
STATUTORY INSTRUMENTS

2007 No. 2317 (L. 23)

**SUPREME COURT OF ENGLAND AND WALES
MAGISTRATES' COURTS,
ENGLAND AND WALES**

The Criminal Procedure (Amendment No. 2) Rules 2007

<i>Made</i>	- - - -	<i>26th July 2007</i>
<i>Laid before Parliament</i>		<i>8th August 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003⁽¹⁾, after consulting in accordance with section 72(1)(a) of that Act:

Citation, commencement and interpretation

1. These Rules may be cited as the Criminal Procedure (Amendment No. 2) Rules 2007 and shall come into force on 1st October 2007.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Criminal Procedure Rules 2005⁽²⁾.

Amendments to the Criminal Procedure Rules 2005

3. After rule 2.1(6) (When the rules apply), insert—

“(7) The rules in Parts 65, 66, 67, 68, 69 and 70 apply where an appeal, application or reference, to which one of those Parts applies, is made on or after 1st October 2007. In other cases the rules replaced by those rules apply.”

4. In rule 2.2(1) (Definitions)—

(a) at the appropriate place, insert—

(i) ““business day” means any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday;”;

(ii) ““live link” means an arrangement by which a person can see and hear, and be seen and heard by, the court when that person is not in court;”;

(1) 2003 c. 39.

(2) S.I.2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699.

- (iii) ““public interest ruling” means a ruling about whether it is in the public interest to disclose prosecution material under sections 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(3).”;
 - (b) at the end of the definition of “court officer”, omit “and”; and
 - (c) at the end of the definition of “Practice Direction”, for “.”, substitute “; and”.
5. In Part 13 (Dismissal of charges transferred or sent to the Crown Court), in the table of contents—
- (a) in the first column, omit “Service of documents”; and
 - (b) in the second column, omit “rule 13.6”.
6. In Part 15 (Preparatory hearings in case of serious fraud and other complex or lengthy cases in the Crown Court), in the table of contents—
- (a) in the first column, omit “Service”; and
 - (b) in the second column, omit “rule 15.6”.
7. In Part 34 (Hearsay evidence), in the table of contents—
- (a) in the first column, omit “Methods of giving notice”; and
 - (b) in the second column, omit “rule 34.6”.
8. In Part 35 (Evidence of bad character), in the table of contents—
- (a) in the first column, omit “Methods of giving notice”; and
 - (b) in the second column, omit “rule 35.7”.
9. In Part 37 (Summary trial)—
- (a) in the table of contents, in the second column—
 - (i) for “rule 37.6”, substitute “rule 37.7”, and
 - (ii) for “rule 37.7”, substitute “rule 37.8”;
 - (b) in the table of contents—
 - (i) in the first column, insert in the appropriate place “Application to change a plea of guilty”, and
 - (ii) in the second column, insert in the appropriate place “rule 37.6”;
 - (c) after rule 37.5 (Notice of intention to cite previous convictions), insert—

“Application to change a plea of guilty

37.6.—(1) The defendant must apply as soon as practicable after becoming aware of the grounds for making an application to change a plea of guilty, and may only do so before the final disposal of the case, by sentence or otherwise.

- (2) Unless the court otherwise directs, the application must be in writing and it must—
- (a) set out the reasons why it would be unjust for the guilty plea to remain unchanged;
 - (b) indicate what, if any, evidence the defendant wishes to call;
 - (c) identify any proposed witness; and
 - (d) indicate whether legal professional privilege is waived, specifying any material name and date.

- (3) The defendant must serve the written application on—
 - (a) the court officer; and
 - (b) the prosecutor.”;
 - (d) Renumber rule 37.6 (Preservation of depositions where offence triable either way is dealt with summarily) as rule 37.7; and
 - (e) Renumber rule 37.7 (Order of evidence and speeches: complaint) as rule 37.8.
- 10.** In Part 39 (Trial on indictment)—
- (a) In the table of contents—
 - (i) at the end of the first column, insert “Application to change a plea of guilty”, and
 - (ii) at the end of the second column, insert “rule 39.3”;
 - (b) In the note after rule 39.1 (Time limits for beginning of trials), omit “For time limits for the listing of plea and directions hearings see direction IV.42 in the Practice Direction.”; and
 - (c) after rule 39.2 (Appeal against refusal to excuse from jury service or to defer attendance), insert—

“Application to change a plea of guilty

39.3.—(1) The defendant must apply as soon as practicable after becoming aware of the grounds for making an application to change a plea of guilty, and may only do so before the final disposal of the case, by sentence or otherwise.

- (2) Unless the court otherwise directs, the application must be in writing and it must—
 - (a) set out the reasons why it would be unjust for the guilty plea to remain unchanged;
 - (b) indicate what, if any, evidence the defendant wishes to call;
 - (c) identify any proposed witness; and
 - (d) indicate whether legal professional privilege is waived, specifying any material name and date.
 - (3) The defendant must serve the written application on—
 - (a) the court officer; and
 - (b) the prosecutor.”.
- 11.** In Part 41 (Retrial following acquittal for serious offence), in the table of contents—
- (a) in the first column, omit “Service”; and
 - (b) in the second column, omit “rule 41.17”.
- 12.** In Part 52 (Enforcement of fines), in the table of contents—
- (a) in the first column, omit “Notice of date of magistrates’ court means enquiry”; and
 - (b) in the second column, omit “rule 52.5”.
- 13.** In Part 55 (Road traffic penalties), in the table of contents—
- (a) in the first column, omit “Notice of registration to defaulter under section 71(6) of the Road Traffic Offenders Act 1988(4)”; and
 - (b) in the second column omit “rule 55.4”.

- 14.** In the heading to Part 63 (Appeal to the Crown Court against conviction or sentence), omit “against conviction or sentence”.
- 15.** In rule 63.1 (Application of this Part)—
- (a) for “and”, substitute “,”; and
 - (b) after “supervision order”, insert “and section 14A(5A) of the Football Spectators Act 1989(5) (failure to make football banning order)”.
- 16.** In the note after rule 63.1, for “Formerly”, substitute “This rule derives in part from”.
- 17.** In rule 63.2(3) (Notice of appeal), for “day on which the decision appealed against is given”, substitute “making of, or failure to make, the decision appealed against”.
- 18.** In the note after rule 63.2, for “Formerly”, substitute “This rule derives in part from”.
- 19.** In rule 63.3(2) (Documents to be sent to Crown Court), for “and of the last known or usual place of abode”, substitute “or proceedings, and details of the last known addresses”.
- 20.** In rule 63.3(3), omit “for the court from whose decision the appeal is brought”.
- 21.** In the note after rule 63.3, for “Formerly”, substitute “This rule derives in part from”.
- 22.** In rule 63.8(1) (Number and qualification of justices – dispensation for special circumstances), for “constituted without unreasonable delay and the Court includes one justice who is a member of a youth court panel.”, substitute
- “so constituted without unreasonable delay and the Court includes—
- (a) in the case of the hearing of an appeal from a youth court, one justice who is a member of a youth court panel; or
 - (b) in any other case, one justice.”.
- 23.** In the note after rule 63.8, for “Formerly”, substitute “This rule derives in part from”.
- 24.** In rule 63.9 (Disqualifications), for “he”, substitute “that justice”.
- 25.** In the note after rule 63.9, for “Formerly”, substitute “This rule derives in part from”.
- 26.** In Part 64 (Appeal to the High Court by way of case stated), in the table of contents—
- (a) in the first column, omit “Service of documents on application to magistrates' court”; and
 - (b) in the second column, omit “rule 64.5”.
- 27.** For Part 65 (Appeal to the Court of Appeal against ruling in preparatory hearing), substitute the Part as set out in Schedule 1 to these Rules.
- 28.** For Part 66 (Appeal to the Court of Appeal against ruling adverse to prosecution), substitute the Part as set out in Schedule 2 to these Rules.
- 29.** For Part 67 (Appeal to the Court of Appeal against order restricting reporting or public access), substitute the Part as set out in Schedule 3 to these Rules.
- 30.** For Part 68 (Appeal to the Court of Appeal against conviction, sentence or sentence review decision), substitute the Part as set out in Schedule 4 to these Rules.
- 31.** For Part 69 (Reference to the Court of Appeal of point of law), substitute the Part as set out in Schedule 5 to these Rules.
- 32.** For Part 70 (Reference to the Court of Appeal of unduly lenient sentence), substitute the Part as set out in Schedule 6 to these Rules.

(5) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

- 33.** In Part 71 (Appeal to the Court of Appeal under the Proceeds of Crime Act 2002⁽⁶⁾ – general rules), in the table of contents—
- (a) in the first column, omit “Service of documents”; and
 - (b) in the second column, omit “rule 71.11”.
- 34.** In the heading to Part 74 (Appeal to the House of Lords), after “Appeal”, insert “or reference”.
- 35.** In Part 74 (Appeal to the House of Lords)—
- (a) in the table of contents, in the first column, after “appeal”, insert “or to refer a case”;
 - (b) in the heading to rule 74(1) (Application for leave to appeal from the Criminal Division of the Court of Appeal to the House of Lords), after “leave to appeal”, insert “or to refer a case”;
 - (c) in rule 74.1(1)(a), after “2005”, insert “, or for a reference to the House of Lords under section 36(3) of the Criminal Justice Act 1972⁽⁷⁾ or section 36(5) of the Criminal Justice Act 1988⁽⁸⁾”; and
 - (d) in rule 74.1(1)—
 - (i) after “from which an appeal”, insert “or reference”, and
 - (ii) after “Registrar”, insert—
 - (i) “within 7 business days of the reasons for the court’s decision, where the appeal to the court concerned a decision under Part 9 of the Criminal Justice Act 2003⁽⁹⁾; or
 - (ii) within 14 days of the court’s opinion, where a reference to the court was made under section 36(3) of the Criminal Justice Act 1972.”.
- 36.** In the note after rule 74.1, for “Formerly”, substitute “This rule derives in part from”.

