which an appeal lies to the House of Lords; or
- (b) by serving notice in writing which shall include the grounds of the application on the proper officer within 7 days of the decision of the Court.

Service

14. Any notice or other document which is required by these Rules to be given to any person shall be served in accordance with Rule 30 of the Criminal Appeal (Northern Ireland) Rules 1968(a).

Brian Kerr
Paul Girvan
Patrick Coghlin
Mark Horner
Bernard McCloskey
Tony Caher
Caroline McGonagle

Dated 8th November 2006

Signed by the authority of the Lord Chancellor

In exercise of the powers conferred by section 55A (3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

Bridget Prentice
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Dated 30th November 2006

(a) S.R. 1968 No. 218

SCHEDULE

Form 1

Rule 3(1)

Notice of Appeal or Application for Leave to Appeal

[under section 47 of the Criminal Justice Act 2003 from an order or ruling made by the court of its own motion or on application for a trial to be conducted or continued without a jury where there is a danger of jury tampering]*

[under section 18A of the Domestic Violence, Crime and Victims Act 2004 from an order or ruling made on an application for trial by jury on sample counts only]*

To the Master (Queen's Bench and Appeals) (the proper officer)
Appeals and Lists Office
Royal Courts of Justice
BELFAST
BT1 3JF

<i>Details Required</i>	<i>Notes</i>
<p>1. Particulars of appellant</p> <p><u>If you are the Prosecutor:</u></p> <p>Name of Prosecutor:</p> <p>Address:</p> <p>PPS Reference Number:</p> <p><u>If you are the Defendant:</u></p> <p>Name:</p> <p>Address:</p> <p>Date of Birth:</p> <p>Name & Address of your Solicitor:</p> <p>If you are in custody, please give your prison number and the address of the establishment in which you are detained:</p> <p>Please state here if there are reasons why you want to appear in person at the appeal or application for leave to appeal and why a live link would not be appropriate.</p>	<p><i>If you are the defendant and you are in custody, you are entitled to appear by way of live link. The Court of Appeal, however, may direct that you appear in person.</i></p>

<p>2. Case details</p> <p>Venue of Crown Court:</p> <p>Name of Crown Court Judge:</p> <p>Name of the defendant (if not provided above):</p> <p>Name of any co-accused:</p> <p>Details of indictment:</p>	<p><i>Details of indictment includes the number of the indictment and details of the offences charged.</i></p>
<p>3. Details of the ruling/order</p> <p>Provide details of the ruling(s)/order(s) that is the subject of this appeal or application for leave to appeal:</p> <p>What date was that ruling(s)/order(s) made:</p>	<p><i>Please attach a transcript of the ruling or a copy of the order which is the subject of the appeal and any skeleton arguments provided to the judge of the court by the parties in respect of the issue which gave rise to the ruling/order.</i></p>
<p>4. Application to the Crown Court</p> <p>State whether there was an application to the judge of the Crown Court for leave to appeal: Yes/No</p> <p>If yes, was the application granted? Yes/No</p> <p>State the grounds on which leave was granted/refused:</p>	
<p>5. Extension of time</p> <p>Are you applying for an extension of time in which to give notice of appeal or application for leave to appeal? Yes/No</p> <p>If yes, please also state your reasons:</p>	

6. Grounds of Appeal

Specify the grounds upon which the appeal is brought.

Summarise the arguments that you intend to put to the Court of Appeal (specifying any authorities to be cited).

Dated this day of 20 .

Signed:
Appellant (Solicitor for appellant)

* Delete as appropriate

NOTES

This form should be served on the proper officer, the chief clerk and every other party to the proceedings directly affected by the order or ruling within 7 days of the date of the order or ruling which is the subject of the appeal.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

Note to party who receives a copy of this notice:

If you wish to oppose this application you are required to serve a respondent's notice in Form 2 on the proper officer, the chief clerk, the appellant and any other party to the proceedings directly affected by the order or ruling within 7 days of the date on which the notice was served on you.

RESPONDENT'S NOTICE

[Section 47 of the Criminal Justice Act 2003] [Section 18A of the Domestic Violence, Crime and Victims Act 2004]*

**To the Master (Queen's Bench and Appeals)(the proper officer)
Appeals and Lists Office
Royal Courts of Justice
BELFAST
BT1 3JF**

<i>Details Required</i>	<i>Notes</i>
<p>1. Particulars of respondent</p> <p><u>If you are the Prosecutor:</u></p> <p>Name of Prosecutor:</p> <p>Address:</p> <p>PPS Reference Number:</p> <p><u>If you are the Defendant:</u></p> <p>Name:</p> <p>Address:</p> <p>Date of Birth:</p> <p>Name & Address of your Solicitor:</p> <p>If you are in custody, please give your prison number and the address of the establishment in which you are detained:</p> <p>Please state here if there are reasons why you want to appear in person at the appeal or application for leave to appeal and why a live link would not be appropriate.</p>	<p><i>If you are the defendant and you are in custody, you are entitled to appear by way of live link. The Court of Appeal, however, may direct that you appear in person.</i></p>

<p>2. Case details</p> <p>Venue of Crown Court:</p> <p>Name of Crown Court Judge:</p> <p>Name of the defendant (if not provided above):</p> <p>Name of any co-accused:</p> <p>Details of indictment:</p>	<p><i>Details of indictment includes the number of the indictment and details of the offences charged.</i></p>
<p>3. Ancillary applications</p> <p>State whether you are applying for:</p> <p>An extension of time in which to serve the respondent's notice under Rule 4(3) – Yes/No* <i>(If yes, give details)</i></p> <p>An order for the production of any document, exhibit or thing under Rule 6(1) – Yes / No* <i>(If yes, give details)</i></p>	
<p>4. Grounds</p> <p>Summarise why you oppose the appeal or application for leave to appeal specifying any authorities to be cited.</p>	

Dated this day of 20 .

