

---

STATUTORY INSTRUMENTS

---

**2005 No. 384**

The Criminal Procedure Rules 2005

PART 66

APPEAL TO THE COURT OF APPEAL AGAINST  
RULING ADVERSE TO PROSECUTION

**Contents of this Part**

---

Interpretation	rule 66.1
Request for adjournment	rule 66.2
Application to the judge of the court for leave to appeal	rule 66.3
Expedited appeal	rule 66.4
Notice of appeal or application for leave to appeal	rule 66.5
Defendant's response	rule 66.6
Defendants in custody	rule 66.7
Public interest rulings	rule 66.8
Supply of documentary and other exhibits	rule 66.9
Abandonment of proceedings	rule 66.10
Powers exercisable by a single judge	rule 66.11
Powers exercisable by the Registrar	rule 66.12
Determination by full Court Service	rule 66.13
Notice of hearing and determination of the Court of Appeal	rule 66.14
Assistance from the Crown Court Service	rule 66.15
Appeal to the House of Lords	rule 66.16
Service	rule 66.17

---

**Interpretation**

**66.1.** In this Part:

“appeal” means an appeal against a ruling under section 58 of the Criminal Justice Act 2003(1) and “application for leave to appeal” should be construed accordingly;

“business day” means any day other than a Saturday, Sunday, Christmas Day or Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(2) in England and Wales;

“defendant” means a party in whose favour the ruling was made which is the subject of the appeal;

“interested party” means a person other than the defendant who—

- (a) is a party to the proceedings in the Crown Court;
- (b) may be affected by the decision of the trial judge under section 59(1) of the 2003 Act as to whether or not the appeal should be expedited; and
- (c) is permitted by the trial judge or the Court of Appeal to make representations on that issue;

“judge of the court” means the judge of the Crown Court with conduct of the proceedings; and

“public interest ruling” means a ruling under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(3) that it is in the public interest to disclose material in the possession of the prosecutor.

### **Request for adjournment**

**66.2.**—(1) A request by the prosecutor for an adjournment under section 58(4)(a)(ii) of the Criminal Justice Act 2003 must be made to the judge of the court immediately following the making of a ruling to which section 58 of that Act refers, unless paragraph (2) applies.

(2) If that ruling is a ruling of no case to answer, an application by the prosecutor under paragraph (1) must be made immediately following that ruling of no case to answer notwithstanding that the prosecutor may also nominate earlier rulings to be the subject of an appeal.

(3) The judge of the court shall grant the request unless it is in the interests of justice for the prosecutor to indicate immediately whether or not he intends to seek leave to appeal.

(4) The adjournment shall be until the next business day after the day on which the ruling was given, unless the interests of justice require a longer adjournment.

(5) Subject to rule 66.8, as soon as is reasonably practicable after the prosecutor informs the judge of the court that he intends to seek leave to appeal or requests an adjournment to consider whether to do so, the court officer shall provide a transcript of the ruling which is the subject of the proposed appeal to—

- (a) the prosecutor;
- (b) the defendant; and
- (c) any interested party.

### **Application to the judge of the court for leave to appeal**

**66.3.**—(1) The prosecutor must inform the judge of the court immediately after the ruling or the adjournment if he intends to seek leave to appeal against a ruling and at the same time he may apply orally for leave to appeal.

(2) Before deciding whether or not to grant leave to appeal, the judge of the court shall hear oral representations from the defendant.

---

(1) 2003 c. 44.

(2) 1971 c. 80.

(3) 1996 c. 25; section 7A(8) is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.

(3) The judge of the court shall decide whether or not to give leave to appeal on the same day on which an oral application for leave to appeal is made to that judge.

(4) The judge of the court may extend the period under paragraph (3) only if it is in the interests of justice to do so.

(5) If the judge of the court gives leave to appeal he must issue a certificate in the form set out in the Practice Direction and the court officer must forward that certificate to the Registrar.

### **Expedited appeal**

**66.4.**—(1) At the time when the prosecutor informs the judge of the court that he intends to seek leave to appeal against a ruling, he must also make oral representations as to whether or not that appeal should be expedited under section 59(1) of the Criminal Justice Act 2003.