⁽⁶⁾ 2002 c. 29.

⁽⁷⁾ 1972 c. 71; section 36(3) is amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from a date to be appointed.

⁽⁸⁾ 1988 c. 33; section 36(5) is amended by section 40 of, and paragraphs 23 and 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from a date to be appointed.

⁽⁹⁾ 2003 c. 44.

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Phillips of Worth Matravers, C.J.
Sir Igor Judge, P.
Hooper, L.J.
Openshaw, J.
Charles Wide
Roderick Denyer
Anthony Evans
Brenda Large
Andrew Mimmack
David Wood
Sir Kenneth Macdonald
David Fisher
Tom Little
Graham White
Derek French
Martin Baker
Mark Harris
James Riches

I allow these Rules, which shall come into force on 1st October, 2007.

26th July 2007

Jack Straw
Lord Chancellor and Secretary of State for
Justice

SCHEDULE 1

Rule 27

“Part 65

Appeal to the Court of Appeal: general rules

Contents of this Part

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Duty of person transcribing proceedings in the Crown Court	rule 65.9
Duty of person keeping exhibit	rule 65.10
Registrar’s duty to provide copy documents for appeal or reference	rule 65.11
Declaration of incompatibility with a Convention right	rule 65.12
Abandoning an appeal	rule 65.13
Abandoning a ground of appeal or opposition	rule 65.14

When this Part applies

65.1.—(1) This Part applies to all the appeals and references to the Court of Appeal to which Parts 66, 67, 68, 69 and 70 apply.

(2) In this Part and in those, unless the context makes it clear that something different is meant—

“court” means the Court of Appeal or any judge of that court;

“Registrar” means the Registrar of Criminal Appeals or a court officer acting with the Registrar’s authority.

[*Note. See rule 2.2 for the usual meaning of ‘court’.*]

Under section 53 of the Supreme Court Act 1981(10) the criminal division of the Court of Appeal exercises jurisdiction in the appeals and references to which Parts 66, 67, 68, 69 and 70 apply. Under section 55 of that Act(11) the Court of Appeal must include at

(10) 1981 c. 54.

(11) 1981 c. 54; section 55 was amended by section 170 of, and paragraph 80 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 52 of the Criminal Justice and Public Order Act 1994 (c. 33) and section 58 of the Domestic Violence, Crime

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least two judges, and for some purposes at least three. For the powers of the Court of Appeal that may be exercised by one judge of that court or by the Registrar, see sections 31(12), 31A(13), 31B(14) and 31C(15) of the Criminal Appeal Act 1968; section 49 of the Criminal Justice Act 2003(16); the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(17); the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(18); and the power conferred by section 53(4) of the 1981 Act.]

Case management in the Court of Appeal

65.2.—(1) The court and the parties have the same duties and powers as under Part 3 (case management).

(2) The Registrar—

- (a) must fulfil the duty of active case management under rule 3.2; and
- (b) in fulfilling that duty may exercise any of the powers of case management under—
 - (i) rule 3.5 (the court’s general powers of case management),
 - (ii) rule 3.9(3) (requiring a certificate of readiness), and
 - (iii) rule 3.10 (requiring a party to identify intentions and anticipated requirements) subject to the directions of the court.

(3) The Registrar must nominate a case progression officer under rule 3.4.

Power to vary requirements

65.3 The court or the Registrar may—

- (a) shorten a time limit or extend it (even after it has expired) unless that is inconsistent with other legislation;
- (b) allow a party to vary any notice that that party has served;
- (c) direct that a notice or application be served on any person;
- (d) allow a notice or application to be in a different form, or presented orally.

[Note. The time limit for serving an appeal notice (a) under section 18 of the Criminal Appeal Act 1968 on an appeal against conviction or sentence and (b) under section 18A of that Act(19) on an appeal against a finding of contempt of court, may be extended but not shortened: see

and Victims Act 2004 (c. 28). It is further amended by section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from a date to be appointed.

- (12) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), section 331 of, and paragraphs 86, 87 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 48 of the Police and Justice Act 2006 (c. 48). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from dates to be appointed.
- (13) 1968 c. 19; section 31A was inserted by section 6 of the Criminal Appeal Act 1995 (c. 35) and amended by sections 87 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 331 of, and paragraphs 86 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).
- (14) 1968 c. 19; section 31B was inserted by section 87 of the Courts Act 2003 (c. 39).
- (15) 1968 c. 19; section 31C was inserted by section 87 of the Courts Act 2003 (c. 39).
- (16) 2003 c. 44.
- (17) S.I. 2005/2798.
- (18) S.I. 2006/2135.
- (19) 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

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rule 68.2. The time limit for serving an application for permission to refer a sentencing case under section 36 of the Criminal Justice Act 1988(20) may be neither extended nor shortened: see rule 70.2(2).]

Application for extension of time

65.4 A person who wants an extension of time within which to serve a notice or make an application must—

- (a) apply for that extension of time when serving that notice or making that application; and
- (b) give the reasons for the application for an extension of time.

Renewing an application refused by a judge or the Registrar

65.5.—(1) This rule applies where a party wants to renew—

- (a) to a judge of the Court of Appeal an application refused by the Registrar; or
- (b) to the Court of Appeal an application refused by a judge of that court.

(2) That party must—

- (a) renew the application in the form set out in the Practice Direction, signed by or on behalf of the applicant;
- (b) serve the renewed application on the Registrar not more than 14 days after—
 - (i) the refusal of the application that the applicant wants to renew; or
 - (ii) the Registrar serves that refusal on the applicant, if the applicant was not present in person or by live link when the original application was refused.

[Note. The time limit of 14 days under this rule is reduced to 5 days where Parts 66, 67 or 69 apply: see rules 66.7, 67.10 and 69.7.]

For the right to renew an application to a judge or to the Court of Appeal, see sections 31(3) and 31C of the Criminal Appeal Act 1968.

If an applicant does not renew an application that a judge has refused, including an application for permission to appeal, the Registrar will treat it as if it had been refused by the Court of Appeal.

Under section 22 of the Criminal Appeal Act 1968(21) the Court of Appeal may direct that an appellant who is in custody is to attend a hearing by live link.]

Hearings

65.6.—(1) The general rule is that the Court of Appeal must hear in public—

- (a) an application, including an application for permission to appeal; and
- (b) an appeal or reference,

but it may order any hearing to be in private.

(2) Where a hearing is about a public interest ruling that hearing must be in private unless the court otherwise directs.

(20) 1988 c. 33; section 36 was amended by sections 272, 304 and 331 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 3 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). It is further amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from a date to be appointed.

(21) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

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- (3) Where the appellant wants to appeal against an order restricting public access to a trial the court must decide without a hearing—
 - (a) an application, including an application for permission to appeal; and
 - (b) an appeal.
- (4) A judge of the Court of Appeal and the Registrar may exercise any of their powers—
 - (a) at a hearing in public or in private; or
 - (b) without a hearing.

[*Note. For the procedure on an appeal against an order restricting public access to a trial, see Part 69.*]

Notice of hearings and decisions

- 65.7.**—(1) The Registrar must give as much notice as reasonably practicable of every hearing to—
- (a) the parties;
 - (b) any party’s custodian;
 - (c) any other person whom the court requires to be notified; and
 - (d) the Crown Court officer, where Parts 66, 67 or 69 apply.
- (2) The Registrar must serve every decision on—
- (a) the parties;
 - (b) any other person whom the court requires to be served; and
 - (c) the Crown Court officer and any party’s custodian, where the decision determines an appeal or application for permission to appeal.
- (3) But where a hearing or decision is about a public interest ruling, the Registrar must not—
- (a) give notice of that hearing to; or
 - (b) serve that decision on,
- anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

Duty of Crown Court officer

- 65.8.**—(1) The Crown Court officer must provide the Registrar with any document, object or information for which the Registrar asks within such period as the Registrar may require.
- (2) Unless the Crown Court otherwise directs, where someone may appeal to the Court of Appeal the Crown Court officer must—
- (a) arrange for the recording of the proceedings in the Crown Court;
 - (b) arrange for the transcription of such a recording if—
 - (i) the Registrar wants such a transcript, or
 - (ii) anyone else wants such a transcript (but that is subject to the restrictions in rule 65.9(2)); and
 - (c) arrange for any document or object exhibited in the proceedings in the Crown Court to be kept there, or kept by some other appropriate person, until 6 weeks after the conclusion of those proceedings.
- (3) Where Part 66 applies (appeal to the Court of Appeal against ruling at preparatory hearing), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

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- (a) each order or ruling against which the appellant wants to appeal; and
- (b) the decision by the Crown Court judge on any application for permission to appeal.
 - (4) Where Part 67 applies (appeal to the Court of Appeal against ruling adverse to prosecution), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—
 - (a) each ruling against which the appellant wants to appeal;
 - (b) the decision by the Crown Court judge on any application for permission to appeal; and
 - (c) the decision by the Crown Court judge on any request to expedite the appeal.
 - (5) Where Part 68 applies (appeal to the Court of Appeal about conviction or sentence), the Crown Court officer must as soon as practicable serve on the Registrar—
 - (a) the appeal notice and any accompanying application that the appellant serves on the Crown Court officer;
 - (b) any Crown Court judge’s certificate that the case is fit for appeal;
 - (c) the decision on any application at the Crown Court centre for bail pending appeal;
 - (d) such of the Crown Court case papers as the Registrar requires; and
 - (e) such transcript of the Crown Court proceedings as the Registrar requires.
 - (6) Where Part 69 applies (appeal to the Court of Appeal regarding reporting or public access) and an order is made restricting public access to a trial, the Crown Court officer must—
 - (a) immediately notify the Registrar of that order, if the appellant has given advance notice of intention to appeal; and
 - (b) as soon as practicable provide the applicant for that order with a transcript or note of the application.

