
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 68

**APPEAL TO THE COURT OF APPEAL
AGAINST CONVICTION OR SENTENCE**

Contents of this Part

Service of documents	rule 68.1
Certificate of trial judge	rule 68.2
Notice of appeal and application for extension of time	rule 68.3
Appeal following reference by Criminal Cases Review Commission	rule 68.4
Exercise of court's powers to give leave etc	rule 68.5
Further applications to a judge or to the court	rule 68.6
Application for bail pending appeal	rule 68.7
Bail with condition of surety	rule 68.8
Forfeiture of recognizances	rule 68.9
Custody of exhibits	rule 68.10
Supply of documentary and other exhibits	rule 68.11
Record of proceedings at trial	rule 68.12
Transcripts	rule 68.13
Verification of record of proceedings	rule 68.14
Application for witness order	rule 68.15
Examination of witnesses	rule 68.16
Vulnerable witness giving video recorded testimony	rule 68.17
Vulnerable witness giving evidence by live television link	rule 68.18
Overseas witness giving evidence by live television link	rule 68.19

Procedure for the admission of hearsay evidence	rule 68.20
Procedure for the admission of evidence of bad character	rule 68.21
Abandonment of proceedings	rule 68.22
The Registrar	rule 68.23
Sittings in vacation	rule 68.24
Opinion on point referred by Criminal Cases Review Commission	rule 68.25
Application for leave to be present	rule 68.26
Declaration of incompatibility	rule 68.27
Dismissal of appeal against hospital order	rule 68.28
Notice of determination of court	rule 68.29
Enforcement of fines	rule 68.30
Notice of application after order for retrial	rule 68.31

Service of documents

68.1.—(1) Except where any other rule contains provision to the contrary, service of a document in proceedings in the Court of Appeal may be effected—

- (a) in the case of a document to be served on the Registrar—
 - (i) in the case of an appellant who is in custody, by delivering it to the person having custody of him,
 - (ii) by delivering it to the Registrar,
 - (iii) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London, W.C.2, or
 - (iv) by sending it by post addressed to him at the said office;
- (b) in the case of a document to be served on a Crown Court officer—
 - (i) in the case of an appellant who is in custody, by delivering it to the person having custody of him,
 - (ii) by delivering it to, or sending it by post addressed to, a court officer at the Crown Court centre at which the conviction, verdict, finding or sentence appealed against was given or passed;
- (c) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; or
- (d) in the case of a document to be served on any other person—
 - (i) by delivering it to the person to whom it is directed,
 - (ii) by leaving it for him with some person at his last known or usual place of abode, or
 - (iii) by sending it by post addressed to him at his last known or usual place of abode.

(2) A person having custody of an appellant to whom a document is delivered in pursuance of paragraph (1)(a)(i) or (1)(b)(i) of this rule shall endorse on it the date of delivery and cause it to be forwarded forthwith to the Registrar or to a Crown Court officer, as the case may be.

(3) In this rule, a reference to an appellant includes an appellant under section 13 of the Administration of Justice Act 1960(1) (appeal in cases of contempt of court), a defendant in proceedings in the Crown Court in respect of which an application is made for leave to appeal under section 159 of the Criminal Justice Act 1988(2) (Crown Court proceedings—orders restricting or preventing reports or restricting public access) and, in the case of an application under section 8(1) or 8(1A) of the Criminal Appeal Act 1968(3), a person who has been ordered to be retried.

[Note. Formerly rule 21 of the Criminal Appeal Rules 1968(4). For further rules of service applicable in particular circumstances see rules 41.17 (retrial following acquittal), 65.9 (appeal against ruling in preparatory hearing), 66.17 (appeal against ruling adverse to prosecution), 68.20 (hearsay evidence), 68.21 (evidence of bad character), 69.6 (Attorney General’s reference of point of law), 70.8 (Attorney General’s reference of unduly lenient sentence) and 71.11 (appeal under the Proceeds of Crime Act 2002(5)). As to appeals generally, see Part II of the Practice Direction.]

Certificate of trial judge

68.2.—(1) The certificate of the judge of the court of trial under section 1(2), 12 or 15(2) of the Criminal Appeal Act 1968(6) that a case is a fit case for appeal shall be in the form set out in the Practice Direction.

(2) The certificate shall be forwarded forthwith to the Registrar, whether or not the person to whom the certificate relates has applied for a certificate.

(3) A copy of the certificate shall be forwarded forthwith to the person to whom the certificate relates or to his legal representative.

[Note. Formerly rule 1 of the Criminal Appeal Rules 1968.]

Notice of appeal and application for extension of time

68.3.—(1) Notice of appeal or of an application for leave to appeal under Part I of the Criminal Appeal Act 1968 or notice of appeal under section 13 (appeal in cases of contempt of court) of the Administration of Justice Act 1960 (as required by section 18A of the 1968 Act(7)) against an order or decision of the Crown Court shall be given by completing Part 1 of the form set out in the Practice Direction, and so much of Part 2 thereof as relates to the notice and serving it on a Crown court officer.

