
STATUTORY INSTRUMENTS

2004 No. 1500

The Criminal Justice (Northern Ireland) Order 2004

PART IV

PROSECUTION APPEALS

Right of appeal in respect of evidentiary rulings

Right of appeal in respect of evidentiary rulings

21.—(1) The prosecution may, in accordance with this Article and Article 22, appeal in respect of—

- (a) a single qualifying evidentiary ruling; or
- (b) two or more qualifying evidentiary rulings.

(2) A “qualifying evidentiary ruling” is an evidentiary ruling of a judge in relation to a trial on indictment which is made at any time (whether before or after the commencement of the trial) before the opening of the case for the defence.

(3) The prosecution may not appeal in respect of a single qualifying evidentiary ruling unless the ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(4) The prosecution may not appeal in respect of two or more qualifying evidentiary rulings unless each ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(5) If the prosecution intends to appeal under this Article, it must before the opening of the case for the defence inform the court—

- (a) of its intention to do so; and
- (b) of the ruling or rulings to which the appeal relates.

(6) In respect of the ruling, or each ruling, to which the appeal relates—

- (a) the qualifying offence, or at least one of the qualifying offences, to which the ruling relates must be the subject of the appeal; and
- (b) any other offence to which the ruling relates may, but need not, be the subject of the appeal.

(7) The prosecution must, at the same time that it informs the court in accordance with paragraph (5), inform the court of the offence or offences which are the subject of the appeal.

(8) For the purposes of this Article, the case for the defence opens when, after the conclusion of the prosecution evidence, the earliest of the following events occurs—

- (a) evidence begins to be adduced by or on behalf of a defendant;
- (b) it is indicated to the court that no evidence will be adduced by or on behalf of a defendant;
- (c) a defendant's case is opened, as permitted by section 2 of the Criminal Procedure Act 1865 (c. 18).

(9) In this Article—

Changes to legislation: The Criminal Justice (Northern Ireland) Order 2004, Cross Heading: Right of appeal in respect of evidentiary rulings is up to date with all changes known to be in force on or before 22 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“evidentiary ruling” means a ruling which relates to the admissibility or exclusion of any prosecution evidence;

“qualifying offence” means—

- (a) an offence described in Schedule 2;
- (b) an offence of aiding, abetting, counselling or procuring the commission of an offence described in Schedule 2.

(10) The Secretary of State may by order amend that Schedule by doing any one or more of the following—

- (a) adding a description of offence;
- (b) removing a description of offence for the time being included;
- (c) modifying a description of offence for the time being included.

(11) Nothing in this Article affects the right of the prosecution to appeal in respect of an evidentiary ruling under Article 17.

Condition that evidentiary ruling significantly weakens prosecution case

22.—(1) Leave to appeal may not be given in relation to an appeal under Article 21 unless the judge or, as the case may be, the Court of Appeal is satisfied that the relevant condition is fulfilled.

(2) In relation to an appeal in respect of a single qualifying evidentiary ruling, the relevant condition is that the ruling significantly weakens the prosecution's case in relation to the offence or offences which are the subject of the appeal.

(3) In relation to an appeal in respect of two or more qualifying evidentiary rulings, the relevant condition is that the rulings taken together significantly weaken the prosecution's case in relation to the offence or offences which are the subject of the appeal.

Expedited and non-expedited appeals

23.—(1) Where the prosecution informs the court in accordance with Article 21(5), 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

24.—(1) This Article applies where the prosecution informs the court in accordance with Article 21(5).

(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

25.—(1) On an appeal under Article 21, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) In addition, the Court of Appeal must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

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- (a) order that proceedings for that offence be resumed in the Crown Court;
 - (b) order that a fresh trial may take place in the Crown Court for that offence;
 - (c) order that the defendant in relation to that offence be acquitted of that offence.
- (3) But no order may be made under paragraph (2)(c) in respect of an offence unless the prosecution has indicated that it does not intend to continue with the prosecution of that offence.

Reversal of rulings

26. The Court of Appeal may not reverse a ruling on an appeal under this Part unless it is satisfied—

- (a) that the ruling was wrong in law;
- (b) that the ruling involved an error of law or principle; or
- (c) that the ruling was a ruling that it was not reasonable for the judge to have made.

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\(6\)](#)