

---

STATUTORY INSTRUMENTS

---

**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 65**

**APPEAL TO THE COURT OF APPEAL AGAINST  
RULING IN PREPARATORY HEARING**

**Contents of this Part**

---

Notice of appeal	rule 65.1
Respondent's notice	rule 65.2
Persons in custody	rule 65.3
Supply of documentary and other exhibits	rule 65.4
Abandonment of proceedings	rule 65.5
Powers exercisable by single judge	rule 65.6
Determination by full court	rule 65.7
Notice of determination of court	rule 65.8
Service of documents	rule 65.9
The Registrar	rule 65.10

---

**Notice of appeal**

**65.**—(1) An application to the judge of the Crown Court for leave to appeal under section 9(11) of the Criminal Justice Act 1987(1) or section 35(1) of the Criminal Procedure and Investigations Act 1996(2) shall be made orally within two days of the making of the order or ruling to which it relates.

(2) Unless the application is made on the occasion of the order or ruling to which it relates, the appellant shall serve notice in writing thereof, specifying the grounds of the application, on the Crown Court officer and on all parties to the hearing directly affected by the order or ruling in question.

(3) The appellant shall no later than the day referred to in paragraph (4) serve notice of appeal from an order or ruling under section 9(11) of the 1987 Act or section 31(3) of the 1996 Act or, as the case may be, of an application to the Court of Appeal for leave to appeal from such a ruling on—

- (a) the Registrar;
- (b) the Crown Court officer; and

---

(1) 1987 c. 38; section 9(11) is amended by the Criminal Justice Act 2003 (c. 44), sections 45(1), (5) and 310(3) with effect from a date to be appointed.

(2) 1996 c. 25; section 35(1) is amended by the Criminal Justice Act 2003 (c. 44), sections 45(1) and (9), and section 31(3) by the Criminal Justice Act 2003 (c. 44), section 310(5), with effect from a date to be appointed.

- (c) all parties to the preparatory hearing directly affected by the said order or ruling.
- (4) The day referred to is—
- (a) the day which occurs seven days after the making of the order or ruling; or
  - (b) where an application is made to the judge of the Crown Court for leave to appeal under section 31(3) of the 1996 Act as in paragraph (1), the day which occurs 7 days after such application is determined or withdrawn.
- (5) The time for giving notice under paragraph (3) may be extended, before or after it expires, by the Court of Appeal.
- (6) A notice of appeal or of an application for leave to appeal, or an application to the Court of Appeal for an extension of time as referred to in paragraph (5), shall be in the form set out in the Practice Direction.
- (7) If notice in writing of an application for leave to appeal was, under paragraph (2), served on the Crown Court, a copy thereof shall accompany the notice of appeal or, as the case may be, of an application for leave to appeal required under paragraph (3) to be served on the Registrar.
- (8) Notice of appeal or of an application for leave to appeal may be given either in respect of the whole or any part of the order to which it relates and shall—
- (a) specify any question of law in respect of which the appeal is brought and, where appropriate, such facts of the case as are necessary for its proper consideration;
  - (b) summarise the arguments intended to be put to the Court of Appeal; and
  - (c) specify any authorities intended to be cited.
- (9) Where the judge of the Crown Court has given leave to appeal the notice of appeal shall state that fact and specify the grounds on which leave is given.
- (10) Notice of appeal or of an application for leave to appeal shall be accompanied by any documents or other things (or copies thereof) necessary for the proper determination of the appeal or application.

*[Note. Formerly rule 3 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988(3) and rule 3 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997(4).]*

### **Respondent's notice**

- 65.2.**—(1) Upon receiving notice of appeal or of an application for leave to appeal, the respondent if he desires to oppose the appeal, shall, within seven days of receipt of the notice, serve a notice in the form set out in the Practice Direction on the Registrar—
- (a) stating the date on which the appellant's notice was received by the respondent;
  - (b) summarising his response to the arguments of the appellant; and
  - (c) specifying the authorities which he intends to cite,

and shall at the same time serve a copy thereof on the appellant and any other party to the proceedings directly affected by the order or ruling and on the Crown Court officer.

- (2) The time for giving notice under this rule may be extended, either before or after it expires, by the Court of Appeal.

*[Note. Formerly rule 4 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 4 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

---

(3) [S.I. 1988/1700](#), modified by [S.I. 1991/2684](#).

(4) [S.I. 1997/1053](#), amended by [S.I. 1999/598](#).

### Persons in custody

**65.3.**—(1) A person in custody shall be entitled to be present on the hearing of an appeal, or an application for leave to appeal, under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996, to which he is a party.

(2) Except as provided by paragraph (1) above, a person in custody shall not be entitled to be present on the hearing of an appeal, or an application for leave to appeal, under section 9(11) of the 1987 Act or section 35(1) of the 1996 Act except—

- (a) on an application to the Crown Court for leave to appeal, with the leave of the judge; or
- (b) on an appeal, or an application to the Court of Appeal for leave to appeal, with the leave of that Court.

(3) An application for leave to be present under paragraph (2) shall be made—

- (a) where paragraph (2)(a) applies, orally to the judge;
- (b) where paragraph (2)(b) applies, by serving notice in the form set out in the Practice Direction on the Registrar, or orally to the Court.