(2) A notice of appeal or of an application for leave to appeal shall be accompanied by a notice in the form set out in the Practice Direction containing the grounds of the appeal or application.

(3) A notice of the grounds of appeal or application in the form set out in the Practice Direction shall include notice—

(1) 1960 c. 65; section 13 was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part II, paragraph 40(1) and by the Access to Justice Act 1999 (c. 22), sections 64 and 106 and Schedule 15, Part III.

(2) 1988 c. 33; section 159 was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 61(6).

(3) 1968 c. 19; section 8 was amended by the Courts Act 1971 (c. 23), section 56 and Schedule 11, Part IV and by the Criminal Justice Act 1988 (c. 33), section 43(3) and (4).

(4) S.I. 1968/1262; amending instruments relevant to this Part are S.I. 1978/1118, 1987/1977, 1988/2159, 1989/1102, 1990/2156, 1992/2757, 1997/702, 2000/2036, 2004/1293, 2004/2992.

(5) 2002 c. 29.

(6) Section 1(2) was amended by the Criminal Appeal Act 1995 (c. 35), section 1(1); section 12 was amended by the Criminal Appeal Act 1995 (c. 35), section 1(3); section 15(2) was amended by the Criminal Appeal Act 1995 (c. 35), section 1(5).

(7) Section 18A was inserted by the Criminal Justice Act 1988 (c. 33), section 170(1) and Schedule 15, paragraphs 20 and 25.

- (a) of any application to be made to the court for a declaration of incompatibility under section 4 of the Human Rights Act 1998⁽⁸⁾; or
 - (b) of any issue for the court to decide which may lead to the court making such a declaration.
- (4) Where the grounds of appeal or application include notice in accordance with paragraph (3) (b) above, a copy of the notice shall be served on the prosecutor by the appellant.
- (5) If the appellant has been convicted of more than one offence, the notice of appeal or of an application for leave, referred to in paragraph (2), shall specify the convictions or sentences against which the appellant is appealing or applying for leave to appeal.
- (6) The grounds of an appeal or application, referred to in paragraph (2), may, with the consent of the court, be varied or amplified within such time as the court may allow.
- (7) Notice of an application to extend the time within which notice of appeal or of an application for leave to appeal may under Part I of the 1968 Act be given shall be given by completing so much of Part 2 of the form, referred to in paragraph (2), as relates to the application and by giving notice of appeal or of an application for leave to appeal in accordance with the foregoing provisions of this rule.
- (8) Notice of an application to extend the time within which notice of appeal or of an application for leave to appeal may under Part I of the 1968 Act be given shall specify the grounds of the application.
- (9) An appellant who is appealing or applying for leave to appeal against conviction shall specify in the form, referred to in paragraph (2), any exhibit produced at the trial which he wishes to be kept in custody for the purposes of his appeal.
- (10) The forms to which this rule relates, shall be signed by, or on behalf of, the appellant.
- (11) If a form is not signed by the appellant and the appellant is in custody, the Registrar shall, as soon as practicable after receiving the form from the Crown Court, send a copy of it to the appellant.
- (12) Where an appellant does not require leave to appeal, a notice of application for leave to appeal shall be treated as a notice of appeal; and where an appellant requires leave to appeal but serves only a notice of appeal, the notice of appeal shall be treated as an application for leave to appeal.

[Note. Formerly rule 2 of the Criminal Appeal Rules 1968.]

Appeal following reference by Criminal Cases Review Commission

68.4.—(1) In this rule:

“the Commission” means the Criminal Cases Review Commission, and

“reference” means the reference of a conviction, verdict, finding or sentence to the Court of Appeal by the Commission under section 9 of the Criminal Appeal Act 1995⁽⁹⁾.

- (2) The Registrar must serve on the appellant written notice of receipt of a reference.
- (3) The appellant must give notice of appeal under rule 68.3 by serving it on the Registrar within—
 - (a) 28 days of the date of the notice served under paragraph (2), in the case of an appeal against sentence; or
 - (b) 56 days of the date of that notice, in the case of an appeal against conviction, verdict of not guilty by reason of insanity, finding that the appellant was under a disability, or finding that the appellant did the act or made the omission charged.

⁽⁸⁾ 1998 c. 42.

⁽⁹⁾ 1995 c. 35.

- (4) The court may extend the time for giving notice of appeal, either before or after it expires.
- (5) The grounds of appeal accompanying a notice of appeal must include—
 - (a) where a ground of appeal is said to relate to a reason given by the Commission for making the reference, an explanation of how it is related; and
 - (b) where a ground of appeal is said not to be so related, notice of application for leave to appeal on that ground.
- (6) If a notice of appeal is not received within the time specified in paragraph (3), or within such longer period as the court allows under paragraph (4), the reasons given by the Commission for making the reference shall stand as the grounds of appeal.
- (7) On receiving a notice of appeal the Registrar must serve a copy on the prosecutor and on any other party to the appeal.

