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## STATUTORY INSTRUMENTS

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### 2004 No. 1500

## The Criminal Justice (Northern Ireland) Order 2004

### PART IV

#### PROSECUTION APPEALS

##### *General right of appeal in respect of rulings*

##### **General right of appeal in respect of rulings**

**17.**—(1) This Article applies where a judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.

(2) The prosecution may appeal in respect of the ruling in accordance with this Article.

(3) The ruling is to have no effect whilst the prosecution is able to take any steps under paragraph (4).

(4) The prosecution may not appeal in respect of the ruling unless, following the making of the ruling—

(a) it informs the court that it intends to appeal; or

(b) it requests an adjournment to consider whether to appeal and if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.

(5) If the prosecution requests an adjournment under paragraph (4)(b), the judge may grant such an adjournment.

(6) Where the ruling relates to two or more offences—

(a) any one or more of those offences may be the subject of the appeal; and

(b) if the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.

(7) Where—

(a) the ruling is a ruling that there is no case to answer; and

(b) the prosecution, at the same time that it informs the court in accordance with paragraph (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time and which relate to the offence or offences which are the subject of the appeal,

that other ruling, or those other rulings, are also to be treated as the subject of the appeal.

(8) The prosecution may not inform the court in accordance with paragraph (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions mentioned in paragraph (9) is fulfilled.

(9) Those conditions are—

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- (a) that leave to appeal to the Court of Appeal is not obtained; and
- (b) that the appeal is abandoned before it is determined by the Court of Appeal.

(10) If the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, the ruling mentioned in paragraph (1) is to continue to have no effect in relation to the offence or offences which are the subject of the appeal whilst the appeal is pursued.

- (11) If and to the extent that a ruling has no effect in accordance with this Article—
- (a) any consequences of the ruling are also to have no effect;
  - (b) the judge may not take any steps in consequence of the ruling; and
  - (c) if he does so, any such steps are also to have no effect.

(12) Where the prosecution has informed the court of its agreement under paragraph (8) and either of the conditions mentioned in paragraph (9) is fulfilled, the judge or the Court of Appeal must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence.

(13) In this Article “applicable time”, in relation to a trial on indictment, means any time (whether before or after the commencement of the trial) before the time when the judge starts his summing-up to the jury.

(14) The reference in paragraph (13) to the time when the judge starts his summing-up to the jury includes the time when the judge would start his summing-up if there were a jury.

### **Expedited and non-expedited appeals**

**18.**—(1) Where the prosecution informs the court in accordance with Article 17(4) that it intends to appeal, the judge must decide whether or not the appeal should be expedited.

- (2) If the judge decides that the appeal should be expedited, he may order an adjournment.
- (3) If the judge decides that the appeal should not be expedited, he may—
  - (a) order an adjournment; or
  - (b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in paragraph (3)(a) or (b).

### **Continuation of proceedings for offences not affected by ruling**

**19.**—(1) This Article applies where the prosecution informs the court in accordance with Article 17(4) that it intends to appeal.

- (2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

### **Determination of appeal by Court of Appeal**

**20.**—(1) On an appeal under Article 17, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

- (2) Paragraphs (3) to (5) apply where the appeal relates to a single ruling.

(3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

- (a) order that proceedings for that offence may be resumed in the Crown Court;
- (b) order that a fresh trial may take place in the Crown Court for that offence;

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(c) order that the defendant in relation to that offence be acquitted of that offence.

[<sup>F1</sup>(5) But the Court of Appeal may not make an order under paragraph (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under paragraph (4)(a) or (b).]

(6) Paragraphs (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.

(7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in paragraph (4)(a) to (c) (but subject to paragraph (5)).

**F1** [Art. 20\(5\)](#) substituted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 45](#), [153\(7\)](#) (with [Sch. 27 para. 17](#)); [S.I. 2008/1586](#), [art. 2\(1\)](#), [Sch. 1 para. 24](#) (with [art. 2\(3\)](#), [Sch. 2](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 4 para. 7A inserted by [S.I. 2008/1769 \(N.I.\) Sch. 1 para. 33\(2\)](#) (Amendment not applied due to drafting error by 2008 1769 (N.I. 2) - the amended provision should read Sch. 2 para. 7A (not Sch. 4 para. 7A). This error has been reported to the relevant Department for correction in due course.)
- Sch. 4 para. 10A inserted by [S.I. 2008/1769 \(N.I.\) Sch. 1 para. 33\(3\)](#) (Amendment not applied due to drafting error by 2008 1769 (N.I. 2) - the amended provision should read Sch. 2 para. 10A (not Sch. 4 para. 10A). This error has been reported to the relevant Department for correction in due course.)
- art. 11A inserted by [2015 c. 9 \(N.I.\) s. 52\(3\)](#)
- art. 14(2)(aa) inserted by [2015 c. 9 \(N.I.\) s. 52\(6\)](#)