(2) Before deciding whether or not the appeal should be expedited, the judge of the court shall hear oral representations from the defendant or any interested party.

(3) The court officer must provide a copy of the reasons given by the judge of the court, for his decision whether or not the appeal should be expedited, to the prosecutor, the defendant and all interested parties.

(4) The judge of the court may reverse his decision that the appeal should be expedited at any time before notice of appeal or application for leave to appeal is served on the Crown Court under rule 66.5(1) and must provide reasons for that reversal in writing to the prosecutor, the defendant and all interested parties.

(5) At any time after notice of appeal or application for leave to appeal has been served on the Registrar under rule 66.5(1), the prosecutor or defendant may invite the Court of Appeal to reverse a judge's decision that the appeal should be expedited under section 59(4) of the 2003 Act and written notice of such an application must be served on—

- (a) the Registrar;
- (b) the court officer;
- (c) the prosecutor
- (d) the defendant; and
- (e) any interested party.

### **Notice of appeal or application for leave to appeal**

**66.5.**—(1) Subject to rule 66.8, a notice of appeal (where the judge of the court has granted leave) or notice of application for leave to appeal shall be in the form prescribed in the Practice Direction and must be served by the prosecutor on—

- (a) the Registrar;
- (b) the court officer;
- (c) the defendant; and
- (d) any interested party.

(2) Notice of appeal or application for leave to appeal must be served—

- (a) where the judge of the court has decided that the appeal should be expedited under section 59(1) of the Criminal Justice Act 2003 and that decision has not been subsequently reversed, before 5.00 p.m. on the day on which the prosecutor informs the judge of the court that he intends to seek leave to appeal or, if the prosecutor demonstrates to that judge that it is not practical to do so, before 5.00 p.m. on the next business day; or

- (b) in any other case, within seven business days of the day on which the prosecutor informs the judge of the court that he intends to seek leave to appeal.
- (3) The Court of Appeal may extend the period for service under paragraph (2), either before or after it expires, on application by the prosecutor.
- (4) Notice of appeal or application for leave to appeal must be accompanied by any documents necessary for the proper determination of the appeal or application for leave to appeal including—
  - (a) transcript of the ruling which is the subject of the appeal;
  - (b) the skeleton arguments provided to the judge of the court by the parties in respect of the issue which gave rise to the ruling; and
  - (c) if the appeal is to be expedited, a copy of the reasons given by the judge of the court under rule 66.4(3).
- (5) Subject to rule 66.8, the notice of appeal or application for leave to appeal served on the defendant must be accompanied by the form set out in the Practice Direction for the defendant to complete if he wishes to oppose the appeal or application.

#### **Defendant's response**

- 66.6.**—(1) Upon receiving notice of an appeal or application for leave to appeal, the defendant if he wishes to oppose the appeal or application, must serve his response in the form set out in the Practice Direction on the—
- (a) Registrar;
  - (b) court officer;
  - (c) prosecutor; and
  - (d) any interested party.
- (2) A defendant's response must be served on those listed in paragraph (1)—
- (a) on the next business day after the day on which the notice of appeal or application for leave to appeal is served on the defendant, where the judge of the court has decided that the appeal should be expedited under section 59(1) of the Criminal Justice Act 2003 and that decision has not been subsequently reversed under section 59(4) of that Act; or
  - (b) within seven business days of the day on which notice of the appeal or application for leave to appeal is served on the defendant in any other case.
- (3) The Court of Appeal may extend the period of service under paragraph (2) either before or after it expires.

#### **Defendants in custody**

- 66.7.**—(1) A defendant 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 of Appeal so directs.
- (2) However, a defendant in custody may participate in such a hearing, without a direction of the Court of Appeal, by way of live television link if he is able to see and hear the court and to be seen and heard by it.
- (3) In directing whether a defendant in custody shall be present in person under paragraph (1) the Court of Appeal must take into account—
- (a) any representations of the prosecutor and the defendant;
  - (b) the availability and reliability of live television link facilities;
  - (c) any practical difficulties with the physical attendance of the defendant; and

(d) whether or not the appeal is expedited under section 59 of the Criminal Justice Act 2003.

### **Public interest rulings**

**66.8.**—(1) This rule applies where a public interest ruling is the subject of an appeal or application for leave to appeal.

