
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 41

RETRIAL FOLLOWING ACQUITTAL FOR SERIOUS OFFENCE

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Interpretation

41.1. In this Part:

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971, in England and Wales⁽¹⁾; and

“section 76 application” means an application made by a prosecutor under section 76(1) or (2) of the Criminal Justice Act 2003⁽²⁾.

Notice of a section 76 application

41.2.—(1) A prosecutor who wants to make a section 76 application must serve notice of that application in the form set out in the Practice Direction on the Registrar and the acquitted person.

(2) That notice shall, where practicable, be accompanied by—

- (a) relevant witness statements which are relied upon as forming new and compelling evidence of guilt of the acquitted person as well as any relevant witness statements from the original trial;
- (b) any unused statements which might reasonably be considered capable of undermining the section 76 application or of assisting an acquitted person’s application to oppose that application under rule 41.3;
- (c) a copy of the indictment and paper exhibits from the original trial;
- (d) copies of the transcript of the summing up and any other relevant transcripts from the original trial; and
- (e) any other documents relied upon to support the section 76 application.

(3) The prosecutor must, as soon as practicable after service of that notice on the acquitted person, file with the Registrar a witness statement or certificate of service which exhibits a copy of that notice.

Response of the acquitted person

41.3.—(1) An acquitted person who wants to oppose a section 76 application must serve a response in the form set out in the Practice Direction on the Registrar and the prosecutor which—

- (a) indicates if he is also seeking an order under section 80(6) of the Criminal Justice Act 2003⁽³⁾ for—
 - (i) the production of any document, exhibit or other thing, or
 - (ii) a witness to attend for examination and to be examined before the Court of Appeal;and
- (b) exhibits any relevant documents.

(2) The acquitted person must serve that response not more than 28 days after receiving notice under rule 41.2.

(3) The Court of Appeal may extend the period for service under paragraph (2), either before or after that period expires.

Examination of witnesses or evidence by the Court of Appeal

41.4.—(1) Prior to the hearing of a section 76 application, a party may apply to the Court of Appeal for an order under section 80(6) of the Criminal Justice Act 2003 for—

- (a) the production of any document, exhibit or other thing; or

(1) 1971 c. 80.
(2) 2003 c. 44.
(3) 2003 c. 44.

- (b) a witness to attend for examination and to be examined before the Court of Appeal.
- (2) An application under paragraph (1) must be in the form set out in the Practice Direction and must be sent to the Registrar and a copy sent to each party to the section 76 application.
- (3) An application must set out the reasons why the order was not sought from the Court when—
 - (a) the notice was served on the Registrar under rule 41.2, if the application is made by the prosecutor; or
 - (b) the response was served on the Registrar under rule 41.3, if the application is made by the acquitted person.
- (4) An application must be made at least 14 days before the day of the hearing of the section 76 application.
- (5) If the Court of Appeal makes an order under section 80(6) of the 2003 Act on its own motion or on application from the prosecutor, it must serve notice and reasons for that order on all parties to the section 76 application.

Bail or custody hearings in the Crown Court

41.5.—(1) Rules 19.18, 19.22 and 19.23 shall apply where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the Criminal Justice Act 2003(4) (with the modification as set out in paragraph (2)), as if they were applications under rule 19.18(1).

(2) Substitute the following for Rule 19.18:

“Where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the Criminal Justice Act 2003, the prosecutor must serve notice of the need for such a hearing on the court officer.”

(3) Where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the 2003 Act the Crown Court may order that the person shall be released from custody on entering into a recognizance, with or without sureties, or giving other security before—

- (a) the Crown Court officer; or
- (b) any other person authorised by virtue of section 119(1) of the Magistrates' Courts Act 1980(5) to take a recognizance where a magistrates' court having power to take the recognizance has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound.

(4) The court officer shall forward to the Registrar a copy of any record made in pursuance of section 5(1) of the Bail Act 1976(6).

Further provisions regarding bail and custody in the Crown Court

41.6.—(1) The prosecutor may only apply to extend or further extend the relevant period before it expires and that application must be served on the Crown Court officer and the acquitted person.

