
STATUTORY INSTRUMENTS

2011 No. 1709

The Criminal Procedure Rules 2011

PART 74

APPEAL OR REFERENCE TO THE SUPREME COURT

Application for permission or reference

- 74.2.**—(1) An appellant must—
- (a) apply orally to the Court of Appeal—
 - (i) for permission to appeal or to refer a sentencing case, or
 - (ii) to refer a point of lawimmediately after the court gives the reasons for its decision; or
 - (b) apply in writing and serve the application on the Registrar and every other party not more than—
 - (i) 14 days after the court gives the reasons for its decision if that decision was on a sentencing reference to which Part 70 applies (Attorney General’s reference of sentencing case), or
 - (ii) 28 days after the court gives those reasons in any other case.
- (2) An application for permission to appeal or to refer a sentencing case must—
- (a) identify the point of law of general public importance that the appellant wants the court to certify is involved in the decision; and
 - (b) give reasons why—
 - (i) that point of law ought to be considered by the Supreme Court, and
 - (ii) the court ought to give permission to appeal.
- (3) An application to refer a point of law must give reasons why that point ought to be considered by the Supreme Court.
- (4) An application must include or attach any application for the following, with reasons—
- (a) an extension of time within which to make the application for permission or for a reference;
 - (b) bail pending appeal;
 - (c) permission to attend any hearing in the Supreme Court, if the appellant is in custody.
- (5) A written application must be in the form set out in the Practice Direction.

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

Under the provisions listed in the note to rule 74.1, except section 36(3) of the Criminal Justice Act 1972 (Attorney General’s reference of point of law), an appellant needs permission to appeal or to refer a sentencing case. Under those provisions, the Court of Appeal must not give permission unless it first certifies that—

- (a) *a point of law of general public importance is involved in the decision, and*
- (b) *it appears to the court that the point is one which the Supreme Court ought to consider.*

If the Court of Appeal gives such a certificate but refuses permission, an appellant may apply for such permission to the Supreme Court.

Under section 36(3) of the Criminal Justice Act 1972 an appellant needs no such permission. The Court of Appeal may refer the point of law to the Supreme Court, or may refuse to do so.

For the power of the court or the Registrar to shorten or extend a time limit, see rule 65.3. The time limit in this rule—

- (a) *for applying for permission to appeal under section 33 of the Criminal Appeal Act 1968 (28 days) is prescribed by section 34 of that Act(1). That time limit may be extended but not shortened by the court. But it may be extended on an application by a prosecutor only after an application to which Part 41 applies (retrial after acquittal for serious offence).*
- (b) *for applying for permission to refer a case under section 36(5) of the Criminal Justice Act 1988 (Attorney General's reference of sentencing decision: 14 days) is prescribed by paragraph 4 of Schedule 3 to that Act. That time limit may be neither extended nor shortened.*
- (c) *for applying for permission to appeal under article 12 of The Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005 (28 days) is prescribed by article 13 of that Order. That time limit may be extended but not shortened.*
- (d) *for applying for permission to appeal under article 15 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (28 days) is prescribed by article 16 of that Order. That time limit may be extended but not shortened.*

For the power of the Court of Appeal to grant bail pending appeal to the Supreme Court , see—

- (a) *section 36 of the Criminal Appeal Act 1968(2).*
- (b) *article 18 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(3).*

For the right of an appellant in custody to attend a hearing in the Supreme Court, see—

- (a) *section 38 of the Criminal Appeal Act 1968(4).*
- (b) *paragraph 9 of Schedule 3 to the Criminal Justice Act 1988(5).*
- (c) *article 15 of The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(6).*
- (d) *article 20 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(7).]*

(1) 1968 c. 19; section 34 was amended by section 88 of the Courts Act 2003 (c. 39), section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(2) 1968 c. 19; section 36 was amended by section 12 of, and paragraph 43 of Schedule 2 to, the Bail Act 1976 (c. 63), section 15 of, and paragraph 4 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 23 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 36 of the Criminal Procedure and Investigations Act 1996 (c. 25), sections 47 and 68 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(3) S.I. 2006/2135.

(4) 1968 c. 19; section 38 was amended by section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(5) 1988 c. 33; paragraph 9 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(6) S.I. 2005/2798.

(7) S.I. 2006/2135.

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