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STATUTORY INSTRUMENTS

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**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 71**

**APPEAL TO THE COURT OF APPEAL UNDER THE  
PROCEEDS OF CRIME ACT 2002—GENERAL RULES**

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**Extension of time**

**71.1.**—(1) An application to extend the time limit for giving notice of application for leave to appeal under Part 2 of the Proceeds of Crime Act 2002<sup>(1)</sup> must—

- (a) be included in the notice of appeal; and
- (b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by this Part, Part 72 or Part 73, or by the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003<sup>(2)</sup>.

*[Note. Formerly rule 13 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003<sup>(3)</sup>.]*

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(1) 2002 c. 29.  
(2) S.I. 2003/82.  
(3) S.I. 2003/428.

## Other applications

**71.2.** Rules 68.15 (application for witness order or for court to receive evidence) and 68.26 (application for leave to be present) shall apply in relation to an application—

- (a) by a party to an appeal under Part 2 of the Proceeds of Crime Act 2002 that, under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal; or
- (b) by the defendant to be given leave by the court to be present at proceedings for which leave is required under article 6 of the 2003 Order,

as they apply in relation to applications under Part I of the Criminal Appeal Act 1968<sup>(4)</sup> and the form in which rules 68.15 and 68.26 require notice to be given may be modified as necessary.

*[Note. Formerly rule 14 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Examination of witness by court

**71.3.—(1)** Rule 68.16 (examination of witness by court) shall apply in relation to an order of the court under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the Criminal Appeal Act 1968.

(2) The form set out in the Practice Direction, which relates to rule 68.16, may be modified as necessary.

*[Note. Formerly rule 15 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Supply of documentary and other exhibits

**71.4.** Rule 68.11 (supply of documentary and other exhibits) shall apply in relation to an appellant or respondent under Part 2 of the Proceeds of Crime Act 2002 as it applies in relation to an appellant and respondent under Part I of the Criminal Appeal Act 1968.

*[Note. Formerly rule 16 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Registrar's power to require information from court of trial

**71.5.** The Registrar may require the Crown Court to provide the Court of Appeal with any assistance or information which they may require for the purposes of exercising their jurisdiction under Part 2 of the Proceeds of Crime Act 2002, the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, this Part or Parts 72 and 73.

*[Note. Formerly rule 17 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Hearing by single judge

**71.6.—(1)** Rule 68.5 (exercise of court's power to give leave) shall apply in relation to a judge exercising any of the powers referred to in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or the powers in rules 71.12(1), (2) and (4) (service of documents), 72.2(3) and (4) (respondent's notice), 73.2(2) (notice of appeal) and 73.3(6) (respondent's notice), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

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(4) 1968 c. 19.

(2) The form in which rule 68.5 requires an application to be made may be modified as necessary.

*[Note. Formerly rule 18 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Determination by full court**

**71.7.** Rule 68.6 (further application to the court) shall apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or the power in rule 72.2(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

*[Note. Formerly rule 19 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Notice of determination**

**71.8.—**(1) This rule applies where a single judge or the Court of Appeal has determined an application or appeal under the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or under Part 2 of the Proceeds of Crime Act 2002.

(2) The Registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for leave to appeal or an appeal under section 31 of the 2002 Act, the registrar must also, as soon as practicable, serve the order on a court officer of the court of trial and any magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

*[Note. Formerly rule 20 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Record of proceedings and transcripts**

**71.9.—**(1) Rules 68.12 (record of proceedings at trial), 68.13 (transcripts) and 68.14 (verification of record of proceedings) shall apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Proceeds of Crime Act 2002 as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

(2) The Director of the Assets Recovery Agency shall be treated as an interested party for the purposes of rule 68.13 as it applies by virtue of this rule.

*[Note. Formerly rule 21 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Appeal to House of Lords**

**71.10.—**(1) An application to the Court of Appeal for leave to appeal to the House of Lords under Part 2 of the Proceeds of Crime Act 2002 must be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the House of Lords; or
- (b) in the form set out in the Practice Direction, in accordance with article 12 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and served on the Registrar.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the Registrar.

(3) Rule 68.5(5) (hearing by single judge or Registrar) applies in relation to a single judge exercising any of the powers referred to in article 15 of the 2003 Order, as it applies in relation to a single judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(4) Rules 68.5 (exercise of court's power to give leave to appeal, etc: general rules) and 68.6 (further applications to a judge or to the Court of Appeal: additional rules) apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 15 of the 2003 Order as they apply where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 68.5 requires an application to be made may be modified as necessary.

*[Note. Formerly rule 22 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### Service of documents

**71.11.**—(1) Where this Part or Parts 72 or 73 require 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 a defendant who is in custody, by delivering it to the person who has custody of him; and
- (b) in any other case, by addressing it to the Registrar and delivering it at, or sending it by first class post to, his office in the Royal Courts of Justice, London WC2.

(2) Where this Part or Parts 72 or 73 require service of a document on a 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 a defendant who is in custody, by delivering it to the person who has custody of him; and
- (b) in any other case, by delivering it to, or sending it by first class post to, the court officer at the Crown Court centre at which the decision being appealed against was made.

(3) A person who has custody of a defendant and to whom the defendant 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 Crown Court officer, as the case may be.

(4) Where this Part or Parts 72 or 73 require 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) in all cases, by delivering the document personally to the party to be served;
- (b) if no solicitor is acting for the party to be served by delivering the document at, or by sending it by first-class post to, his residence or his last-known residence; and
- (c) if a solicitor is acting for the party to be served—
  - (i) by delivering the document at, or sending it by first-class post to, the solicitor's address for service, or
  - (ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or

- (iii) if the solicitor has indicated that he is willing to accept service by facsimile transmission, by sending a legible copy of the document by facsimile transmission to the solicitor's office.

*[Note. Formerly rule 23 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*