Exercise of court's powers to give leave to appeal, etc: general rules

68.5.—(1) This rule and rule 68.6 apply when the Registrar or a single judge exercises a power conferred by one of these sections of the Criminal Appeal Act 1968—

- (a) section 31(10) (powers exercisable by a single judge);
- (b) section 31A(11) (powers exercisable by the Registrar);
- (c) section 31B(12) (procedural directions by a single judge or the Registrar); or
- (d) section 31C (appeals against procedural directions).

(2) An application to the Registrar, a single judge or the court for the exercise of any of the powers referred to in paragraph (1) should be in the relevant form set out in the Practice Direction or in the form required by the Registrar.

(3) An application by an appellant must be signed by him or on his behalf. If it is not signed by him and he is in custody, the Registrar must send him a copy as soon as practicable after receiving it.

(4) An application by an appellant must be served on the Crown Court officer if the appellant makes it when he gives notice of appeal or notice of an application for leave to appeal. In all other cases, the application must be served on the Registrar.

(5) Neither a single judge nor the Registrar need sit in court to exercise any of the powers referred to in paragraph (1) of this rule.

[Note. Formerly rule 11 of the Criminal Appeal Rules 1968.]

Further applications to a judge or to the court: additional rules

68.6.—(1) Where—

- (a) an appellant renews an application for the exercise of a power conferred by section 31 of the Criminal Appeal Act 1968 (powers exercisable by a single judge) or by section 31A (powers exercisable by the Registrar); or

(10) Section 31 was amended by the Costs in Criminal Cases Act 1973 (c. 14), section 21(2) and Schedule 2, by the Road Traffic Act 1974 (c. 50), Schedule 6, paragraph 10, by the Criminal Justice Act 1982 (c. 48), section 29(2), by the Criminal Justice Act 1988 (c. 33), section 170(1) and Schedule 15, paragraphs 20, 29 and 30, by the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 4 and Schedule 3, paragraph 4(1) and by the Courts Act 2003 (c. 39), section 87(1) and it is amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(1) and Schedule 4, paragraph 4(1) and (3), by the Licensing Act 2003 (c. 17), Schedule 6, paragraphs 38 and 40 and by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 6, paragraphs 86, 87 and 88 with effect from dates to be appointed.

(11) Section 31A was inserted by the Criminal Appeal Act 1995 (c. 35), section 6 and was amended by the Courts Act 2003 (c. 39), section 87(2) and Schedule 10.

(12) Sections 31B and 31C were inserted by the Courts Act 2003 (c. 39), section 87(3).

- (b) an appellant or a respondent applies for procedural directions under section 31C of the 1968 Act (appeals against procedural directions),

then he must do so within 14 days. That period begins when the Registrar serves on him notice of the decision that prompts his further application. That period may be extended before or after it expires by the Registrar, by a single judge or by the court. The general rule is that an application for an extension of that period will be considered at the same time as the further application itself.

- (2) Where—

- (a) an appellant may renew to the court an application for the exercise of a power conferred by section 31 of the 1968 Act; but

- (b) he does not do so within the period fixed by this rule or extended under it,

then his application shall be treated as having been refused by the court.

[Note. Formerly rule 12 of the Criminal Appeal Rules 1968.]

Application for bail pending appeal

68.7.—(1) Notice of an application by the appellant to be granted bail pending the determination of his appeal or pending his retrial shall be in the form set out in the Practice Direction and, unless notice of appeal or of an application for leave to appeal has previously been given, shall be accompanied by such a notice and shall be served on the Registrar; save that where notice of such an application is given together with a notice of appeal or notice of application for leave to appeal, it shall be served on the Crown Court officer.

- (2) An application as aforesaid may be made to the court orally.

(3) Notice in writing of intention to make an application relating to bail to the court shall, unless the court or a judge thereof otherwise directs, at least 24 hours before it is made be served on the prosecutor and on the Director of Public Prosecutions, if the prosecution was carried on by him or, if the application is to be made by the prosecutor or a constable under section 3(8) of the Bail Act 1976(13), on the appellant.

[Note. Formerly paragraphs (1)(a), (2) and (3) of rule 3 of the Criminal Appeal Rules 1968. For applications to the trial judge for bail pending appeal see also direction IV.50 in the Practice Direction.]

Bail with condition of surety

68.8.—(1) Where the court grants bail to the appellant, the recognizance of any surety required as a condition of bail may be entered into before the Registrar or, where the person who has been granted bail is in a prison or other place of detention, before the governor or keeper of the prison or place as well as before the persons specified in section 8(4) of the Bail Act 1976(14).

(2) The recognizance of a surety shall be in the form set out in the Practice Direction, there being an alternative form for use in relation to an appellant granted bail pending his retrial or on the issue of a writ of venire de novo.

(3) Where, under section 3(5) or (6) of the 1976 Act(15), the court imposes a requirement to be complied with before a person's release on bail, the court may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.

(13) 1976 c. 63; section 3(8) was amended by the Criminal Law Act 1977 (c. 45), section 65(4) and Schedule 12 and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 48(1) and (2) with effect from a date to be appointed.