[*Note. See also rules 65.9 (duty of person transcribing record of proceedings in the Crown Court) and 65.10 (duty of person keeping exhibit).*]

Duty of person transcribing proceedings in the Crown Court

65.9.—(1) A person who transcribes a recording of proceedings in the Crown Court under arrangements made by the Crown Court officer must provide the Registrar with any transcript for which the Registrar asks within such period as the Registrar may require.

- (2) Unless the Crown Court otherwise directs, such a person—
 - (a) must not provide anyone else with a transcript of a public interest ruling or of an application for such a ruling;
 - (b) subject to that, must provide anyone else with any transcript for which that person asks—
 - (i) in accordance with the transcription arrangements made by the Crown Court officer, and
 - (ii) on payment by that person of any charge fixed by the Treasury.

[*Note. Section 32 of the Criminal Appeal Act 1968 deals with the recording of proceedings in the Crown Court, the transcription of such a recording and the charge for providing such a transcript. See also rule 65.8(2) (duty of Crown Court officer).*]

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Duty of person keeping exhibit

65.10 A person who under arrangements made by the Crown Court officer keeps a document or object exhibited in the proceedings in the Crown Court must—

- (a) keep that exhibit until—
 - (i) 6 weeks after the conclusion of the Crown Court proceedings, or
 - (ii) the conclusion of any proceedings in the Court of Appeal that begin within that 6 weeks,unless the court, the Registrar or the Crown Court otherwise directs; and
- (b) provide the Registrar with any such document or object for which the Registrar asks within such period as the Registrar may require.

[*Note. See also rule 65.8(2) (duty of Crown Court officer).*]

Registrar’s duty to provide copy documents for appeal or reference

65.11 Unless the court otherwise directs, for the purposes of an appeal or reference—

- (a) the Registrar must—
 - (i) provide a party with a copy of any document or transcript held by the Registrar for such purposes, or
 - (ii) allow a party to inspect such a document or transcript on payment by that party of any charge fixed by the Treasury; but
- (b) the Registrar must not provide a copy or allow the inspection of—
 - (i) a document provided only for the court and the Registrar, or
 - (ii) a transcript of a public interest ruling or of an application for such a ruling.

[*Note. Section 21 of the Criminal Appeal Act 1968 requires the Registrar to collect, prepare and provide documents needed by the court.*]

Declaration of incompatibility with a Convention right

65.12.—(1) This rule applies where a party—

- (a) wants the court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998⁽²²⁾; or
- (b) raises an issue that the Registrar thinks may lead the court to make such a declaration.

(2) The Registrar must serve notice on—

- (a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947⁽²³⁾; or
- (b) the Treasury Solicitor, if it is not clear who is the relevant person.

(3) That notice must include or attach details of—

- (a) the legislation affected and the Convention right concerned;
- (b) the parties to the appeal; and
- (c) any other information or document that the Registrar thinks relevant.

(22) 1998 c. 42; section 4 is amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9) and section 378 of, and paragraph 156 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), with effect from dates to be appointed.

(23) 1947 c. 44; section 17 was amended by article 3(2) of the Minister for the Civil Service Order 1968, S.I. 1968/1656.

- (4) A person who has a right under the 1998 Act to become a party to the appeal must—
 - (a) serve notice on—
 - (i) the Registrar, and
 - (ii) the other parties,if that person wants to exercise that right; and
 - (b) in that notice—
 - (i) indicate the conclusion that that person invites the court to reach on the question of incompatibility, and
 - (ii) identify each ground for that invitation, concisely outlining the arguments in support.
- (5) The court must not make a declaration of incompatibility—
 - (a) less than 21 days after the Registrar serves notice under paragraph (2); and
 - (b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

Abandoning an appeal

- 65.13.**—(1) This rule applies where an appellant wants to—
- (a) abandon—
 - (i) an application to the court for permission to appeal, or
 - (ii) an appeal; or
 - (b) reinstate such an application or appeal after abandoning it.
- (2) The appellant—
- (a) may abandon such an application or appeal without the court’s permission by serving a notice of abandonment on—
 - (i) the Registrar, and
 - (ii) any respondentbefore any hearing of the application or appeal; but
 - (b) at any such hearing, may only abandon that application or appeal with the court’s permission.
- (3) A notice of abandonment must be in the form set out in the Practice Direction, signed by or on behalf of the appellant.
- (4) On receiving a notice of abandonment the Registrar must—
- (a) date it;
 - (b) serve a dated copy on—
 - (i) the appellant,
 - (ii) the appellant’s custodian, if any,
 - (iii) the Crown Court officer, and
 - (iv) any other person on whom the appellant or the Registrar served the appeal notice; and
 - (c) treat the application or appeal as if it had been refused or dismissed by the Court of Appeal.
- (5) An appellant who wants to reinstate an application or appeal after abandoning it must—

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- (a) apply in writing, with reasons; and
- (b) serve the application on the Registrar.

[Note. The Court of Appeal has power only in exceptional circumstances to allow an appellant to reinstate an application or appeal that has been abandoned.]

Abandoning a ground of appeal or opposition

65.14.—(1) This rule applies where a party wants to abandon—

- (a) a ground of appeal identified in an appeal notice; or
- (b) a ground of opposition identified in a respondent’s notice.

(2) Such a party must give written notice to—

- (a) the Registrar; and
- (b) every other party,

before any hearing at which that ground will be considered by the court.”

SCHEDULE 2

Rule 28

“Part 66

Appeal to the Court of Appeal against ruling at preparatory hearing

Contents of this Part

When this Part applies	rule 66.1
Service of appeal notice	rule 66.2
Form of appeal notice	rule 66.3
Crown Court judge’s permission to appeal	rule 66.4
Respondent’s notice	rule 66.5
Powers of Court of Appeal judge	rule 66.6
Renewing applications	rule 66.7
Right to attend hearing	rule 66.8

When this Part applies

66.1.—(1) This Part applies where a party wants to appeal under—

- (a) section 9(11) of the Criminal Justice Act 1987⁽²⁴⁾ or section 35(1) of the Criminal Procedure and Investigations Act 1996⁽²⁵⁾; or
- (b) section 47(1) of the Criminal Justice Act 2003⁽²⁶⁾.

(2) A reference to an ‘appellant’ in this Part is a reference to such a party.

⁽²⁴⁾ 1987 c. 38; section 9(11) was amended by section 310 of the Criminal Justice Act 2003 (c. 44).

⁽²⁵⁾ 1996 c. 25; section 35(1) was amended by section 45 of the Criminal Justice Act 2003 (c. 44). The amendment is in force for certain purposes, for remaining purposes it has effect from a date to be appointed.

⁽²⁶⁾ 2003 c. 44.

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[*Note. Under section 9(11) of the Criminal Justice Act 1987 (which applies to serious or complex fraud cases) and under section 35(1) of the Criminal Procedure and Investigations Act 1996 (which applies to other complex, serious or long cases) a party may appeal to the Court of Appeal against an order made at a preparatory hearing in the Crown Court.*

Under section 47(1) of the Criminal Justice Act 2003 a party may appeal to the Court of Appeal against an order in the Crown Court that because of jury tampering a trial will continue without a jury or that there will be a new trial without a jury.

Part 15 contains rules about preparatory hearings.

The rules in Part 65 also apply where this Part applies.]

Service of appeal notice

- 66.2.**—(1) An appellant must serve an appeal notice on—
- (a) the Crown Court officer;
 - (b) the Registrar; and
 - (c) every party directly affected by the order or ruling against which the appellant wants to appeal.
- (2) The appellant must serve the appeal notice not more than 5 business days after—
- (a) the order or ruling against which the appellant wants to appeal; or
 - (b) the Crown Court judge gives or refuses permission to appeal.

Form of appeal notice

- 66.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify each order or ruling against which the appellant wants to appeal;
 - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
 - (c) summarise the relevant facts;
 - (d) identify any relevant authorities;
 - (e) include or attach any application for the following, with reasons—
 - (i) permission to appeal, if the appellant needs the court’s permission,
 - (ii) an extension of time within which to serve the appeal notice,
 - (iii) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody;
 - (f) include a list of those on whom the appellant has served the appeal notice; and
 - (g) attach—
 - (i) a transcript or note of each order or ruling against which the appellant wants to appeal,
 - (ii) all relevant skeleton arguments considered by the Crown Court judge,
 - (iii) any written application for permission to appeal that the appellant made to the Crown Court judge,
 - (iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal, and

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- (v) any other document or thing that the appellant thinks the court will need to decide the appeal.