(2) In any appeal or application for leave to appeal against a public interest ruling, the prosecutor need not describe the material that is the subject of the ruling in the notice of appeal or application for leave to appeal under rule 66.5.

(3) Where the prosecutor has reason to believe that to reveal to the defendant or any interested party the category of material that is the subject of the public interest ruling would have the effect of disclosing that which the prosecutor considers should not be disclosed, the prosecutor need not describe the category of the material in the notice of appeal or application for leave to appeal under rule 66.5.

(4) Where the prosecutor has reason to believe that to reveal to the defendant or to any other interested party the fact that a public interest ruling has been made would have the effect of disclosing that which the prosecutor considers should not be disclosed, the prosecutor need not serve notice of appeal or application for leave to appeal on the defendant or any interested party as otherwise required under rule 66.5, unless the Court of Appeal otherwise directs.

(5) Where the prosecutor has taken the measures set out in paragraphs (2), (3) or (4), the notice of appeal or application for leave to appeal served on the Registrar under rule 66.5(1)(a), must be accompanied by a confidential annexe indicating that the measures have been taken and giving the prosecutor's reasons for taking them.

(6) Where the prosecutor has taken the measures set out in paragraph (4), the defendant shall not be entitled to be present in person at the hearing by the Court of Appeal of the appeal or application for leave to appeal, or appear by way of live television link, unless the Court of Appeal otherwise directs.

### **Supply of documentary and other exhibits**

**66.9.**—(1) The Registrar must, on request, supply to the prosecutor, the defendant or any interested party copies of documents or other exhibits required for the appeal or application for leave to appeal and may make charges in accordance with scales and rates fixed for the time being by the Treasury.

(2) The Registrar must, on request, make arrangements for the prosecutor, the defendant or any interested party to inspect any document or other exhibit required for the appeal.

(3) This rule shall not apply to the supply of transcripts of proceedings.

(4) This rule shall not require the Registrar to supply to the defendant or any interested party, or allow the defendant or any interested party to inspect—

- (a) material that is the subject of a public interest ruling;
- (b) a notice of appeal served by the prosecutor on the Registrar in accordance with rule 66.8(4);  
or
- (c) a confidential annexe served by the prosecutor on the Registrar in accordance with rule 66.8(5),

unless the Court of Appeal otherwise directs.

### **Abandonment of proceedings**

**66.10.** An appeal or application for leave to appeal (including an application for leave to appeal to the House of Lords) may be abandoned by the prosecutor before it is heard by the Court of Appeal by serving notice in writing on the Registrar in the form set out in the Practice Direction.

### **Powers exercisable by a single judge**

**66.11.**—(1) The following powers may be exercised by a single judge in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions—

- (a) to give leave to appeal under section 57(4) of the Criminal Justice Act 2003;
- (b) to reverse a decision of the judge of the court that an appeal should be expedited under section 59(4) of that Act;
- (c) to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 66.5(3);
- (d) to extend time for service of the defendant’s response under rule 66.6(3);
- (e) to direct that the defendant in custody be present in person at the hearing of the appeal or application for leave to appeal under rule 66.7(1); and
- (f) to order the acquittal of the defendant and, where appropriate, his release from custody and order payment of his costs where the prosecution has served a notice of abandonment under rule 66.10.

(2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.

(3) Where a single judge exercises one of the powers set out in paragraph (1), the Registrar must serve notice of the single judge’s decision on—

- (a) the prosecutor;
- (b) the defendant;
- (c) any interested party; and
- (d) the court officer.

### **Powers exercisable by the Registrar**

**66.12.**—(1) The following powers may be exercised by the Registrar in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions—

- (a) to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 66.5(3); and
- (b) to extend time for service of the defendant’s response under rule 66.6(3).

(2) Where the Registrar exercises one of the powers set out in paragraph (1), the Registrar must serve notice of that decision on—

- (a) the prosecutor;
- (b) the defendant;
- (c) any interested party; and
- (d) the court officer.

(3) Where the Registrar has refused an application to exercise any of the powers referred to in paragraph (1), the party making the application may have it determined by a single judge by serving a renewal in the form set out in the Practice Direction within seven business days of the day on which notice of the single judge’s decision is served on that party.