(14) Section 8(4) was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 186(1) and (2).

(15) Section 3(5) was amended by the Crime and Disorder Act 1998 (c. 37), sections 54(1) and 120(2) and Schedule 10; section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c. 33), sections 27(2) and 168(3) and Schedule 11, by

(4) A person who, in pursuance of an order for the grant of bail made by the court, proposes to enter into a recognizance as a surety or give security shall, unless the court or a judge thereof otherwise directs, give notice to the prosecutor at least 24 hours before he enters into the recognizance or gives security as aforesaid.

(5) Where the court has fixed the amount in which a surety is to be bound by a recognizance or, under section 3(5) or (6) of the 1976 Act, has imposed any requirement to be complied with before the appellant's release on bail, the Registrar shall issue a certificate in the form set out in the Practice Direction showing the amount and conditions, if any, of the recognizance or, as the case may be, containing a statement of the requirement; and a person authorised to take the recognizance or do anything in relation to the compliance with such requirement shall not be required to take or do it without production of such a certificate as aforesaid.

(6) Where, in pursuance of an order for the grant of bail made by the court, a recognizance is entered into or requirement complied with before any person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement that the requirement has been complied with, to be transmitted forthwith to the Registrar; and a copy of such recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the appellant is detained, unless the recognizance was entered into or the requirement complied with before such governor or keeper.

(7) A person taking a recognizance in pursuance of such an order shall give a copy thereof to the person entering into the recognizance.

(8) Where the court has fixed the amount in which a surety is to be bound by a recognizance or, under section 3(5) or (6) of the 1976 Act, has imposed any requirement to be complied with before the appellant's release on bail, the governor or keeper of the prison or other place of detention in which the appellant is detained shall, on receipt of a certificate in the appropriate form stating that the recognizances of all sureties required have been taken and that all such requirements have been complied with or on being otherwise so satisfied, release the appellant.

(9) Where the court has granted bail pending retrial or on ordering the issue of a writ of venire de novo, the Registrar shall forward to the Crown Court officer a copy of any record made in pursuance of section 5 of the 1976 Act(16) relating to such bail and also all recognizances and statements sent to the Registrar under paragraph (6) of this rule.

(10) Any record required by section 5 of the 1976 Act shall be made by including in the file relating to the case in question—

- (a) where bail is granted, a copy of the form issued under paragraph (5) of this rule and a statement of the day on which, and the time and place at which, the appellant is notified to surrender to custody; and
- (b) in any other case, a copy of the notice served under rule 68.29(1) (notice of determination of court).

[Note. Formerly rule 4 of the Criminal Appeal Rules 1968. As to forfeiture where there has been a default in performing the conditions of a recognizance, see rule 68.8.]

Forfeiture of recognizances in respect of person bailed to appear

68.9.—(1) Where a recognizance has been entered into in respect of an appellant and it appears to the court that a default has been made in performing the conditions of the recognizance, the court may order the recognizance to be forfeited and such an order may—

the Crime and Disorder Act 1998 (c. 37), section 54(2) and by the Criminal Justice Act 2003 (c. 44), section 13(1) and Schedule 37, Part 2.

(16) Section 5 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 27 and Schedule 3, paragraph 1(a), and by the Criminal Justice and Police Act 2001, section 129(1), and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 12 with effect from a date to be appointed.

- (a) allow time for the payment of the amount due under the recognizance;
- (b) direct payment of that amount by instalments of such amounts and on such dates respectively as may be specified in the order; or
- (c) discharge the recognizance or reduce the amount due thereunder.

(2) Where the court is to consider making an order under paragraph (1) for a recognizance to be forfeited, the Registrar shall give notice to that effect to the person by whom the recognizance was entered into indicating the time and place at which the matter will be considered; and no such order shall be made before the expiry of seven days after the notice required by this paragraph has been given.

[Note. Formerly rule 6 of the Criminal Appeal Rules 1968.]

Custody of exhibits

68.10.—(1) On a conviction on indictment or on a coroner’s inquisition a court officer of the court of trial shall, subject to any directions of the judge of the court of trial, make arrangements for any exhibit at the trial which in his opinion may be required for the purposes of an appeal against conviction to be kept in the custody of the court, or given into the custody of the person producing it at the trial or any other person for retention, until the expiration of 35 days from the date of conviction.

(2) Where an appellant has given notice of appeal, or of an application for leave to appeal, against conviction, the Registrar shall inform a court officer of the notice and give directions concerning the continued retention in custody of any exhibit which appears necessary for the proper determination of the appeal or application.

(3) Where the court orders an appellant to be retried, it shall make arrangements pending his retrial for the continued retention in custody of exhibits.

(4) Any arrangements under this rule may include arrangements for the inspection of an exhibit by an interested party.

[Note. Formerly rule 7 of the Criminal Appeal Rules 1968.]

Supply of documentary and other exhibits

68.11.—(1) The Registrar shall, on request, supply to the appellant or respondent copies of documents or other things required for the appeal and in such case may make charges in accordance with scales and rates fixed for the time being by the Treasury.