[Note. An appellant needs the court's permission to appeal in every case to which this Part applies unless the Crown Court judge gives permission.]

Crown Court judge's permission to appeal

66.4.—(1) An appellant who wants the Crown Court judge to give permission to appeal must—

- (a) apply orally, with reasons, immediately after the order or ruling against which the appellant wants to appeal; or
- (b) apply in writing and serve the application on—
 - (i) the Crown Court officer, and
 - (ii) every party directly affected by the order or rulingnot more than 2 business days after that order or ruling.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

[Note. For the Crown Court judge's power to give permission to appeal, see section 9(11) of the Criminal Justice Act 1987, section 35(1) of the Criminal Procedure and Investigations Act 1996 and section 47(2) of the Criminal Justice Act 2003.]

Respondent's notice

66.5.—(1) A party on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

- (a) that party wants to make representations to the court; or
- (b) the court so directs.

(2) Such a party must serve the respondent's notice on—

- (a) the appellant;
- (b) the Crown Court officer;
- (c) the Registrar; and
- (d) any other party on whom the appellant served the appeal notice.

(3) Such a party must serve the respondent's notice not more than 5 business days after—

- (a) the appellant serves the appeal notice; or
- (b) a direction to do so.

(4) The respondent's notice must be in the form set out in the Practice Direction.

(5) The respondent's notice must—

- (a) give the date on which the respondent was served with the appeal notice;
- (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
- (c) summarise any relevant facts not already summarised in the appeal notice;
- (d) identify any relevant authorities;
- (e) include or attach any application for the following, with reasons—

- (i) an extension of time within which to serve the respondent’s notice,
- (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;
- (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

Powers of Court of Appeal judge

66.6 A judge of the Court of Appeal may give permission to appeal as well as exercising the powers given by other legislation (including these Rules).

[Note. See section 53(4) of the Supreme Court Act 1981(27) and section 49 of the Criminal Justice Act 2003(28).]

Renewing applications

66.7 Rule 65.5 (renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

Right to attend hearing

66.8.—(1) A party who is in custody has a right to attend a hearing in public.

(2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

[Note. See rule 65.6 (hearings).]”

SCHEDULE 3

Rule 29

“Part 67

Appeal to the Court of Appeal against ruling adverse to prosecution

Contents of this Part

When this Part applies	rule 67.1
Decision to appeal	rule 67.2
Service of appeal notice	rule 67.3
Form of appeal notice	rule 67.4
Crown Court judge’s permission to appeal	rule 67.5
Expediting an appeal	rule 67.6
Respondent’s notice	rule 67.7
Public interest ruling	rule 67.8
Powers of Court of Appeal judge	rule 67.9

(27) 1981 c. 54.

(28) 2003 c. 44.

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Contents of this Part	
Renewing applications	rule 67.10
Right to attend hearing	rule 67.11

When this Part applies

67.1.—(1) This Part applies where a prosecutor wants to appeal under section 58(2) of the Criminal Justice Act 2003⁽²⁹⁾.

(2) A reference to an ‘appellant’ in this Part is a reference to such a prosecutor.

[Note. Under section 58(2) of the Criminal Justice Act 2003 a prosecutor may appeal to the Court of Appeal against a ruling in the Crown Court. See also sections 57 and 59 to 61 of the 2003 Act.

The rules in Part 65 also apply where this Part applies.]

Decision to appeal

67.2.—(1) An appellant must tell the Crown Court judge of any decision to appeal—

- (a) immediately after the ruling against which the appellant wants to appeal; or
- (b) on the expiry of the time to decide whether to appeal allowed under paragraph (2).

(2) If an appellant wants time to decide whether to appeal—

- (a) the appellant must ask the Crown Court judge immediately after the ruling; and
- (b) the general rule is that the judge must not require the appellant to decide there and then but instead must allow until the next business day.

[Note. If the ruling against which the appellant wants to appeal is a ruling that there is no case to answer, the appellant may appeal against earlier rulings as well: see section 58(7) of the Criminal Justice Act 2003.

Under section 58(8) of the 2003 Act the appellant must agree that a defendant directly affected by the ruling must be acquitted if the appellant (a) does not get permission to appeal or (b) abandons the appeal.

The Crown Court judge may give permission to appeal and may expedite the appeal: see rules 67.5 and 67.6.]

Service of appeal notice

67.3.—(1) An appellant must serve an appeal notice on—

- (a) the Crown Court officer;
- (b) the Registrar; and
- (c) every defendant directly affected by the ruling against which the appellant wants to appeal.

(2) The appellant must serve the appeal notice not later than—

- (a) the next business day after telling the Crown Court judge of the decision to appeal, if the judge expedites the appeal; or
- (b) 5 business days after telling the Crown Court judge of that decision, if the judge does not expedite the appeal.

(29) 2003 c. 44.

[*Note. If the ruling against which the appellant wants to appeal is a public interest ruling, see rule 67.8.*]

Form of appeal notice

- 67.4.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify each ruling against which the appellant wants to appeal;
 - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
 - (c) summarise the relevant facts;
 - (d) identify any relevant authorities;
 - (e) include or attach any application for the following, with reasons—
 - (i) permission to appeal, if the appellant needs the court’s permission,
 - (ii) an extension of time within which to serve the appeal notice,
 - (iii) expedition of the appeal, or revocation of a direction expediting the appeal;
 - (f) include a list of those on whom the appellant has served the appeal notice;
 - (g) attach—
 - (i) a transcript or note of each ruling against which the appellant wants to appeal,
 - (ii) all relevant skeleton arguments considered by the Crown Court judge,
 - (iii) any written application for permission to appeal that the appellant made to the Crown Court judge,
 - (iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal,
 - (v) a transcript or note of the decision by the Crown Court judge on any request to expedite the appeal, and
 - (vi) any other document or thing that the appellant thinks the court will need to decide the appeal; and
 - (h) attach a form of respondent’s notice for any defendant served with the appeal notice to complete if that defendant wants to do so.

[*Note. An appellant needs the court’s permission to appeal unless the Crown Court judge gives permission: see section 57(4) of the Criminal Justice Act 2003. For ‘respondent’s notice’ see rule 67.7.*]

Crown Court judge’s permission to appeal

- 67.5.**—(1) An appellant who wants the Crown Court judge to give permission to appeal must—
- (a) apply orally, with reasons, immediately after the ruling against which the appellant wants to appeal; or
 - (b) apply in writing and serve the application on—
 - (i) the Crown Court officer, and
 - (ii) every defendant directly affected by the rulingon the expiry of the time allowed under rule 67.2 to decide whether to appeal.

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(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

(3) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(4) The general rule is that the Crown Court judge must decide whether or not to give permission to appeal on the day that the application for permission is made.

[Note. For the Crown Court judge's power to give permission to appeal, see section 57(4) of the Criminal Justice Act 2003.

Rule 67.5(3) does not apply where the appellant wants to appeal against a public interest ruling: see rule 67.8(5).]

Expediting an appeal

67.6.—(1) An appellant who wants the Crown Court judge to expedite an appeal must ask, giving reasons, on telling the judge of the decision to appeal.

(2) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(3) The Crown Court judge may revoke a direction expediting the appeal unless the appellant has served the appeal notice.

[Note. For the Crown Court judge's power to expedite the appeal, see section 59 of the Criminal Justice Act 2003.

Rule 67.6(2) does not apply where the appellant wants to appeal against a public interest ruling: see rule 67.8(5).]

Respondent's notice

67.7.—(1) A defendant on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

- (a) the defendant wants to make representations to the court; or
- (b) the court so directs.

(2) Such a defendant must serve the respondent's notice on—

- (a) the appellant;
- (b) the Crown Court officer;
- (c) the Registrar; and
- (d) any other defendant on whom the appellant served the appeal notice.

(3) Such a defendant must serve the respondent's notice—

- (a) not later than the next business day after—
 - (i) the appellant serves the appeal notice, or
 - (ii) a direction to do soif the Crown Court judge expedites the appeal; or
- (b) not more than 5 business days after—
 - (i) the appellant serves the appeal notice, or
 - (ii) a direction to do soif the Crown Court judge does not expedite the appeal.

- (4) The respondent's notice must be in the form set out in the Practice Direction.
- (5) The respondent's notice must—
 - (a) give the date on which the respondent was served with the appeal notice;
 - (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
 - (c) summarise any relevant facts not already summarised in the appeal notice;
 - (d) identify any relevant authorities;
 - (e) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;
 - (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

Public interest ruling

67.8.—(1) This rule applies where the appellant wants to appeal against a public interest ruling.

- (2) The appellant must not serve on any defendant directly affected by the ruling—
 - (a) any written application to the Crown Court judge for permission to appeal; or
 - (b) an appeal notice

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

- (3) The appellant must not include in an appeal notice—
 - (a) the material that was the subject of the ruling; or
 - (b) any indication of what sort of material it is

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

- (4) The appellant must serve on the Registrar with the appeal notice an annex—
 - (a) marked to show that its contents are only for the court and the Registrar;
 - (b) containing whatever the appellant has omitted from the appeal notice, with reasons; and
 - (c) if relevant, explaining why the appellant has not served the appeal notice.
- (5) Rules 67.5(3) and 67.6(2) do not apply.

