

# **COURTS ACT 2003**

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## **EXPLANATORY NOTES**

### **BACKGROUND**

#### ***Provisions relating to criminal procedure and appeals***

##### ***Appeals to Court of Appeal: procedural directions***

204. This section inserts new sections into the Criminal Appeal Act 1968 (CAA 1968) to extend the powers of (a) a single judge in the Court of Appeal Criminal Division and (b) the Registrar of the Court of Appeal Criminal Division prior to determination by the full court of an appeal or application for leave to appeal. New section 31B will enable either a single judge or the Registrar to give procedural directions that need not trouble the full court, thus reducing delay. Section 31C provides, in the case of a decision of a single judge, for the appellant, or under specified circumstances, the prosecution, to apply to the full court to review such a direction. Section 31C also provides for the decision by the Registrar to be reviewed by a single judge in the first instance, or if the defence or prosecution so wish, further reviewed by the full court.
205. In the Court of Appeal Criminal Division, single judges consider applications for leave to appeal and act as a 'filter' by carrying out certain specified functions of the full Court of Appeal. Section 31 of the CAA 1968 lists the powers of the Court of Appeal which may be exercised by a single judge. However, the inability of the single judge to make a broader range of procedural directions for the conduct and progress of an appeal can lead to delay and unnecessary complication.
206. The Auld Review recommended that a judge of the Court of Appeal should be empowered, when considering applications for leave to appeal, to give procedural directions for the hearing of the application or of the appeal that need not trouble the full court, subject to a right on the part of the applicant or the prosecution, as the case may be, to renew the application to the full court.
207. The role of the Registrar of Criminal Appeals, who is also the Registrar of the Courts-Martial Appeal Court, currently combines both judicial and administrative functions. The Registrar has ultimate responsibility for the management and running of the Criminal Appeal Office, which has a staff of 150. The Registrar also provides a key reference point for the judiciary in the criminal justice system. He undertakes the judicial responsibilities listed in section 31A of the Criminal Appeal Act 1968. In the future, the judicial and administrative functions of the posts of Registrar of Criminal Appeals and Registrar of the Courts-Martial Appeal Court will be separated so that they become more clearly judicial offices. The Registrar's administrative duties will fall to appropriate Court Service staff. These changes will come into effect upon the appointment of the next office holder.
208. The aim is to enable the Registrar to give procedural directions for the preparation or hearing of the application or of the appeal, subject to a right on the part of the applicant or the prosecution, as the case may be, to submit the matter to a single judge for review. However, the intention is also to enable the Lord Chief Justice to further define by practice direction the use and operation of the Registrar's power to make procedural

directions. This would allow maximum flexibility in responding to the changing needs of the Court of Appeal Criminal Division.

### ***Prosecution appeals from Court of Appeal***

209. The Act amends section 2 of the Administration of Justice Act 1960 and section 34 of the CAA 1968 by extending the time in which an application by either the defence or the prosecution for leave to appeal from a decision of the Court of Appeal Criminal Division can be made. It also makes clear that time begins to run against either the prosecution or the defendant from the date of the Court of Appeal's reasoned judgment, rather than from the date of the Court's decision. The Act makes provision with the same effect in relation to Northern Ireland by amending paragraph 1 of Schedule 1 to the Judicature (Northern Ireland) Act 1978 and section 32 of the Criminal Appeal (Northern Ireland) Act 1980.
210. The Auld Review recommended that section 34(2) of the CAA 1968 should be amended to empower the House of Lords and Court of Appeal, as the case may be, to extend the time within which a prosecutor may apply for leave to appeal, as it does in the case of a defendant.
211. There is a disparity between a defendant and a prosecutor as to the operation of the time limits within which each may petition the House of Lords for leave to appeal where the Court of Appeal, having certified a point of law of general public importance, has refused leave. Both have 14 days from the decision of the Court of Appeal to apply to it for leave and, if leave is refused by the Court, a further 14 days from the date of refusal to petition the House of Lords. Whilst the House or the Court have power at any time to extend a defendant's time for application for leave, neither has power to do so if the prosecutor wishes leave but fails to apply within time. The Act will now give both the defence and the prosecution an extra 14 days. However, it was not considered appropriate to accept the recommendation that the prosecution should be able to apply for an extension of time – this would leave a defendant with the indefinite possibility of the original conviction being restored by the House of Lords.

### ***Retirement age of the Registrar of Criminal Appeals***

212. This section brings the retirement age of the Registrar of Criminal Appeals into line with that for other judicial office holders (i.e. a normal compulsory retirement age of 70 for those appointed after the implementation of the Judicial Pensions and Retirement Act 1993 (JPRA 1993) in March 1995). Currently the registrar must retire at the age of 62. This is not only out of line with the retirement age for judicial office-holders generally but also inconsistent with the terms of the judicial pension scheme under which benefits are normally only payable at the age of 65.