(2) The Registrar shall, on request, make arrangements for the appellant or respondent to inspect any document or other thing required for the appeal.

(3) This rule shall not apply to the supply of the transcripts of any proceedings or part thereof.

[Note. Formerly rule 8 of the Criminal Appeal Rules 1968.]

Record of proceedings at trial

68.12.—(1) Except as provided by this rule, the whole of any proceedings in respect of which an appeal lies (with or without leave) to the court shall be recorded by means of shorthand notes or, with the permission of the Lord Chancellor, by mechanical means.

(2) Where such proceedings are recorded by means of shorthand notes, it shall not be necessary to record—

- (a) the opening or closing addresses to the jury on behalf of the prosecution or an accused person unless the judge of the court of trial otherwise directs; or

(b) any other part of such proceedings which the judge of the court of trial directs need not be recorded.

(3) Where it is not practicable for such proceedings to be recorded by means of shorthand notes or by mechanical means, the judge of the court of trial shall direct how and to what extent the proceedings shall be recorded.

(4) The permission of the Lord Chancellor may contain conditions concerning the custody, and supply of transcripts, of a recording made by mechanical means.

[Note. Formerly rule 18 of the Criminal Appeal Rules 1968.]

Transcripts

68.13.—(1) A transcript of the record of any proceedings or part thereof in respect of which an appeal lies, with or without leave, to the court and which are recorded in accordance with the provisions of rule 68.12—

- (a) shall, on request be supplied to the Registrar or any interested party; and
- (b) may, on request, be supplied to any other person on payment of such charge as may be fixed for the time being by the Treasury.

(2) Without prejudice to the provisions of paragraph (1) of this rule, the Registrar may, on request, supply to any interested party a transcript of the record of any proceedings or part thereof which is in his possession for the purposes of the appeal or application in question and in such case may make charges in accordance with scales and rates fixed for the time being by the Treasury:

Provided that in the case of an interested party who has been granted a right to representation by the Criminal Defence Service under Schedule 3 to the Access to Justice Act 1999⁽¹⁷⁾ for the purpose of the appeal or any proceedings preliminary or incidental thereto such a transcript shall be supplied free.

[Note. Formerly rule 19 of the Criminal Appeal Rules 1968.]

Verification of record of proceedings

68.14.—(1) An official shorthand writer who takes shorthand notes of any proceedings or part thereof before the court of trial in respect of which an appeal lies (with or without leave) to the court shall—

- (a) at the beginning of the notes state the name of the parties to the proceedings;
- (b) in the case of shorthand notes of part of any proceedings, state the part concerned;
- (c) record his name in the notes; and
- (d) retain the shorthand notes for not less than five years.

(2) Verification of a transcript of the shorthand notes taken by an official shorthand writer of any proceedings or part thereof before the court of trial in respect of which an appeal lies (with or without leave) to the court shall be by a certificate by the person making the transcript that—

- (a) he has made a correct and complete transcript of the notes to the best of his skill and ability; and
- (b) the notes were either taken by him and were to the best of his skill and ability a complete and correct account of those proceedings or part thereof or were taken by another official shorthand writer.

(17) 1999 c. 22.

(3) Verification of a transcript of the record of the proceedings or part thereof if recorded by mechanical means shall be by—

- (a) a certificate by the person making the transcript that he has made a correct and complete transcript of the recording to the best of his skill and ability; and
- (b) a certificate by a person responsible for the recording or a successor that the recording records so much of the proceedings as is specified in the certificate.

(4) Verification of a transcript of the record of the proceedings or part thereof if recorded in any other way shall be by—

- (a) a certificate by the person who made the record that he recorded the proceedings or part thereof to the best of his ability; and
- (b) a certificate by the person making the transcript that he has made a correct and complete transcript of the record to the best of his skill and ability.

[Note. Formerly rule 20 of the Criminal Appeal Rules 1968.]

Application for a witness order and for evidence to be received

68.15.—(1) Notice of an application by the appellant—

- (a) that a witness who would have been a compellable witness at the trial be ordered to attend for examination by the court; or
- (b) that the evidence of a witness be received by the court;

shall be in the form set out in the Practice Direction and shall be served on the Registrar; save that where a notice of an application under sub-paragraph (a) or (b) is given together with a notice of appeal or notice of application for leave to appeal, it shall be served on the Crown Court officer.

(2) An application as aforesaid may be made to the court orally.

[Note. Formerly paragraphs (1)(c)-(d) and (2) of rule 3 of the Criminal Appeal Rules 1968.]

Examination of witnesses by the court

68.16.—(1) An order of the court to a person to attend for examination as a witness shall be in the form set out in the Practice Direction and shall specify the time and place of attendance.

(2) The examination of a witness shall be conducted by the taking of a deposition and, unless the court directs otherwise, shall take place in public.

[Note. Formerly rule 9 of the Criminal Appeal Rules 1968.]