[Note. Rules 67.5(3) and 67.6(2) require the Crown Court judge to allow a defendant to make representations about (i) giving permission to appeal and (ii) expediting an appeal.]

Powers of Court of Appeal judge

- 67.9** A judge of the Court of Appeal may—
 - (a) give permission to appeal;
 - (b) revoke a Crown Court judge's direction expediting an appeal; and

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(c) where an appellant abandons an appeal, order a defendant’s acquittal, his release from custody and the payment of his costs, as well as exercising the powers given by other legislation (including these Rules).

[*Note. See section 73 of the Criminal Justice Act 2003.*]

Renewing applications

67.10 Rule 65.5 (renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

Right to attend hearing

67.11.—(1) A respondent who is in custody has a right to attend a hearing in public.

(2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

[*Note. See rule 65.6 (hearings).*]

SCHEDULE 4

Rule 30

“Part 68

Appeal to the Court of Appeal about conviction or sentence

Contents of this Part

When this part applies	rule 68.1
Service of appeal notice	rule 68.2
Form of appeal notice	rule 68.3
Crown Court judge’s certificate that case is fit for appeal	rule 68.4
Reference by Criminal Cases Review Commission	rule 68.5
Respondent’s notice	rule 68.6
Adaptation of rules about introducing evidence	rule 68.7
Application for bail pending appeal or retrial	rule 68.8
Conditions of bail pending appeal or retrial	rule 68.9
Forfeiture of a recognizance given as a condition of bail	rule 68.10
Right to attend hearing	rule 68.11
Power to vary determination of appeal against sentence	rule 68.12
Directions about re-admission to hospital on dismissal of appeal	rule 68.13

Contents of this Part

Renewal or setting aside of order for retrial rule 68.14

When this Part applies

68.1.—(1) This Part applies where—

- (a) a defendant wants to appeal under—
 - (i) Part 1 of the Criminal Appeal Act 1968**(30)**, or
 - (ii) paragraph 14 of Schedule 22 to the Criminal Justice Act 2003**(31)**;
- (b) the Criminal Cases Review Commission refers a case to the Court of Appeal under section 9 of the Criminal Appeal Act 1995**(32)**;
- (c) a prosecutor wants to appeal to the Court of Appeal under section 14A(5A) of the Football Spectators Act 1989**(33)**;
- (d) a party wants to appeal under section 74(8) of the Serious Organised Crime and Police Act 2005**(34)**; or
- (e) a person found to be in contempt of court wants to appeal under section 13 of the Administration of Justice Act 1960**(35)** and section 18A of the Criminal Appeal Act 1968**(36)**.

(2) A reference to an ‘appellant’ in this Part is a reference to such a party or person.

[Note. Under Part 1 (sections 1 to 32) of the Criminal Appeal Act 1968 a defendant may appeal against

a conviction (section 1(37))

a sentence (sections 9(38) and 10(39): see section 50(40) for the meaning of ‘sentence’)

(30) 1968 c. 19.

(31) 2003 c. 44; paragraph 14 of Schedule 22 is amended by section 40 of, and paragraph 82 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from dates to be appointed.

(32) 1995 c. 35; section 9 was amended by section 58 of, and paragraph 31 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(33) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(34) 2005 c. 15.

(35) 1960 c. 65; section 13 was amended by section 56 of, and paragraph 40 of Schedule 8 to, the Courts Act 1971 (c. 23), section 52 of, and Schedule 5 to, the Criminal Appeal Act 1968 (c. 19), section 154 of, and paragraph 36 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 152 of, and Schedule 7 to, the Supreme Court Act 1981 (c. 54), section 148 of, and paragraph 25 of Schedule 2 to, the County Courts Act 1984 (c. 28) and sections 64 and 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22). It is further amended by section 378 of, and paragraph 45 of Schedule 16 to, the Armed Forces Act 2006 (c. 52) and section 40 of, and paragraph 13 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from dates to be appointed.

(36) 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

(37) 1968 c. 19; section 1 is amended by section 154 of, and paragraph 71 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 1 of the Criminal Appeal Act 1995 (c. 35) and is further amended by section 41 of, and paragraph 44 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part, the remainder to have effect from a date to be appointed.

(38) 1968 c. 19; section 9 was amended by section 170 of, and paragraph 21 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 271 of the Criminal Justice Act 2003 (c. 44), section 119 of, and paragraph 12 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and section 58 of the Access to Justice Act 1999 (c. 22). It is further amended by sections 41 and 332 of, and paragraph 44 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(39) 1968 c. 19; section 10 was amended by section 56 of, and paragraph 57 of Schedule 8 to, the Courts Act 1971 (c. 23), section 77 of, and paragraph 23 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 22 of Schedule 15 and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 100 of, and paragraph 3 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120 of, and paragraph 13 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22), section 67 of, and paragraph 4 of Schedule 4 and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), sections 304 and 319 of, and paragraphs 7 and 8 of Schedule 32 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

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a verdict of not guilty by reason of insanity (section 12)

a finding of disability (section 15(41))

a hospital order, interim hospital order or supervision order under section 5(42) or 5A(43) of the Criminal Procedure (Insanity) Act 1964 (section 16A of the 1968 Act(44)).

Under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003 a defendant sentenced to life imprisonment may appeal against the minimum term fixed on review by a High Court judge in certain cases.

See section 13 of the Criminal Appeal Act 1995(45) for the circumstances in which the Criminal Cases Review Commission may refer a conviction, sentence, verdict or finding to the Court of Appeal.

Under section 14A(5A) of the Football Spectators Act 1989 a prosecutor may appeal against a failure by the Crown Court to make a football banning order.

Under section 74(8) of the Serious Organised Crime and Police Act 2005 a prosecutor or defendant may appeal against a review by a Crown Court judge of a sentence that was reduced because the defendant assisted the investigator or prosecutor.

Under section 13 of the Administration of Justice Act 1960 a person punished by the Crown Court for contempt of court may appeal to the Court of Appeal.

The rules in Part 65 also apply where this Part applies.]

Service of appeal notice

- 68.2.**—(1) The general rule is that an appellant must serve an appeal notice—
- (a) on the Crown Court officer at the Crown Court centre where there occurred—
 - (i) the conviction, verdict, or finding,
 - (ii) the sentence, or
 - (iii) the order, or the failure to make an order
 about which the appellant wants to appeal; and
 - (b) not more than 28 days after that occurred.
- (2) But an appellant must serve an appeal notice—
- (a) on the Registrar instead where—
 - (i) the appeal is against a minimum term review decision under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003, or

(40) 1968 c. 19; section 50 was amended by section 66 of the Criminal Justice Act 1982 (c. 48), sections 100 and 101 of, and paragraph 4 of Schedule 11 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 79 of, and Schedule 5 to, the Criminal Justice Act 1993 (c. 36), section 65 of, and Schedule 1 to, the Drug Trafficking Act 1994 (c. 37), section 55 of, and paragraph 6 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), section 24 of, and paragraph 3 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 30 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 7 of the Football (Offences and Disorder) Act 1999 (c. 21), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 43), section 198 of, and paragraphs 38 and 42 of Schedule 6 to, the Licensing Act 2003 (c. 17), and section 52 of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(41) 1968 c. 19; section 15 was amended by section 58 of, and paragraph 4 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 7 of, and paragraph 2 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) and section 1 of the Criminal Appeal Act 1995 (c. 35).

(42) 1964 c. 84; section 5 was substituted, together with section 5A, by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(43) 1964 c. 84; section 5A was substituted, together with a new section 5, by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(44) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(45) 1995 c. 35; section 13 is amended by section 321 of, and paragraph 3 of Schedule 11 to the Armed Forces Act 2006 (c. 52), with effect from a date to be appointed.

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- (ii) the Criminal Cases Review Commission refers the case to the court; and
- (b) not more than—
 - (i) 28 days after such a decision, or after the Registrar serves notice that the Commission has referred a sentence, or
 - (ii) 56 days after the Registrar serves notice that the Commission has referred a conviction.

[Note. The time limit for serving an appeal notice (a) on an appeal under Part 1 of the Criminal Appeal Act 1968 and (b) on an appeal against a finding of contempt of court is prescribed by sections 18 and 18A of the Criminal Appeal Act 1968. It may be extended but not shortened.

For service of a reference by the Criminal Cases Review Commission, see rule 68.5.]

Form of appeal notice

- 68.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify—
 - (i) the conviction, verdict, or finding,
 - (ii) the sentence, or
 - (iii) the order, or the failure to make an orderabout which the appellant wants to appeal;
 - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
 - (c) identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against a conviction;
 - (d) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
 - (e) where the Criminal Cases Review Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference;
 - (f) summarise the relevant facts;
 - (g) identify any relevant authorities;
 - (h) include or attach any application for the following, with reasons—
 - (i) permission to appeal, if the appellant needs the court’s permission,
 - (ii) an extension of time within which to serve the appeal notice,
 - (iii) bail pending appeal,
 - (iv) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
 - (v) the introduction of evidence, including hearsay evidence and evidence of bad character,
 - (vi) an order requiring a witness to attend court,
 - (vii) a direction for special measures for a witness,
 - (viii) a direction for special measures for the giving of evidence by the appellant;
 - (i) identify any other document or thing that the appellant thinks the court will need to decide the appeal.

