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STATUTORY INSTRUMENTS

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**2010 No. 60**

The Criminal Procedure Rules 2010

PART 73

APPEAL TO THE COURT OF APPEAL UNDER POCA  
2002: RESTRAINT OR RECEIVERSHIP ORDERS

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**Leave to appeal**

**73.1.**—(1) Leave to appeal to the Court of Appeal under section 43 or section 65 of the Proceeds of Crime Act 2002(1) will only be given where—

- (a) the Court of Appeal considers that the appeal would have a real prospect of success; or
  - (b) there is some other compelling reason why the appeal should be heard.
- (2) An order giving leave may limit the issues to be heard and be made subject to conditions.

**Notice of appeal**

**73.2.**—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 43 or 65 of the Proceeds of Crime Act 2002 Act, he must serve a notice of appeal in the form set out in the Practice Direction on the Crown Court officer.

(2) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the appellant must serve the notice of appeal, accompanied by a respondent's notice in the form set out in the Practice Direction for the respondent to complete, on—

- (a) each respondent;

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(1) 2002 c. 29; section 65 was amended by section 74 of, and paragraphs 1 and 32 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

- (b) any person who holds realisable property to which the appeal relates; and
- (c) any other person affected by the appeal,

as soon as practicable and in any event not later than 7 days after the notice of appeal is served on a Crown Court officer.

- (3) The appellant must serve the following documents with his notice of appeal—
  - (a) four additional copies of the notice of appeal for the Court of Appeal;
  - (b) four copies of any skeleton argument;
  - (c) one sealed copy and four unsealed copies of any order being appealed;
  - (d) four copies of any witness statement or affidavit in support of the application for leave to appeal;
  - (e) four copies of a suitable record of the reasons for judgment of the Crown Court; and
  - (f) four copies of the bundle of documents used in the Crown Court proceedings from which the appeal lies.

(4) Where it is not possible to serve all of the documents referred to in paragraph (3), the appellant must indicate which documents have not yet been served and the reasons why they are not currently available.

(5) The appellant must provide a Crown Court officer with a certificate of service stating that he has served the notice of appeal on each respondent in accordance with paragraph (2) and including full details of each respondent or explaining why he has been unable to effect service.

### **Respondent's notice**

**73.3.**—(1) This rule applies to an appeal under section 43 or 65 of the Proceeds of Crime Act 2002.

- (2) A respondent may serve a respondent's notice on the Registrar.
- (3) A respondent who—
  - (a) is seeking leave to appeal from the Court of Appeal; or
  - (b) wishes to ask the Court of Appeal to uphold the decision of the Crown Court for reasons different from or additional to those given by the Crown Court,

must serve a respondent's notice on the Registrar.

(4) A respondent's notice must be in the form set out in the Practice Direction and where the respondent seeks leave to appeal to the Court of Appeal it must be requested in the respondent's notice.

- (5) A respondent's notice must be served on the Registrar not later than 14 days after—
  - (a) the date the respondent is served with notification that the Court of Appeal has given the appellant leave to appeal; or
  - (b) the date the respondent is served with notification that the application for leave to appeal and the appeal itself are to be heard together.

(6) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the respondent serving a respondent's notice must serve the notice on the appellant and any other respondent—

- (a) as soon as practicable; and
- (b) in any event not later than seven days,

after it is served on the Registrar.

### **Amendment and abandonment of appeal**

**73.4.**—(1) The appellant may amend a notice of appeal served under rule 73.2 or abandon an appeal under section 43 or 65 of the Proceeds of Crime Act 2002—

(a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and

(b) with the permission of the Court after the Court of Appeal have begun hearing the appeal, by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice under paragraph (1), he must send a copy of it to each respondent.

### **Stay**

**73.5.** Unless the Court of Appeal or the Crown Court orders otherwise, an appeal under section 43 or 65 of the Proceeds of Crime Act 2002 shall not operate as a stay of any order or decision of the Crown Court.

### **Striking out appeal notices and setting aside or imposing conditions on leave to appeal**

**73.6.**—(1) The Court of Appeal may—

(a) strike out the whole or part of a notice of appeal served under rule 73.2; or

(b) impose or vary conditions upon which an appeal under section 43 or 65 of the Proceeds of Crime Act 2002 may be brought.

(2) The Court of Appeal will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party is present at the hearing at which leave to appeal was given, he may not subsequently apply for an order that the Court of Appeal exercise its powers under paragraph (1)(b).

### **Hearing of appeals**

**73.7.**—(1) This rule applies to appeals under section 43 or 65 of the Proceeds of Crime Act 2002.

(2) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(3) The Court of Appeal will allow an appeal where the decision of the Crown Court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

(4) The Court of Appeal may draw any inference of fact which it considers justified on the evidence.

(5) At the hearing of the appeal a party may not rely on a matter not contained in his notice of appeal unless the Court of Appeal gives permission.