(2) A prosecutor's application for a summons or a warrant under section 89(3)(a) or (b) of the Criminal Justice Act 2003 must be served on the court officer and the acquitted person.

(4) 2003 c. 44.

(5) 1980 c. 43.

(6) 1976 c. 63; section 5(1) was amended by section 27 of and paragraph 1(a) of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), and is further amended by Part 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

Bail or custody orders in the Court of Appeal

41.7. Rules 68.8 and 68.9 shall apply to bail or custody orders made in the Court of Appeal under section 90 of the Criminal Justice Act 2003(7) as if they were orders made pursuant to an application under rule 68.7.

Application for restrictions on publication

41.8.—(1) An application by the Director of Public Prosecutions, under section 82 of the Criminal Justice Act 2003(8), for restrictions on publication must be in the form set out in the Practice Direction and be served on the Registrar and the acquitted person.

(2) If notice of a section 76 application has not been given and the Director of Public Prosecution has indicated that there are reasons why the acquitted person should not be notified of the application for restrictions on publication, the Court of Appeal may order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person.

(3) If the Court of Appeal makes an order for restrictions on publication of its own motion or on application of the Director of Public Prosecutions, the Registrar must serve notice and reasons for that order on all parties, unless paragraph (2) applies.

Variation or revocation of restrictions on publication

41.9.—(1) A party who wants to vary or revoke an order for restrictions on publication, under section 82(7) of the Criminal Justice Act 2003(9), may apply to the Court of Appeal in writing at any time after that order was made.

(2) A copy of the application to vary or revoke shall be sent to all parties to the section 76 application unless paragraph (3) applies.

(3) If the application to vary or revoke is made by the Director of Public Prosecutions and—

- (a) the notice of a section 76 application has not been given under rule 41.2; and
- (b) the Director of Public Prosecutions has indicated that there are reasons why the acquitted person should not be notified of an application for restrictions on publication, the Court of Appeal may order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person.

(4) If the Court of Appeal varies or revokes an order for restrictions on publication of its own motion or on application, it must serve notice and reasons for that order on all parties, unless paragraph (3) applies.

Powers exercisable by a single judge of the Court of Appeal

41.10.—(1) The following powers under the Criminal Justice Act 2003 and under this Part may be exercised by a single judge in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions, namely to—

- (a) order the production of any document, exhibit or thing under section 80(6)(a) of the 2003 Act;
- (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the Court of Appeal under section 80(6)(b) of the 2003 Act;
- (c) extend the time for service under rule 41.3(2); and

(7) 2003 c. 44.

(8) 2003 c. 44.

(9) 2003 c. 44.

- (d) delay the requirement of service on the acquitted person of an application for restrictions on publication under rules 41.8(2) and 41.9(3).
- (2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.
- (3) Where a single judge exercises one of the powers set out in paragraph (1), the Registrar must serve notice of the single judge's decision on all parties to the section 76 application.

Powers exercisable by the Registrar

41.11.—(1) The Registrar may require the Crown Court at the place of original trial to provide the Court of Appeal with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 10 of the Criminal Justice Act 2003(10) or this Part.

(2) The following powers may be exercised by the Registrar in the same manner as the Court of Appeal and subject to the same provisions?

- (a) order the production of any document, exhibit or thing under section 80(6)(a) of the 2003 Act;
- (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the Court of Appeal under section 80(6)(b) of the 2003 Act; and
- (c) extend the time for service under rule 41.3(2).

(3) Where the Registrar exercises one of the powers set out in paragraph (2) the Registrar must serve notice of that decision on all parties to the section 76 application.

(4) Where the Registrar has refused an application to exercise any of the powers referred to in paragraph (2), the party making the application may have it determined by a single judge by serving a renewal in the form set out in the Practice Direction within 14 days of the day on which notice of the Registrar's decision is served on the party making the application, unless that period is extended by the Court of Appeal.

Determination by full court

41.12.—(1) Where a single judge has refused an application to exercise any of the powers referred to in rule 41.10, the applicant may have that application determined by the Court of Appeal by serving a notice of renewal in the form set out in the Practice Direction.