Vulnerable witness giving video recorded testimony

68.17.—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32A of the Criminal Justice Act 1988(**18**) to tender in evidence a video recording of testimony from a witness where—

- (a) the offence charged is one to which section 32(2) of the 1988 Act(**19**) applies;

(18) 1988 c. 33; section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54 and amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 50 and Schedule 11, by the Criminal Appeal Act 1995 (c. 35), section 29 and Schedule 2, paragraph 16(3), by the Criminal Procedure and Investigations Act 1996 (c. 25), sections 47, 62(2), (3), and 80 and Schedules 1, paragraph 33 and 5, and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and (4) and Schedules 6 and 7, paragraph 3.

(19) Section 32(2) was amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and (4) and Schedules 6 and 7, paragraph 3 and by the Sexual Offences Act 2003 (c. 42), Schedule 6, paragraph 29(1) and (2) and Schedule 7.

- (b) in the case of an offence falling within section 32(2)(a) or (b) of the 1988 Act, the proposed witness is under the age of 14 or, if he was under 14 when the video recording was made, is under the age of 15;
- (c) in the case of an offence falling within section 32(2)(c) of the 1988 Act, the proposed witness is under the age of 17 or, if he was under 17 when the video recording was made, is under the age of 18; and
- (d) the video recording is of an interview conducted between an adult and a person coming within sub-paragraph (b) or (c) above (not being the accused or one of the accused) which relates to any matter in issue in the proceedings;

and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar. The application shall be accompanied by the video recording which it is proposed to tender in evidence and shall include the following, namely—

- (a) the name of the appellant and the offence or offences charged;
- (b) the name and date of birth of the witness in respect of whom the application is made;
- (c) the date on which the video recording was made;
- (d) a statement that in the opinion of the applicant the witness is willing and able to attend the appeal for cross-examination; and
- (e) a statement of the circumstances in which the video recording was made which complies with paragraph (4).

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, an application under paragraph (1) must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(e) and (3) shall include the following information, except in so far as it is contained in the recording itself, namely—

- (a) the times at which the recording commenced and finished, including details of any interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) the name, age and occupation of any person present at any point during the recording, the time for which he was present, his relationship (if any) to the witness and to the appellant;
- (d) a description of the equipment used including the number of cameras used and whether they were fixed or mobile, the number and location of microphones, the video format used and whether there were single or multiple recording facilities; and
- (e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(6) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal. Copies of any video recording required by paragraph (2) or (3) to accompany the notice shall be provided by the applicant and sent by the Registrar to any party to the appeal not already served with a copy. In the case of an appellant acting in person, a copy shall be made available for viewing by him.

(7) An application under paragraph (1) shall be determined without a hearing, unless the Court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(8) Without prejudice to rule 68.29, the Registrar shall notify all the parties of the decision of the Court in relation to an application under paragraph (1) and, where leave is granted, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.

[Formerly rule 9C of the Criminal Appeal Rules 1968.]

Vulnerable witness giving evidence by live television link

68.18.—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1)(b) of the Criminal Justice Act 1988⁽²⁰⁾ for the evidence of that witness to be given through a live television link where—

- (a) the offence charged is one to which section 32(2) of the 1988 Act applies; and
- (b) the evidence is to be given by a witness who is either—
 - (i) in the case of an offence falling within section 32(2)(a) or (b) of the 1988 Act, under the age of 14,
 - (ii) in the case of an offence falling within section 32(2)(c) of the 1988 Act, under the age of 17, or
 - (iii) a person who is to be cross-examined following the admission under section 32A of the 1988 Act of a video recording of testimony from him,
 and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar which shall state—

- (a) the grounds of the application;
- (b) the date of birth of the witness;
- (c) the name of the witness; and
- (d) the name, occupation and relationship (if any) to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(4) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal.

(5) An application under paragraph (1) shall be determined without a hearing, unless the Court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(6) Without prejudice to rule 68.29, the Registrar shall notify all the parties and the person who is to accompany the witness (if known) of the decision of the court in relation to an application under paragraph (1). Where leave is granted, the notification shall state the name of the witness,

⁽²⁰⁾ Section 32(1) was amended by the Criminal Justice Act 1991 (c. 53), section 55(2) and (3) and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and (4) and Schedules 6 and 7, paragraph 3.

and, if known, the name, occupation and relationship (if any) to the witness of the person who is to accompany the witness.

(7) A witness giving evidence through a television link pursuant to leave granted in accordance with this rule shall be accompanied by a person acceptable to the Court and, unless the Court otherwise directs, by no other person.

[Note. Formerly rule 9A of the Criminal Appeal Rules 1968.]

Evidence through live television link where witness is outside the United Kingdom

68.19.—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1) of the Criminal Justice Act 1988 for the evidence of that witness to be given through a live television link where the witness is outside the United Kingdom.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar which shall state—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) the country and place where it is proposed the witness will be when giving evidence; and
- (d) the name and occupation of any person who it is proposed should be available for the purpose specified in paragraph (3).

(3) The purpose referred to in paragraph (2)(d) is that of answering any questions the court may put, before or after the evidence of the witness is given, as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

(4) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(5) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal.