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[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as [leave to appeal]

An appellant needs the court's permission to appeal in every case to which this Part applies, except where—

the Criminal Cases Review Commission refers the case

the appellant appeals against a finding of contempt of court

the Crown Court judge certifies under sections 1(2)(a), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968(46), under section 81(1B) of the Supreme Court Act 1981(47) or under section 14A(5B) of the Football Spectators Act 1989 that a case is fit for appeal.

A judge of the Court of Appeal may give permission to appeal under section 31 of the Criminal Appeal Act 1968(48).;]

Crown Court judge's certificate that case is fit for appeal.

68.4.—(1) An appellant who wants the Crown Court judge to certify that a case is fit for appeal must—

(a) apply orally, with reasons, immediately after there occurs—

(i) the conviction, verdict, or finding,

(ii) the sentence, or

(iii) the order, or the failure to make an order

about which the appellant wants to appeal; or

(b) apply in writing and serve the application on the Crown Court officer not more than 14 days after that occurred.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

[Note. The Crown Court judge may certify that a case is fit for appeal under sections 1(2)(b), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968, under section 81(1B) of the Supreme Court Act 1981 or under section 14A(5B) of the Football Spectators Act 1989.

See also rule 68.2 (service of appeal notice in all cases).]

Reference by Criminal Cases Review Commission

68.5.—(1) The Registrar must serve on the appellant a reference by the Criminal Cases Review Commission.

(2) The court must treat that reference as the appeal notice if the appellant does not serve such a notice under rule 68.2.

(46) 1968 c. 19; section 11(1A) was inserted by section 29 of the Criminal Justice Act 1982 (c. 48).

(47) 1981 c. 54; section 81(1B) was inserted by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48).

(48) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), section 331 of, and paragraphs 86, 87 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 48 of the Police and Justice Act 2006 (c. 48). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from dates to be appointed.

Respondent's notice

- 68.6.**—(1) The Registrar—
- (a) may serve an appeal notice on any party directly affected by the appeal; and
 - (b) must do so if the Criminal Cases Review Commission refers a conviction, verdict, finding or sentence to the court.
- (2) Such a party may serve a respondent's notice, and must do so if—
- (a) that party wants to make representations to the court; or
 - (b) the court or the Registrar so directs.
- (3) Such a party must serve the respondent's notice on—
- (a) the appellant;
 - (b) the Registrar; and
 - (c) any other party on whom the Registrar served the appeal notice.
- (4) Such a party must serve the respondent's notice not more than 14 days after the Registrar serves—
- (a) the appeal notice; or
 - (b) a direction to do so.
- (5) The respondent's notice must be in the form set out in the Practice Direction.
- (6) The respondent's notice must—
- (a) give the date on which the respondent was served with the appeal notice;
 - (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
 - (c) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
 - (d) summarise any relevant facts not already summarised in the appeal notice;
 - (e) identify any relevant authorities;
 - (f) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) bail pending appeal,
 - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody,
 - (iv) the introduction of evidence, including hearsay evidence and evidence of bad character,
 - (v) an order requiring a witness to attend court,
 - (vi) a direction for special measures for a witness; and
 - (g) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

[Note. Part II of the Practice Direction sets out the circumstances in which the Registrar usually will serve a defendant's appeal notice on the prosecutor.]

Adaptation of rules about introducing evidence

- 68.7.**—(1) The following Parts apply with such adaptations as the court or the Registrar may direct—

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- (a) Part 29 (special measures directions);
 - (b) Part 30 (use of live television link other than for vulnerable witnesses);
 - (c) Part 34 (hearsay evidence);
 - (d) Part 35 (evidence of bad character); and
 - (e) Part 36 (evidence of a complainant’s previous sexual behaviour).
- (2) But the general rule is that—
- (a) a respondent who opposes an appellant’s application to which one of those Parts applies must do so in the respondent’s notice, with reasons;
 - (b) an appellant who opposes a respondent’s application to which one of those Parts applies must serve notice, with reasons, on—
 - (i) the Registrar, and
 - (ii) the respondent
 not more than 14 days after service of the respondent’s notice; and
 - (c) the court or the Registrar may give directions with or without a hearing.

[Note. An application to introduce evidence or for directions about evidence must be included in, or attached to, an appeal notice or a respondent’s notice: see rule 68.3 and 68.6(6).]

Under section 23 of the Criminal Appeal Act 1968(49) the Court of Appeal may allow the introduction of evidence that was not introduced at trial.

See also Part 27 (witness statements) and Part 33 (expert evidence).]

Application for bail pending appeal or retrial

68.8.—(1) This rule applies where a party wants to make an application to the court about bail pending appeal or retrial.

- (2) That party must serve an application in the form set out in the Practice Direction on—
- (a) the Registrar, unless the application is with the appeal notice; and
 - (b) the other party.

(3) The court must not decide such an application without giving the other party an opportunity to make representations, including representations about any condition or surety proposed by the applicant.

[Note. See section 19 of the Criminal Appeal Act 1968(50) and section 3(8) of the Bail Act 1976(51). An application about bail or about the conditions of bail may be made either by an appellant or respondent.

Under section 81(1) of the Supreme Court Act 1981(52) a Crown Court judge may grant bail pending appeal only (a) if that judge gives a certificate that the case is fit for appeal

(49) 1968 c. 19; section 23 was amended by sections 4 and 29 of, and paragraph 4 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35) and section 48 of the Police and Justice Act 2006 (c. 48).

(50) 1968 c. 19; section 19 was substituted by section 29 of the Criminal Justice Act 1982 (c. 48) and was amended by section 170 of, and paragraphs 20 and 26 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33) and section 168 of, and paragraph 22 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33). It is further amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(51) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part and for certain purposes only, the remainder to take effect from a date to be appointed.

(52) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and

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(see rule 68.4) and (b) not more than 28 days after the conviction or sentence against which the appellant wants to appeal.]

Conditions of bail pending appeal or retrial

68.9.—(1) This rule applies where the court grants a party bail pending appeal or retrial subject to any condition that must be met before that party is released.

(2) The court may direct how such a condition must be met.

(3) The Registrar must serve a certificate in the form set out in the Practice Direction recording any such condition and direction on—

- (a) that party;
- (b) that party’s custodian; and
- (c) any other person directly affected by any such direction.

(4) A person directly affected by any such direction need not comply with it until the Registrar serves that person with that certificate.

(5) Unless the court otherwise directs, if any such condition or direction requires someone to enter into a recognizance it must be—

- (a) in the form set out in the Practice Direction and signed before—
 - (i) the Registrar,
 - (ii) the custodian, or
 - (iii) someone acting with the authority of the Registrar or custodian;
- (b) copied immediately to the person who enters into it; and
- (c) served immediately by the Registrar on the appellant’s custodian or vice versa, as appropriate.

(6) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, surrender a document or take some other step—

- (a) that payment, document or step must be made, surrendered or taken to or before—
 - (i) the Registrar,
 - (ii) the custodian, or
 - (iii) someone acting with the authority of the Registrar or custodian;
- (b) the Registrar or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or step has been made, surrendered or taken, as appropriate.

(7) The custodian must release the appellant where it appears that any condition ordered by the court has been met.

(8) For the purposes of section 5 of the Bail Act 1976⁽⁵³⁾ (record of decision about bail), the Registrar must keep a copy of—

Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and articles 2 and 6 of S.I. 2004/1033. It is further amended by sections 41, 331 and 332 of, and paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(53) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 33), section 27 of, and paragraph 1 of Schedule 3 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 165 of, and paragraph 53 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129 of the Criminal Justice and Police Act 2001 (c. 16), section 182 of, and paragraph 109 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 41 of, and paragraph 48(1) and (3)(a) and (b)(i) of Schedule 3 to, the Criminal Justice Act 2003, in force for certain purposes, the remainder to have effect from a date to be appointed. It is further amended by sections 41 and 331 of, and paragraphs 1 and 2 of Schedule 36 and paragraph 48(1) and (3)(b)(ii)(iii) and (iv) of Schedule 3 to, the Criminal Justice

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- (a) any certificate served under paragraph (3);
- (b) a notice of hearing given under rule 65.7(1); and
- (c) a notice of the court's decision served under rule 65.7(2).

(9) Where the court grants bail pending retrial the Registrar must serve on the Crown Court officer copies of the documents kept under paragraph (8).

Forfeiture of a recognizance given as a condition of bail

68.10.—(1) This rule applies where—

- (a) the court grants a party bail pending appeal or retrial; and
- (b) the bail is subject to a condition that that party provides a surety to guarantee that he will surrender to custody as required; but
- (c) that party does not surrender to custody as required.

(2) The Registrar must serve notice on—

- (a) the surety; and
- (b) the prosecutor

of the hearing at which the court may order the forfeiture of the recognizance given by that surety.

(3) The court must not forfeit a surety's recognizance—

- (a) less than 7 days after the Registrar serves notice under paragraph (2); and
- (b) without giving the surety an opportunity to make representations at a hearing.

[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety's recognizance, the sum promised by that person is then payable to the Crown.]

