
STATUTORY INSTRUMENTS

2008 No. 1863

**The Serious Crime Act 2007 (Appeals
under Section 24) Order 2008**

PART 2

Appeals to the Court of Appeal: England and Wales

Interpretation of Parts 2, 3 and 4

3.—(1) In this Part and Part 3 “the registrar” means the registrar of Criminal Appeals of the Court of Appeal.

(2) References in this Part and Parts 3 and 4 to a single judge are to any judge of the Court of Appeal or of the High Court.

(3) In this Part and Part 3, except in articles 26 to 28, “appeal” means an appeal under section 24(1) or (2) of the Act.

(4) In Part 4 “appeal” means an appeal under section 24(6) of the Act.

Hearing of appeal and grounds for allowing an appeal

4.—(1) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an appeal it would be in the interests of justice to hold a re-hearing.

(2) The Court of Appeal will allow an appeal where the decision of the Crown Court was—

- (a) wrong; or
- (b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

Powers of the Court of Appeal on appeal

5.—(1) The Court of Appeal has all the powers of the Crown Court.

(2) The Court of Appeal may—

- (a) make a serious crime prevention order;
- (b) affirm, set aside or vary any order or judgment made or given by the Crown Court;
- (c) refer any issue for determination by the Crown Court;
- (d) order a new hearing in the Crown Court;
- (e) make an order for costs in accordance with Part 3;
- (f) make an order for the payment of interest on those costs.

(3) The Court of Appeal may exercise its powers in relation to the whole or part of an order of the Crown Court.

Presence and live links

- 6.—(1) A person 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 person is in custody in consequence of—
 - (i) a verdict of not guilty by reason of insanity; or
 - (ii) a finding of disability.
- (2) At any time before the beginning of a hearing, the Court of Appeal may give a live link direction in relation to that hearing if—
- (a) a person who is a party to the appeal is expected to be in custody; and
 - (b) that person has a right to attend the hearing in accordance with paragraph (1).
- (3) For this purpose—
- (a) “live link direction” is a direction that the person concerned (if the person is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which the person is held; and
 - (b) “live link” means an arrangement by which the person concerned is able to see and hear, and to be seen and heard by, the Court of Appeal (for this purpose any impairment of eyesight or hearing is to be disregarded).
- (4) The Court of Appeal—
- (a) must not give a live link direction unless the persons who are parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
 - (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a person who is a party to the appeal).

Evidence

- 7.—(1) For the purposes of an appeal, or an application for leave to appeal, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—
- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
 - (b) order any witness to attend for examination and be examined before the Court of Appeal (whether or not the witness was called in the proceedings under section 19, 20 or 21 of the Act); and
 - (c) receive any evidence which was not adduced in the proceedings under section 19, 20 or 21 of the Act.
- (2) The power conferred by sub-paragraph 1(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that sub-paragraph to—
- (a) the Court of Appeal; or
 - (b) any person who is a party to the appeal.
- (3) The Court of Appeal shall, in considering whether to receive evidence, have regard in particular to—
- (a) whether the evidence appears to the Court of Appeal to be capable of belief;
 - (b) whether it appears to the Court of Appeal that the evidence may afford any ground for allowing the appeal;

- (c) whether the evidence would have been admissible in the proceedings under section 19, 20 or 21 of the Act on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

(4) Sub-paragraph (1)(c) applies to any evidence of a witness (including the person who is the subject of the serious crime prevention order) who is competent but not compellable.

Effect of appeal on serious crime prevention order

8. The coming into force of a serious crime prevention order shall not be affected by an appeal, subject to any direction which the Court of Appeal may give to the contrary.

Powers of the Court of Appeal under Part 2 which are exercisable by a single judge

9.—(1) There may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

- (a) the powers of the Court of Appeal under this Part and Part 3 specified in paragraph (2); and
- (b) the power to give leave under section 24(3) of the Act.

(2) The powers referred to in sub-paragraph (1)(a) are—

- (a) to extend time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination;
- (c) to give a live link direction under article 6(2);
- (d) to make orders under article 7(1)(a) (production of documents etc.);
- (e) to give directions under article 8 (effect of appeal on serious crime prevention order); and
- (f) to make orders for the payment of costs under Part 3.

(3) If the single judge refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the judge by this article, that person shall be entitled to have the application determined by the Court of Appeal.

Powers of the Court of Appeal under Part 2 which are exercisable by the registrar

10.—(1) There may be exercised by the registrar, in the same manner as the Court of Appeal and subject to the same provisions, the powers of the Court of Appeal under this Part which are specified in paragraph (2).

(2) The powers mentioned in paragraph (1) are—

- (a) to extend the time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination; and
- (c) to make orders under article 7(1)(a) (production of documents etc.).

(3) If the registrar refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the registrar by this article, that person shall be entitled to have the application determined by a single judge.

Procedural directions: powers of single judge and registrar

11.—(1) The power of the Court of Appeal to determine an application for procedural directions may be exercised by—

- (a) a single judge; or
 - (b) the registrar.
- (2) “Procedural directions” means directions for the efficient and effective preparation of—
- (a) an application for leave to appeal; or
 - (b) an appeal.
- (3) A single judge may give such procedural directions as the single judge thinks fit—
- (a) when acting under paragraph (1);
 - (b) on a reference from the registrar; or
 - (c) of the single judge’s own motion, when the single judge is exercising, or considering whether to exercise, any power of the single judge in relation to the application or appeal.
- (4) The registrar may give such procedural directions as the registrar thinks fit—
- (a) when acting under paragraph (1); or
 - (b) of the registrar’s own motion.

Appeals against procedural directions

- 12.**—(1) Paragraph (2) applies if the registrar gives, or refuses to give, procedural directions.
- (2) A single judge may, on an application to the single judge under paragraph (3)—
- (a) confirm, set aside or vary any procedural directions given by the registrar; and
 - (b) give such procedural directions as the single judge thinks fit.
- (3) An application under this article may be made by a person who is a party to the appeal.