(6) An application under paragraph (1) shall be determined without a hearing, unless the court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any such hearing.

(7) Without prejudice to rule 68.29, the Registrar shall notify all the parties of the decision of the court in relation to an application under paragraph (1), and, where leave is granted, the notification shall state the name of the witness and, where applicable, the name and occupation of any person specified by the court for the purpose set out in paragraph (3).

[Formerly rule 9B of the Criminal Appeal Rules 1968. For the corresponding rule in the Crown Court see rule 30.1.]

Procedure for the admission of hearsay evidence

68.20.—(1) Part 34 applies where a party wants to introduce hearsay evidence in an appeal or application for leave to appeal, except for rules 34.2, 34.3 and 34.4 (relating to the notice of hearsay evidence).

(2) An appellant who wants to introduce hearsay evidence to support a ground of appeal contained in his notice under rule 68.3(2)—

- (a) must give notice in the form set out in the Practice Direction to the Crown Court officer with his notice of application for leave to appeal under rule 68.3(1); but

(b) need not give a separate notice of application under rule 68.15(1) for that same evidence to be received by the court.

(3) A party who wants to introduce hearsay evidence in any other circumstances must give notice in the form set out in the Practice Direction to the Registrar and all other parties not more than 28 days after—

- (a) leave to appeal is given; or
- (b) notice of appeal is given, if leave is not required.

[Note: “Statements” and “matters stated” are defined in section 115 of the Criminal Justice Act 2003(21). “Oral evidence” is defined in section 134(1) of that Act. See also section 23 of the Criminal Appeal Act 1968 on the receipt of evidence by the Court of Appeal.]

Procedure for the admission of evidence of bad character

68.21. Part 35 applies to the introduction of evidence of bad character in proceedings before the Court of Appeal, except for rule 35.1 and with the following modifications—

- (a) a reference to a defendant should be read as a reference to an appellant, and “non-defendant” and “co-defendant” read accordingly;
- (b) a reference to a court officer should be read as a reference to the Registrar; and
- (c) an application under rule 35.2 (non-defendant’s bad character) must be received, and a notice under rule 35.4 or 35.5 (defendant’s bad character) must be given, not more than 28 days after—
 - (i) leave to appeal is given, or
 - (ii) notice of appeal is given, if leave is not required.

[Note. Formerly rule 9D of the Criminal Appeal Rules 1968.]

Abandonment of proceedings

68.22.—(1) An appeal or an application for leave to appeal under Part I of the Criminal Appeal Act 1968 may be abandoned before the hearing of the appeal or application by serving on the Registrar notice thereof in the form set out in the Practice Direction.

(2) The notice shall be signed by, or on behalf of, the appellant.

(3) The Registrar shall, as soon as practicable after receiving a notice under this rule, send a copy of it, endorsed with the date of receipt, to the appellant, to the Secretary of State and to a court officer of the court of trial.

(4) Where an appeal or an application for leave to appeal is abandoned, the appeal or application shall be treated as having been dismissed or refused by the court.

[Note. Formerly rule 10 of the Criminal Appeal Rules 1968.]

The Registrar

68.23.—(1) The Registrar may require the court of trial to furnish the court with any assistance or information which it may require for the purpose of exercising its jurisdiction.

(2) The Registrar shall give as long notice in advance as reasonably possible of the date on which the court will hear any appeal or application by an appellant to—

- (a) the appellant;

- (b) any person having custody of the appellant; and
- (c) any other interested party whom the court requires to be represented at the hearing.

(3) This paragraph shall not apply to proceedings before a single judge of the court under section 31 of the Criminal Appeal Act 1968.

[Note. Formerly rule 22 of the Criminal Appeal Rules 1968.]

Sittings in vacation

68.24. The Lord Chief Justice shall determine the days on which the court shall, if necessary, sit during vacations; and the court shall sit on such days in accordance with arrangements made by the Lord Chief Justice after consultation with the Master of the Rolls.

[Note. Formerly rule 17 of the Criminal Appeal Rules 1968.]

Opinion of court on point referred by Criminal Cases Review Commission

68.25. Where the Criminal Cases Review Commission refers a point to the court under section 14(3) of the Criminal Appeal Act 1995 the court may consider the point in private if appropriate.

[Note. Formerly rule 16 of the Criminal Appeal Rules 1968.]

Application to the Court of Appeal for leave to be present

68.26.—(1) Notice of an application by the appellant to be given leave by the court to be present at proceedings for which such leave is required shall be in the form set out in the Practice Direction and shall be served on the Registrar; save that where a notice of such an application is given together with a notice of appeal or notice of application for leave to appeal, it shall be served on a Crown Court officer.

- (2) An application as aforesaid may be made to the court orally.

[Note. Formerly paragraphs (1)(b) and (2) of rule 3 of the Criminal Appeal Rules 1968.]

Declaration of incompatibility

68.27.—(1) The court shall not consider making a declaration of incompatibility under section 4 of the Human Rights Act 1998 unless it has given written notice to the Crown.