Right to attend hearing

68.11 A party who is in custody has a right to attend a hearing in public unless—

- (a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal; or
- (b) that party is in custody in consequence of—
 - (i) a verdict of not guilty by reason of insanity, or
 - (ii) a finding of disability.

[Note. See rule 65.6 (hearings) and section 22 of the Criminal Appeal Act 1968(54). There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(55) and in the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(56). Under section 22 of the 1968 Act the court may direct that an appellant who is in custody is to attend a hearing by live link.]

Act 2003 (c. 44) and section 378 of, and paragraph 74 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), with effect from dates to be appointed.

(54) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

(55) S.I. 2005/2798.

(56) S.I. 2006/2135.

Power to vary determination of appeal against sentence

68.12.—(1) This rule applies where the court decides an appeal affecting sentence in a party's absence.

(2) The court may vary such a decision if it did not take account of something relevant because that party was absent.

(3) A party who wants the court to vary such a decision must—

- (a) apply in writing, with reasons;
- (b) serve the application on the Registrar not more than 7 days after—
 - (i) the decision, if that party was represented at the appeal hearing, or
 - (ii) the Registrar serves the decision, if that party was not represented at that hearing.

[Note. Section 22(3) of the Criminal Appeal Act 1968 allows the court to sentence in an appellant's absence. There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 and in the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006.]

Directions about re-admission to hospital on dismissal of appeal

68.13.—(1) This rule applies where—

- (a) an appellant subject to—
 - (i) an order under section 37(1) of the Mental Health Act 1983⁽⁵⁷⁾ (detention in hospital on conviction), or
 - (ii) an order under section 5(2) of the Criminal Procedure (Insanity) Act 1964⁽⁵⁸⁾ (detention in hospital on finding of insanity or disability)has been released on bail pending appeal; and
- (b) the court—
 - (i) refuses permission to appeal,
 - (ii) dismisses the appeal, or
 - (iii) affirms the order under appeal.

(2) The court must give appropriate directions for the appellant's—

- (a) re-admission to hospital; and
- (b) if necessary, temporary detention pending re-admission.

Renewal or setting aside of order for retrial

68.14.—(1) This rule applies where—

- (a) a prosecutor wants a defendant to be arraigned more than 2 months after the court ordered a retrial under section 7 of the Criminal Appeal Act 1968⁽⁵⁹⁾; or
- (b) a defendant wants such an order set aside after 2 months have passed since it was made.

⁽⁵⁷⁾ 1983 c. 20; section 37(1) was amended by section 55 of, and paragraph 12 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), section 165 of, and paragraph 90 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44).

⁽⁵⁸⁾ 1964 c. 84.

⁽⁵⁹⁾ 1968 c. 19; section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and section 331 of, and paragraph 44 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

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- (2) That party must apply in writing, with reasons, and serve the application on—
- (a) the Registrar;
 - (b) the other party.

[*Note. Section 8(1)(60) and (1A)(61) of the Criminal Appeal Act 1968 set out the criteria for making an order on an application to which this rule applies.*]

SCHEDULE 5

Rule 31

“Part 69

Appeal to the Court of Appeal regarding reporting or public access restriction

Contents of this Part

When this Part applies	rule 69.1
Service of appeal notice	rule 69.2
Form of appeal notice	rule 69.3
Advance notice of appeal against order restricting public access	rule 69.4
Duty of applicant for order restricting public access	rule 69.5
Respondent’s notice on appeal against reporting restriction	rule 69.6
Renewing applications	rule 69.7
Right to introduce evidence	rule 69.8
Right to attend hearing	rule 69.9

When this Part applies

69.1.—(1) This Part applies where a person directly affected by an order to which section 159(1) of the Criminal Justice Act 1988(62) applies wants to appeal against that order.

- (2) A reference to an ‘appellant’ in this Part is a reference to such a party.

[*Note. Section 159(1) of the Criminal Justice Act 1988 gives a ‘person aggrieved’ (in this Part described as a person directly affected) a right of appeal to the Court of Appeal against a Crown Court judge’s order—*

under section 4(63) or section 11 of the Contempt of Court Act 1981

(60) 1968 c. 19; section 8(1) was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and section 43 of the Criminal Justice Act 1988 (c. 33).

(61) 1968 c. 19; section 8(1A) was inserted by section 43 of the Criminal Justice Act 1988 (c. 33).

(62) 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(63) 1981 c. 49; section 4 was amended by section 16 of, and Schedule 2 to the Defamation Act 1996 (c. 31) and section 57 of the Criminal Procedure and Investigations Act 1996 (c. 25). It is further amended by section 41 of, and paragraph 53 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

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under section 58(7) of the Criminal Procedure and Investigations Act 1996(64) restricting public access to any part of a trial for reasons of national security or for the protection of a witness or other person restricting the reporting of any part of a trial. See Rule 16.10 for the procedure on an application to restrict public access to a trial. The rules in Part 65 also apply where this Part applies.]

Service of appeal notice

- 69.2.**—(1) An appellant must serve an appeal notice on—
- (a) the Crown Court officer;
 - (b) the Registrar;
 - (c) the parties; and
 - (d) any other person directly affected by the order against which the appellant wants to appeal.
- (2) The appellant must serve the appeal notice not later than—
- (a) the next business day after an order restricting public access to the trial;
 - (b) 10 business days after an order restricting reporting of the trial.

Form of appeal notice

- 69.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify the order against which the appellant wants to appeal;
 - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
 - (c) summarise the relevant facts;
 - (d) identify any relevant authorities;
 - (e) include or attach, with reasons—
 - (i) an application for permission to appeal,
 - (ii) any application for an extension of time within which to serve the appeal notice,
 - (iii) any application for a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
 - (iv) any application for permission to introduce evidence, and
 - (v) a list of those on whom the appellant has served the appeal notice; and
 - (f) attach any document or thing that the appellant thinks the court will need to decide the appeal.

[Note. An appellant needs the court's permission to appeal in every case to which this Part applies.]

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A Court of Appeal judge may give permission to appeal under section 31(2B) of the Criminal Appeal Act 1968(65).]

Advance notice of appeal against order restricting public access

69.4.—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The appellant may serve advance written notice of intention to appeal against any such order that may be made.

(3) The appellant must serve any such advance notice—

(a) on—

(i) the Crown Court officer,

(ii) the Registrar,

(iii) the parties, and

(iv) any other person who will be directly affected by the order against which the appellant intends to appeal, if it is made; and

(b) not more than 5 business days after the Crown Court officer displays notice of the application for the order.

(4) The advance notice must include the same information (with the necessary adaptations) as an appeal notice.

(5) The court must treat that advance notice as the appeal notice if the order is made.

Duty of applicant for order restricting public access

69.5.—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The party who applied for the order must serve on the Registrar—

(a) a transcript or note of the application for the order; and

(b) any other document or thing that that party thinks the court will need to decide the appeal.

(3) That party must serve that transcript or note and any such other document or thing as soon as practicable after—

(a) the appellant serves the appeal notice; or

(b) the order, where the appellant served advance notice of intention to appeal.

Respondent's notice on appeal against reporting restriction

69.6.—(1) This rule applies where the appellant wants to appeal against an order restricting the reporting of a trial.

(2) A person on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

(a) that person wants to make representations to the court; or

(b) the court so directs.

(3) Such a person must serve the respondent's notice on—

(65) 1968 c. 19; section 31(2B) was inserted by section 170 of, and paragraphs 20 and 30 to, the Criminal Justice Act 1988 (c. 33).

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- (a) the appellant;
 - (b) the Crown Court officer;
 - (c) the Registrar;
 - (d) the parties; and
 - (e) any other person on whom the appellant served the appeal notice.
- (4) Such a person must serve the respondent's notice not more than 3 business days after—
- (a) the appellant serves the appeal notice; or
 - (b) a direction to do so.
- (5) The respondent's notice must be in the form set out in the Practice Direction.
- (6) The respondent's notice must—
- (a) give the date on which the respondent was served with the appeal notice;
 - (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
 - (c) summarise any relevant facts not already summarised in the appeal notice;
 - (d) identify any relevant authorities;
 - (e) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody,
 - (iii) permission to introduce evidence; and
 - (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

Renewing applications

69.7 Rule 65.5 (renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

Right to introduce evidence

69.8 No person may introduce evidence without the court's permission.

[Note. Section 159(4) of the Criminal Justice Act 1988 entitles the parties to give evidence, subject to procedure rules.]

Right to attend hearing

69.9.—(1) A party who is in custody has a right to attend a hearing in public of an appeal against an order restricting the reporting of a trial.

(2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

[Note. See rule 65.6 (hearings). The court must decide an application and an appeal without a hearing where the appellant wants to appeal against an order restricting public access to a trial: rule 65.6(3).]

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SCHEDULE 6

Rule 32

“Part 70

Reference to the Court of Appeal of point of law or unduly lenient sentencing

Contents of this Part

When this Part applies	rule 70.1
Service of notice of reference and application for permission	rule 70.2
Form of notice of reference and application for permission	rule 70.3
Registrar’s notice to defendant	rule 70.4
Respondent’s notice	rule 70.5
Variation or withdrawal of notice of reference or application for permission	rule 70.6
Right to attend hearing	rule 70.7
Anonymity of defendant on reference of point of law	rule 70.8

When this Part applies

70.1 This Part applies where the Attorney General wants to—

- (a) refer a point of law to the Court of Appeal under section 36 of the Criminal Justice Act 1972(66); or
- (b) refer a sentencing case to the Court of Appeal under section 36 of the Criminal Justice Act 1988(67).

