

CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 1500 (N.I. 9)

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

Part IV - Prosecution appeals

Introduction

31. **Article 16** sets out basic criteria for a prosecution appeal under this Part of the Order. The right of appeal arises only in trials on indictment and lies to the Court of Appeal.
32. **Paragraph 2** prohibits the prosecution from appealing rulings on discharge of the jury and those rulings that may be appealed by the prosecution under other legislation, (eg. appeals from preparatory hearings against rulings on admissibility of evidence and other points of law).
33. **Paragraph 4** provides that the prosecution must obtain leave to appeal, either from the judge of the court of trial or the Court of Appeal.

General right of appeal in respect of rulings

34. **Article 17** sets out the procedure that must be followed when the prosecution wishes to appeal against a terminating ruling made by the judge. It covers rulings which are both terminating and that are de facto terminating in that sense that they are so fatal to the prosecution case that, in the absence of a right of appeal, the prosecution would offer no or no further evidence.
35. Where the prosecution fails to obtain leave to appeal or abandons the appeal, the prosecution must agree that an acquittal follow.

Expedited and non-expedited appeals

36. **Article 18** provides 2 alternative appeal routes, an expedited (fast) route and a non-expedited (slower) route. The judge must determine which route the appeal will follow.
37. In the case of an expedited appeal the trial may be adjourned. In the case of a non-expedited appeal the judge may either adjourn the proceedings or discharge the jury (if one has been sworn).
38. Both the judge and the Court of Appeal have the power to reverse a decision to expedite an appeal and thus transfer it to the slower route, in which case the jury may be discharged.

Continuation of proceedings for offences not affected by ruling

39. **Article 19** deals with cases where the trial involves more than one offence but the appeal does not apply to all those offences. It enables proceedings to continue in relation to any offence to which the appeal does not apply. A ruling may affect several offences

and several defendants but the prosecutor may only wish to appeal against the ruling insofar as it affects one or more of those defendants or offences.

40. The Article enables proceedings to continue, at the discretion of the trial judge, against any offences affected by the ruling but not by the appeal.

Determination of appeal by Court of Appeal

41. **Article 20** sets out the powers of the Court of Appeal when determining a prosecution appeal and should be read in conjunction with Article 26.

Right of appeal in respect of evidentiary rulings

42. **Article 21** provides that the prosecution may appeal either a single or two or more evidentiary rulings. Like the right of appeal in Article 17, this right of appeal will only be available to the prosecution. An evidentiary ruling is a ruling which relates to the admissibility or exclusion of any prosecution evidence. The prosecution must inform the court that it intends to appeal an evidentiary ruling before the opening of the case for the defence. The right to appeal only arises in respect of certain qualifying offences. These offences are generally grave offences and are set out in Schedule 2.

Condition that evidentiary ruling significantly weakens prosecution case

43. **Article 22** provides that leave to appeal a qualifying evidentiary ruling may not be given unless the judge or Court of Appeal is satisfied that the ruling (or 2 or more rulings taken together) significantly weakens the prosecution case in relation to the offence or offences that are the subject of the appeal.

Expedited and non-expedited appeals

44. As in the case of appeals against terminating rulings **Article 23** provides 2 alternative appeal routes for appeals against evidentiary rulings, an expedited (fast) route and a non-expedited (slower) route.

Continuation of proceedings for offences not affected by ruling

45. **Article 24** deals with cases where the trial involves more than one offence but the appeal does not apply to all of the offences. It enables proceedings to continue in relation to any offence to which the appeal does not apply.

Determination of appeal by Court of Appeal

46. **Article 25** sets out the powers of the Court of Appeal when determining a prosecution appeal against an evidentiary ruling and should be read in conjunction with Article 26. The Court of Appeal may confirm, reverse or vary the ruling which was the subject of the appeal. It must then direct the next stage to take place in the proceedings.

Reversal of rulings

47. **Article 26** sets out the criteria that have to be satisfied before the Court of Appeal can overturn a judge's ruling. This applies to both the general right of appeal and appeals against evidentiary rulings.

Appeals to the House of Lords

48. **Article 27** amends the Criminal Appeal (Northern Ireland) Act 1980 to:
- give both the prosecution and defence a right of appeal to the House of Lords from a decision by the Court of Appeal on a prosecution appeal against a ruling made under this Part of the Order; and

*This Explanatory Memorandum refers to the Criminal
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- prevent the Court of Appeal from granting bail to a defendant who is appealing or applying for leave to appeal to the House of Lords from a Court of Appeal decision made under this Part of the Order. Bail will continue to be a matter for the trial court.