(2) Where notice has been given to the Crown, a Minister, or other person entitled under the 1998 Act to be joined as a party, shall be so joined on giving written notice to the court.

- (3) A notice given under paragraph (1) above shall be given to—

- (a) the person named in the list published under section 17(1) of the Crown Proceedings Act 1947(22); or
- (b) in the case of doubt as to whether any and if so which of those departments is appropriate, the Treasury Solicitor.

(4) A notice given under paragraph (1) above, shall provide an outline of the issues in the case and specify—

- (a) the prosecutor and appellant;
- (b) the date, judge and court of the trial in the proceedings from which the appeal lies; and
- (c) the provision of primary legislation and the Convention right under question.

(22) 1947 c. 44.

(5) Any consideration of whether a declaration of incompatibility should be made, shall be adjourned for—

- (a) 21 days from the date of the notice given under paragraph (1) above; or
- (b) such other period (specified in the notice), as the court shall allow in order that the relevant Minister or other person, may seek to be joined and prepare his case.

(6) Unless the court otherwise directs, the Minister or other person entitled under the 1998 Act to be joined as a party shall, if he is to be joined, give written notice to the court and every other party.

(7) Where a Minister of the Crown has nominated a person to be joined as a party by virtue of section 5(2)(a) of the 1998 Act, a notice under paragraph (6) above shall be accompanied by a written nomination signed by or on behalf of the Minister.

[Note. Formerly rule 14A of the Criminal Appeal Rules 1968.]

Dismissal of appeal against hospital order

68.28. If the court dismisses an appeal or an application for leave to appeal by an appellant who is subject to a hospital order under the Mental Health Act 1983(23) or an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964(24) (power to deal with persons not guilty by reason of insanity or unfit to plead etc.) or the court affirms the order and the appellant has been released on bail pending his appeal, the court shall give such directions as it thinks fit for his conveyance to the hospital from which he was released on bail and for his detention, if necessary, in a place of safety as defined in section 55 of the 1983 Act pending his admission to the said hospital.

[Note. Formerly rule 14 of the Criminal Appeal Rules 1968.]

Notice of determination of court

68.29.—(1) The Registrar shall, as soon as practicable, serve notice of any determination by the court or by any judge of the court under section 31 of the Criminal Appeal Act 1968 (powers exercisable by a single judge) on any appeal or application by an appellant on—

- (a) the appellant;
- (b) the Secretary of State;
- (c) any person having custody of the appellant;
- (d) in the case of an appellant detained under the Mental Health Act 1983 the responsible authority; and
- (e) in the case of a declaration of incompatibility under section 4 of the Human Rights Act 1998, the declaration shall be served on—
 - (i) all of the parties to the proceedings, and
 - (ii) where a Minister of the Crown has not been joined as a party, the Crown (in accordance with rule 68.27(3) above).

(2) The Registrar shall, as soon as practicable, serve notice on a court officer of the court of trial of the order of the court disposing of an appeal or application for leave to appeal.

(3) In this rule the expression “responsible authority” means—

(23) 1983 c. 20; section 145(1) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66(1) and Schedule 9, paragraph 24(9), by the Mental Health (Amendment) Act 1994 (c. 6), section 1, by the Health Authorities Act 1995 (c. 17), section 2(1) and Schedule 1, paragraph 107(14), by the Health Act 1999 (c. 8), sections 41(2) and 65 and Schedule 5, by the Care Standards Act 2000 (c. 14), section 116 and Schedule 4, paragraphs 9(1) and (10)(c), by the National Health Service Reform and Health Care Professionals Act 2002 (c. 17), section 2(5) and Schedule 2, Part 2, paragraphs 42 and 49, by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 34 and Schedule 4, paragraphs 50 and 57, and by S.I. 2000/90, 2002/2469.

(24) 1964 c. 84; section 5 was amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 3.

- (a) in relation to a patient liable to be detained under the 1983 Act in a hospital or mental nursing home, the managers of the hospital or home as defined in section 145(1) of that Act; and
- (b) in relation to a patient subject to guardianship, the responsible local health authority as defined in section 34(3) of the 1983 Act.

[Note. Formerly rule 15 of the Criminal Appeal Rules 1968.]

Enforcement of fines

68.30.—(1) Where the court imposes a fine on an appellant, the court shall make an order fixing a term of imprisonment, not exceeding 12 months, which the appellant is to undergo if the fine is not duly paid or recovered.

(2) Such an order may—

- (a) allow time for the payment of the fine; or
- (b) direct payment of the fine by instalments of such amounts and on such dates respectively as may be specified in the order.

[Note. Formerly rule 13 of the Criminal Appeal Rules 1968.]

Notice of application after order for retrial

68.31. Notice of an application under section 8(1) of the Criminal Appeal Act 1968 for leave to arraign, and notice of an application under section 8(1A) of that Act to set aside an order for retrial shall be in the form set out in the Practice Direction and shall be served on the prosecutor or the person ordered to be retried as the case may be, and on the Registrar.

[Note. Formerly rule 2A of the Criminal Appeal Rules 1968.]