### **Determination by full court**

**66.13.**—(1) Where a single judge has refused an application to exercise any of the powers referred to in rule 66.11, the party making the application may have it determined by the Court of Appeal by serving a notice of renewal in the form set out in the Practice Direction.

(2) Notice of renewal must be served on the Registrar within seven business days of the day on which notice of the single judge's decision is served on the party making the application.

(3) The Court of Appeal may extend the period for service under paragraph (2) either before or after it expires.

(4) A notice of renewal must be signed by, or on behalf of, the person making the application. If the notice is not signed by the party making the application and that party is in custody, the Registrar shall, as soon as practicable after receiving the notice, send a copy of it to that party.

(5) If the notice of renewal is not served on the Registrar within the period specified in paragraph (2) or such extended period as the Court of Appeal has allowed under paragraph (3), the application shall be treated as having been refused by the court.

### **Notice of hearing and determination of the Court of Appeal**

**66.14.**—(1) The Registrar must give notice, as far in advance as reasonably practicable, of the date fixed for the hearing by the Court of Appeal of an appeal or application to—

- (a) the prosecutor;
- (b) the defendant;
- (c) any interested party; and
- (d) the court officer.

(2) The Registrar must, as soon as reasonably practicable, serve notice of a decision of the Court of Appeal on an appeal or application on those parties listed in paragraph (1).

(3) Where a party to whom notice is required to be given under this rule is in custody, notice must instead be given to the person having custody of him.

### **Assistance from the Crown Court**

**66.15.** The Registrar may require the court officer to furnish the Court of Appeal with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 9 of the Criminal Justice Act 2003.

### **Appeal to the House of Lords**

**66.16.**—(1) An application to the Court of Appeal for leave to appeal to the House of Lords under Part 9 of the Criminal Justice Act 2003 may be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the House of Lords; or
- (b) in writing and served on the Registrar within seven business days of the reasons for the decision.

(2) If leave to appeal to the House of Lords is granted by the Court of Appeal, or a party has made an application to the House of Lords for leave, in a case where the judge of the court has decided that the appeal should be expedited under section 59(1) of the 2003 Act and that decision has not subsequently been reversed under section 59(4) of that Act, the Registrar must inform the court officer that the jury must be discharged from giving a verdict in respect of that defendant.

## Service

**66.17.**—(1) Where this Part requires service of a document on the Registrar then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant or interested party who is in custody, by delivering it to the person who has custody of him; or
- (b) by addressing it to the Registrar and delivering it at, or sending it by first class post or fax or other means of electronic communication, to his office at the Royal Courts of Justice, London WC2A 2LL.

(2) Where this Part requires service of a document on the court officer then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant or interested party who is in custody, by delivering it to the person who has custody of him; or
- (b) by delivering it to, or sending it by first class post or fax or other means of electronic communication, to the court officer at the Crown Court centre at which the ruling appealed against was made.

(3) A person who has custody of a defendant or interested person and to whom the defendant or interested person delivers a document under paragraph (1)(a) or (2)(a), must endorse on it the date of delivery and forward it to the Registrar or the court officer, as the case may be.

(4) Where this Part requires the service of a document on any other person then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) personally on that person or their solicitor;
- (b) by first class post to that person's last known residence or place of business or to their solicitor's business address;
- (c) leaving it at that person's last known residence or place of business;
- (d) if the party has indicated that he is willing to accept service by fax or other means of electronic communication, by sending a legible copy of the document by such means to that party; or
- (e) where the person or their solicitor has given a number of a box at a document exchange and has not indicated that they are unwilling to accept service through a document exchange, by leaving it at the document exchange addressed to the box number.

(5) Where a document is served under this Part by any method other than personal service it is deemed to be served—

- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
- (b) in the case of a document sent by first class post, on the second business day after the day on which it was posted;
- (c) in the case of a document left at a document exchange, on the second business day after the day on which it was left;
- (d) in the case of a document transmitted by fax or other electronic means on a business day before 5 p.m. on that day; and
- (e) in the case of a document transmitted by fax or other electronic means at any time other than that specified in sub-paragraph (d), on the next business day after the day on which it was transmitted.



---

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

---