*[Note. Formerly rule 5 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 5 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### Supply of documentary and other exhibits

**65.4.** Rule 68.11 (supply of documentary and other exhibits) shall apply in relation to an appellant and a respondent under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 as it applies in relation to an appellant and a respondent under Part I of the Criminal Appeal Act 1968(5).

*[Note. Formerly rule 6 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 6 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### Abandonment of proceedings

**65.5.** Rule 68.22 (abandonment of proceedings) shall apply for the purposes of an appeal or an application for leave to appeal by an appellant under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 as it applies to an appeal or application for leave under Part I of the Criminal Appeal Act 1968, except that—

- (a) notice thereof shall be served on the Registrar in the alternative form set out in the Practice Direction; and
- (b) the requirement under rule 68.22(3) for the Registrar to send a copy of a notice of abandonment of proceedings to the Secretary of State shall be omitted.

*[Note. Formerly rule 7 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 7 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### Powers exercisable by single judge

**65.6.**—(1) The following powers may be exercised by a judge of the court in the same manner as they may be exercised by the court and subject to the same provisions, namely—

- (a) to give leave to appeal under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996;
- (b) to extend, under rule 65.1, the time within which notice of appeal or of an application for leave to appeal must be given;
- (c) to extend the time within which a notice under rule 65.2 of opposition to an appeal or application for leave to appeal must be given by the respondent; and
- (d) to give leave, in pursuance of rule 65.3, for a person in custody to be present at any proceedings.

(2) A judge of the court shall, for the purpose of exercising any of the powers specified above, sit in such place as he appoints, and may sit otherwise than in open court.

*[Note. Formerly rule 8 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 8 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

#### **Determination by full court**

**65.7.**—(1) Where a judge of the court has refused an application on the part of an applicant to exercise in his favour any of the powers referred to in rule 65.6, the applicant may have the application determined by the court by serving a notice in the form set out in the Practice Direction on the Registrar within 7 days, or such longer period as a judge of the court may fix, from the date on which notice of the refusal was served on him by the Registrar.

(2) The notice shall be signed by, or on behalf of, the applicant.

(3) If the notice is not signed by the applicant and the applicant is in custody, the Registrar shall, as soon as practicable after receiving the notice, send a copy of it to the applicant.

(4) If such a notice is not served on the Registrar within the said 7 days or such longer period as a judge of the court may fix, the application shall be treated as having been refused by the court.

*[Note. Formerly rule 9 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 9 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

#### **Notice of determination of court**

**65.8.**—(1) The Registrar shall, as soon as practicable, serve notice of any determination by the Court of Appeal or by any judge of the court under rule 65.6 on—

- (a) the applicant;
- (b) the respondent; and
- (c) and any other party who is directly affected by the ruling to which the appeal or application relates,

and notice of a determination by a single judge under rule 65.6 shall be served in the form set out in the Practice Direction.

(2) The Registrar shall, as soon as practicable, serve notice on the Crown Court officer at the place of trial of the order of the Court of Appeal disposing of an appeal or application for leave to appeal.

*[Note. Formerly rule 10 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 10 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

## Service of documents

**65.9.**—(1) Subject to paragraphs (2) to (4), rule 68.1 (service of documents) shall apply for the purposes of an appeal or an application for leave to appeal under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 as it applies for the purposes of Part I of the Criminal Appeal Act 1968.

(2) Where any document is required under this Part to be served on any party to the proceedings and that party is acting by a solicitor, service of the document may be effected by delivering it, or sending it by post, to the solicitor’s address for service.

(3) Where there is inscribed on the writing paper of the person to be served with a document or on the writing paper of his solicitor (where the person to be served is a party to the proceedings and is acting by a solicitor) a document exchange box number, and that person or his solicitor (as the case may be) has not indicated in writing to the person serving the document that he is unwilling to accept service through a document exchange, service of the document may be effected by leaving the document addressed to the numbered box of that person or his solicitor at the document exchange in question or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(4) In this rule:

“document exchange” means any document exchange for the time being approved by the Lord Chancellor for the purposes of the service of documents;

“business day” means a day other than a day which is to be excluded for the purposes of reckoning a period of 7 days or less; and

“solicitor” includes a body corporate which is recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 (6) (a “recognised body”) and, in the case of a recognised body, the reference in paragraph (2) above to the solicitor’s address for service shall be construed as a reference to the address specified by the recognised body as its address for the purposes of the proceedings relating to the appeal or application for leave to appeal under section 35(1) of the 1996 Act (including an address specified for the general purposes of the criminal proceedings in relation to which the appeal or application for leave to appeal is made), or, in the absence of such a specified address, to its registered office.

*[Note. Formerly rule 11 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 11 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

## The Registrar

**65.10.**—(1) The Registrar may require the Crown Court at the place of trial to furnish the Court of Appeal with any assistance or information which it may require for the purpose of exercising its jurisdiction.

(2) Subject to paragraphs (3) and (4) the Registrar shall give as long notice in advance as reasonably possible of the date of hearing of any appeal or application—

(a) to the appellant; and

(b) to the respondent and any other party directly affected by the order or ruling to which the appeal or application relates.

(3) Paragraph (2) shall not apply to proceedings before a judge of the court under rule 65.6.

---

(6) 1985 c. 61; section 9 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 54.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

(4) Where a party to whom notice is required to be given by this rule is at the material time in custody, notice shall instead be given to the person having custody of him.

*[Note. Formerly rule 12 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 12 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*