[Note. Under section 36 of the Criminal Justice Act 1972, where a defendant is acquitted in the Crown Court the Attorney General may refer to the Court of Appeal a point of law in the case.

Under section 36 of the Criminal Justice Act 1988, if the Attorney General thinks the sentencing of a defendant in the Crown Court is unduly lenient he may refer the case to the Court of Appeal: but only if the sentence is one to which Part IV of the 1988 Act applies, and only if the Court of Appeal gives permission. See also section 35 of the 1988 Act(68) and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006(69).

The rules in Part 65 also apply where this Part applies.]

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- (66) 1972 c. 71; section 36 is amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from a date to be appointed.
- (67) 1988 c. 33; section 36 was amended by sections 272, 304 and 331 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 3 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). It is further amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), with effect from a date to be appointed.
- (68) 1988 c. 33; section 35(3) was amended by section 168 of, and paragraph 34 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).
- (69) S.I. 2006/1116.

Service of notice of reference and application for permission

70.2.—(1) The Attorney General must—

- (a) serve on the Registrar—
 - (i) any notice of reference, and
 - (ii) any application for permission to refer a sentencing case; and
- (b) with a notice of reference of a point of law, give the Registrar details of—
 - (i) the defendant affected,
 - (ii) the date and place of the relevant Crown Court decision, and
 - (iii) the relevant verdict and sentencing.

(2) The Attorney General must serve an application for permission to refer a sentencing case not more than 28 days after the last of the sentences in that case.

[Note. The time limit for serving an application for permission to refer a sentencing case is prescribed by paragraph 1 of Schedule 3 to the Criminal Justice Act 1988. It may be neither extended nor shortened.]

Form of notice of reference and application for permission

70.3.—(1) A notice of reference and an application for permission to refer a sentencing case must be in the appropriate form set out in the Practice Direction, giving the year and number.

(2) A notice of reference of a point of law must—

- (a) specify the point of law in issue and indicate the opinion that the Attorney General invites the court to give;
- (b) identify each ground for that invitation, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
- (c) exclude any reference to the defendant's name and any other reference that may identify the defendant;
- (d) summarise the relevant facts; and
- (e) identify any relevant authorities.

(3) An application for permission to refer a sentencing case must—

- (a) give details of—
 - (i) the defendant affected,
 - (ii) the date and place of the relevant Crown Court decision, and
 - (iii) the relevant verdict and sentencing;
- (b) explain why that sentencing appears to the Attorney General unduly lenient, concisely outlining each argument in support; and
- (c) include the application for permission to refer the case to the court.

(4) A notice of reference of a sentencing case must—

- (a) include the same details and explanation as the application for permission to refer the case;
- (b) summarise the relevant facts; and
- (c) identify any relevant authorities.

(5) Where the court gives the Attorney General permission to refer a sentencing case, it may treat the application for permission as the notice of reference.

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Registrar's notice to defendant

- 70.4.**—(1) The Registrar must serve on the defendant—
- (a) a notice of reference;
 - (b) an application for permission to refer a sentencing case.
- (2) Where the Attorney General refers a point of law, the Registrar must give the defendant notice that—
- (a) the outcome of the reference will not make any difference to the outcome of the trial; and
 - (b) the defendant may serve a respondent's notice.
- (3) Where the Attorney General applies for permission to refer a sentencing case, the Registrar must give the defendant notice that—
- (a) the outcome of the reference may make a difference to that sentencing, and in particular may result in a more severe sentence; and
 - (b) the defendant may serve a respondent's notice.

Respondent's notice

- 70.5.**—(1) A defendant on whom the Registrar serves a reference or an application for permission to refer a sentencing case may serve a respondent's notice, and must do so if—
- (a) the defendant wants to make representations to the court; or
 - (b) the court so directs.
- (2) Such a defendant must serve the respondent's notice on—
- (a) the Attorney General; and
 - (b) the Registrar.
- (3) Such a defendant must serve the respondent's notice—
- (a) where the Attorney General refers a point of law, not more than 28 days after—
 - (i) the Registrar serves the reference, or
 - (ii) a direction to do so;
 - (b) where the Attorney General applies for permission to refer a sentencing case, not more than 14 days after—
 - (i) the Registrar serves the application, or
 - (ii) a direction to do so.
- (4) Where the Attorney General refers a point of law, the respondent's notice must—
- (a) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the Attorney General's ground or reason to which each relates;
 - (b) summarise any relevant facts not already summarised in the reference;
 - (c) identify any relevant authorities; and
 - (d) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) permission to attend a hearing that the respondent does not have a right to attend,

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- (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.
- (5) Where the Attorney General applies for permission to refer a sentencing case, the respondent's notice must—
- (a) say if the respondent wants to make representations at the hearing of the application or reference; and
 - (b) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) permission to attend a hearing that the respondent does not have a right to attend,
 - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

Variation or withdrawal of notice of reference or application for permission

- 70.6.**—(1) This rule applies where the Attorney General wants to vary or withdraw—
- (a) a notice of reference; or
 - (b) an application for permission to refer a sentencing case.
- (2) The Attorney General—
- (a) may vary or withdraw the notice or application without the court's permission by serving notice on—
 - (i) the Registrar, and
 - (ii) the defendantbefore any hearing of the reference or application; but
 - (b) at any such hearing, may only vary or withdraw that notice or application with the court's permission.

Right to attend hearing

70.7.—(1) A respondent who is in custody has a right to attend a hearing in public unless it is a hearing preliminary or incidental to a reference, including the hearing of an application for permission to refer a sentencing case.

(2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

[Note. See rule 65.6 (hearings) and paragraphs 6 and 7 of Schedule 3 to the Criminal Justice Act 1988. Under paragraph 8 of that Schedule the Court of Appeal may sentence in the absence of a defendant whose sentencing is referred.]

Anonymity of defendant on reference of point of law

70.8 Where the Attorney General refers a point of law, the court must not allow anyone to identify the defendant during the proceedings unless the defendant gives permission.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules add the following new provisions to the Criminal Procedure Rules 2005

- In Part 37 (Summary trial) a new rule 37.6 prescribes the procedure for making an application to change a plea of guilty in summary proceedings.
- In Part 39 (Trial on indictment) a new rule 39.3 prescribes the procedure for making an application to change a plea of guilty in a trial on indictment.
- A new Part 65 (Appeal to the Court of Appeal: general rules), in substitution for the existing Part 65 (Appeal to the Court of Appeal against ruling in preparatory hearing). The rules that relate to an appeal against a ruling in a preparatory hearing are found in the new Part 66. The new Part 65 provides rules of general application to appeals.
- A new Part 66 (Appeal to the Court of Appeal against ruling at preparatory hearing), in substitution for the existing Part 66 (Appeal to the Court of Appeal against ruling adverse to prosecution). The rules that relate to an appeal against a ruling adverse to the prosecution are found in the new Part 67 (Appeal to the Court of Appeal against ruling adverse to prosecution).
- A new Part 67 (Appeal to the Court of Appeal against ruling adverse to prosecution), in substitution for the existing Part 67 (Appeal to the Court of Appeal against order restricting reporting or public access). The rules that relate to an appeal against an order restricting reporting or public access are found in the new Part 69 (Appeal to the Court of Appeal regarding reporting or public access restriction).
- A new Part 68 (Appeal to the Court of Appeal about conviction or sentence), in substitution for the existing Part 68 (Appeal to the Court of Appeal against conviction, sentence or sentence review decision).
- A new Part 69 (Appeal to the Court of Appeal regarding reporting or public access restriction), in substitution for the existing Part 69 (Reference to the Court of Appeal of point of law). The rules that relate to a reference to the Court of Appeal of a point of law are found in the new Part 70 (Reference to the Court of Appeal of point of law or unduly lenient sentencing).
- A new Part 70 (Reference to the Court of Appeal of point of law or unduly lenient sentencing), in substitution for the existing Part 70 (Reference to the Court of Appeal of unduly lenient sentence).

In addition the following amendments are made:

- Rule 2.2 (Definitions) is amended to provide definitions of “business day”, “live link” and “public interest ruling”.
- Part 63 (Appeal to the Crown Court against conviction or sentence) is amended to extend the ambit of those rules to an appeal by a prosecutor under section 14A(5A) of the Football Spectators Act 1989 (failure to make a football banning order). It is also amended to reproduce rule 4(1)(e) of the Crown Court Rules 1982, so that the Crown Court may, in certain circumstances, enter on an appeal with the judge sitting with a single justice, when hearing an appeal from a magistrates' court.
- Part 74 (Appeal to the House of Lords) is amended so that there are included in that Part provisions corresponding to those in existing rules 66.16 (Appeal to the House of Lords) and 69.5 (Reference to House of Lords) that are not reproduced in the new Parts 67 (Appeal to

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the Court of Appeal against ruling adverse to prosecution) and 70 (Reference to the Court of Appeal of point of law or unduly lenient sentencing).

The opportunity has been taken to correct some errors in those tables of contents relating to the service of documents.

The changes made by these Rules come into force on 1st October, 2007.