(2) A notice under paragraph (1) must be served on the Registrar within 14 days of the day on which notice of the single judge's decision is served on the party making the application, unless that period is extended by the Court of Appeal.

(3) If a notice under paragraph (1) is not served on the Registrar within the period specified in paragraph (2) or such extended period as the Court of Appeal has allowed, the application shall be treated as having been refused by the Court of Appeal.

Notice of the determination of the application

41.13.—(1) The Court of Appeal may give its determination of the section 76 application at the conclusion of the hearing.

(2) If determination is reserved, the Registrar shall as soon as practicable, serve notice of the determination on the parties to the section 76 application.

(3) If the Court of Appeal orders under section 77 of the Criminal Justice Act 2003⁽¹¹⁾ that a retrial take place, the Registrar must as soon as practicable, serve notice on the Crown Court officer at the appropriate place of retrial.

Notice of application to set aside order for retrial

41.14.—(1) If an acquitted person has not been arraigned before the end of 2 months after the date of an order under section 77 of the Criminal Justice Act 2003 he may apply in the form set out in the Practice Direction to the Court of Appeal to set aside the order.

(2) An application under paragraph (1) must be served on the Registrar and the prosecutor.

Leave to arraign

41.15.—(1) If the acquitted person has not been arraigned before the end of 2 months after the date of an order under section 77 of the Criminal Justice Act 2003, the prosecutor may apply in the form set out in the Practice Direction to the Court of Appeal for leave to arraign.

(2) An application under paragraph (1) must be served on the Registrar and the acquitted person.

Abandonment of the application

41.16.—(1) A section 76 application may be abandoned by the prosecutor before the hearing of that application by serving a notice in the form set out in the Practice Direction on the Registrar and the acquitted person.

(2) The Registrar must, as soon as practicable, after receiving a notice under paragraph (1) send a copy of it endorsed with the date of receipt to the prosecutor and acquitted person.

Service

41.17.—(1) Where this Part requires service of a document on the Registrar then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of an acquitted person in custody, by delivering it to the person who has custody of him;
- (b) by addressing it to the Registrar and delivering it at, or sending it by first class post to his office at the Royal Courts of Justice London WC2A 2LL; or
- (c) if the Registrar has indicated that he is willing to accept service by facsimile or other means of electronic communication, by sending a legible copy of the document by such means to the Registrar.

(2) Where this Part requires service of a document on the Crown Court officer then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of an acquitted person in custody, by delivering it to the person who has custody of him;
- (b) by delivering it to, or sending it by first class post to the court officer at the Crown Court at which the ruling appealed against was made; or
- (c) if the court officer has indicated that he is willing to accept service by facsimile or other means of electronic communication, by sending a legible copy of the document by such means to that officer.

(11) 2003 c. 44.

(3) A person who has custody of an acquitted person and to whom the acquitted person delivers a document under paragraph (1)(a) or (2)(a) must endorse on it the date of delivery and forward it to the Registrar or the court officer as the case may be.

(4) Where this Part requires the service of a document on any other person then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) personally on that person or their solicitor;
- (b) by first class post to that person's last known residence or place of business or to their solicitor's business address;
- (c) leaving it at that person's known address or place of business;
- (d) if the party has indicated that he is willing to accept service by facsimile or other means of electronic communication, by sending a legible copy of the document by such means to that party; and
- (e) where the person or their solicitor has given a number of a box at a document exchange and has not indicated that they are unwilling to accept service through a document exchange, by leaving it at the document exchange addressed to the box number.

(5) Where a document is served under this Part by any method other than personal service it is deemed to be served—

- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
- (b) in the case of a document sent by first class post, on the second business day after the day on which it was posted;
- (c) in the case of a document left at a document exchange, on the second business day after the day on which it was left;
- (d) in the case of a document transmitted by fax or other electronic means on a business day before 5 p.m., on that day; and
- (e) in the case of a document transmitted by fax or other electronic means at any time other than that specified in paragraph (d), on the next business day after the day on which it was transmitted.