Signed:
 Respondent (Solicitor for respondent)

* Delete as appropriate

NOTES

This form should be served on the proper officer, the chief clerk, the appellant and any other party to the proceedings directly affected by the order or ruling within 7 days of the date on which the notice of appeal or application for leave to appeal was served.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

NOTICE OF ABANDONMENT OF PROCEEDINGS
[Section 47 of the Criminal Justice Act 2003] [Section 18A of the Domestic Violence, Crime
and Victims Act 2004]*

To the Master (Queen's Bench and Appeals) (the proper officer)
Court of Appeal
Royal Courts of Justice
BELFAST
BT1 3JF

<i>Details required</i>	<i>Notes</i>
<p>1. Case details</p> <p>Venue of Crown Court:</p> <p>Name of Crown Court Judge:</p> <p>Name of the defendant:</p> <p>Name of any co-accused:</p> <p>Details of indictment:</p>	<p><i>Details of indictment includes the number of the indictment and details of the offences charged.</i></p>
<p>2. Details of the ruling</p> <p>The ruling(s)/order(s) that is (are) the subject of the appeal are as follows:</p> <p>Date on which ruling(s)/order(s) made:</p> <p>Date that leave to appeal was granted/refused:</p> <p>If applicable, date of written notice of appeal:</p>	

**DETERMINATION BY THE PROPER OFFICER OR A SINGLE JUDGE
[AND NOTICE OF RENEWAL]**

[Section 47 of the Criminal Justice Act 2003] [Section 18A of the Domestic Violence, Crime
and Victims Act 2004]*

PART A

<i>Details required</i>	<i>Notes</i>
<p>1. Details of the applicant</p> <p>Name:</p> <p>Address:</p> <p>In the case of a defendant in custody, please give your prison number and the address of the establishment in which you are detained:</p>	
<p>ORDER BY [PROPER OFFICER] [SINGLE JUDGE OF THE COURT]*</p> <p>2. Application considered</p> <p><input type="checkbox"/> Application for leave to appeal.</p> <p><input type="checkbox"/> Application to extend the time for service of notice of appeal or of an application for leave to appeal under rule 3(3).</p> <p><input type="checkbox"/> Application to extend the time for service of the respondent's notice under rule 4(3).</p> <p><input type="checkbox"/> Application for a direction that a person in custody be present in person at the hearing of the appeal or application for leave to appeal under rule 5(1).</p> <p><i>(tick where appropriate)</i></p>	
<p>3. Decision:</p>	<p><i>If an application has been refused, it may be renewed for consideration by a single judge of the Court (if the decision was made by the proper officer) or by the Court (if the decision was made by a single judge of the Court).</i></p>

	<i>The applicant must fill in Part B of this form and return it to the proper officer.</i>
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Dated this day of 20 .

Master (Queen’s Bench and Appeals)(the proper officer)

PART B

NOTICE OF RENEWAL

**To the Master (Queen’s Bench and Appeals)(the proper officer)
Appeals and Lists Office
Court of Appeal
Royal Courts of Justice
BELFAST
BT1 3JF**

<p>4. Notice of Renewal</p> <p>The following application(s) are renewed:</p> <p>The date that this form was delivered to the applicant:</p>	<p><i>Applicants must use this section for the renewal of applications.</i></p> <p><i>An application not renewed in time will be treated as if it were refused by the full Court.</i></p> <p><i>Notice of the renewal must be served on the proper officer within 7 days of the date on which notice of the decision was served on the party making the application, unless a longer period has been specified.</i></p>
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EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedures which apply in the Court of Appeal in relation to appeals under section 47 of the Criminal Justice Act 2003 (“the 2003 Act”) or section 18A of the Domestic Violence, Crime and Victims Act 2004 (“the 2004 Act”).

Section 47 of the 2003 Act provides for a right of appeal to the Court of Appeal against—

- (a) the refusal by a judge of an application for a trial to be conducted without a jury where there is a danger of jury tampering or an order of a judge made on the determination of such an application, or
- (b) an order by a judge under section 46(3) or (5) of the 2003 Act that a trial should be conducted or continued without a jury where there is evidence that jury tampering has taken place.

Section 18A of the 2004 Act provides for a right of appeal to the Court of Appeal against the refusal by a judge of an application for trial by jury of sample counts only or an order of a judge made on the determination of such an application,

Rule 3 prescribes the manner in which, and the time at which, notice of appeal (where the judge of the Crown Court has granted leave) or application for leave to appeal shall be given. It also prescribes the documents which should accompany the notice and provides that the Court may extend the time within which the notice of appeal or application for leave to appeal shall be given.

Rule 4 provides that a respondent may oppose the appeal or application for leave to appeal by serving a notice of his opposition in Form 2. It also prescribes the time within which the respondent’s notice shall be served and provides that the Court may extend this time limit.

Rules 5 to 14 make supplementary provision.