
STATUTORY INSTRUMENTS

2003 No. 82

The Proceeds of Crime Act 2002
(Appeals under Part 2) Order 2003

PART 2—

APPEALS TO COURT OF APPEAL

Initiating procedure

3.—(1) A person who wishes to obtain the leave of the Court of Appeal to appeal to the Court of Appeal under Part 2 of the Act shall give notice of application for leave to appeal, in such manner as may be directed by rules of court.

(2) Notice of application for leave to appeal shall be given within—

- (a) 28 days from the date of the decision appealed against, in the case of an appeal under section 31 of the Act; or
- (b) 14 days from the date of the decision appealed against, in the case of an appeal under section 43 or 65 of the Act.

(3) The time for giving notice under this article may be extended by the Court of Appeal.

Disposal of groundless appeal or application for leave to appeal

4. If it appears to the registrar that a notice of application for leave to appeal to the Court of Appeal under Part 2 of the Act does not show any substantial ground of appeal, he may refer the application for leave to the Court of Appeal for summary determination; and where the case is so referred the Court of Appeal may, if they consider that the application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the application for leave summarily, without calling on anyone to attend the hearing.

Preparation of case for hearing

5.—(1) The registrar shall—

- (a) take all necessary steps for obtaining a hearing of any application for leave to appeal to the Court of Appeal under Part 2 of the Act of which notice is given to him and which is not referred and dismissed summarily under article 4;
- (b) where an application for leave to appeal to the Court of Appeal under Part 2 of the Act is granted, take all necessary steps for obtaining a hearing of an appeal; and
- (c) 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 application for leave to appeal under Part 2 of the Act or the appeal under Part 2 of the Act.

(2) A party to an appeal under Part 2 of the Act may obtain from the registrar any documents or things, including copies or reproductions of documents, required for his appeal, in accordance with rules of court.

(3) The registrar may make charges in accordance with such rules of court and with scales and rates fixed from time to time by the Treasury.

Right of defendant to be present

6.—(1) The defendant shall be entitled to be present, if he wishes it, on the hearing of any appeal to the Court of Appeal under Part 2 of the Act to which he is a party, although he may be in custody.

(2) But if the defendant is in custody, he shall not be entitled to be present—

- (a) where the appeal is on some ground involving a question of law alone; or
- (b) on an application for leave to appeal; or
- (c) on any proceedings preliminary or incidental to an appeal,

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

Evidence

7.—(1) For the purposes of an appeal under Part 2 of the 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 appeal;
- (b) order any witness to attend for examination and be examined before the Court of Appeal; and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(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 the proceedings giving rise to the appeal.

(3) 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 paragraph (1)(b) to be conducted 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.

Powers of Court of Appeal which are exercisable by single judge

8.—(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 the powers—

- (a) to give leave to appeal to the Court of Appeal under Part 2 of the Act;
- (b) to extend the time within which notice of application for leave to appeal may be given under article 3(3);
- (c) to allow, under article 6, the defendant to be present at any proceedings which he would not otherwise be entitled to attend; and
- (d) to order a witness to attend for examination under article 7.

(2) If the single judge refuses an application on the part of any party to exercise in his favour any of the powers specified in paragraph (1), the party shall be entitled to have his application determined by the Court of Appeal.

Powers of Court of Appeal which are exercisable by registrar

9.—(1) The following powers of the Court of Appeal under this Order may be exercised by the registrar—

- (a) the power to extend the time within which notice of application for leave to appeal may be given under article 3(3); and
- (b) the power to order a witness to attend for examination under article 7.

(2) If the registrar refuses an application on the part of any party to exercise in his favour any of the powers specified in paragraph (1), the party shall be entitled to have his application determined by a single judge.

Transcripts

10.—(1) Arrangements may be made in accordance with rules of court—

- (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 to the Court of Appeal under Part 2 of the Act; 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.

(2) Without prejudice to paragraph (1), 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 arrangements and be supplied to him.

(3) The cost—

- (a) of making any such record in pursuance of the arrangements; and
- (b) of making and supplying in pursuance of this article 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.