

2005 No. 159

SUPREME COURT, NORTHERN IRELAND

**The Criminal Appeal (Prosecution Appeals) Rules
(Northern Ireland) 2005**

Made - - - - - *21st March 2005*

Coming into operation *18th April 2005*

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978^(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby with the concurrence of the Lord Chancellor, exercise those powers, the powers under Article 32 of the Criminal Justice (Northern Ireland) Order 2004^(b), and all other powers enabling us in that behalf as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Appeal (Prosecution Appeals) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules –

“Court” means the Court of Appeal of Northern Ireland;

“the 2004 Order” means the Criminal Justice (Northern Ireland) Order 2004;

“appeal” means an appeal against a ruling under Article 17 of the 2004 Order and “application for leave to appeal” shall be construed accordingly;

“business day” means any day other than –

(a) a Saturday, Sunday, Christmas Day or Good Friday; or

(b) a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971^(c);

“chief clerk” means the chief clerk of the Crown Court before which the defendant is being tried;

“defendant” means a party in whose favour the ruling which is the subject of the appeal was made;

“interested party” means a person other than the defendant who –

(i) is a party to the proceedings in the Crown Court;

(ii) may be affected by the decision of the judge of the Crown Court under Article 18(1) of the 2004 Order as to whether or not the appeal should be expedited; and

(a) 1978 c. 23

(b) S.I. 2004/1500 (N.I. 9)

(c) 1971 c. 80

(iii) is permitted by the judge of the Crown Court or the Court of Appeal to make representations on that issue;

“judge of the Crown Court” means the judge of the Crown Court with conduct of the proceedings;

“public interest ruling” means a ruling under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(a) that it is not in the public interest to disclose material in the possession of the prosecution;

“the proper officer” means the Master (Queen’s Bench and Appeals) and includes any other officer of the Supreme Court directed by the Lord Chief Justice to exercise the powers and duties of the Master (Queen’s Bench and Appeals).

Forms

2. Any reference in these Rules to a Form means a reference to a form set out in the Schedule or a form to the same effect.

Notice of appeal or application for leave to appeal

3.—(1) Subject to rule 7, a notice of appeal (where the judge of the Crown Court has granted leave) or of application for leave to appeal to the Court shall be given by completing Form 1 and serving it on –

- (a) the proper officer;
- (b) the chief clerk;
- (c) the defendant; and
- (d) any interested party.

(2) The notice of appeal or application for leave to appeal shall be served –

- (a) where the judge of the Crown Court has decided that the appeal should be expedited under Article 18(1) of the 2004 Order and that decision has not been subsequently reversed, before 5.00 p.m. on the day on which the prosecution informs the judge of the Crown Court that it intends to appeal or, if the prosecution demonstrates to that judge that it is not practical to do so, before 5.00 p.m. on the next business day; or
- (b) in any other case, within 7 business days of the date on which the prosecution informs the judge of the Crown Court that it intends to appeal.

(3) The Court may, on application by the prosecution, extend the time within which notice of appeal or of an application for leave to appeal shall be given either before or after that period expires.

(4) The notice of appeal or application for leave to appeal shall be accompanied by any documents necessary for the proper determination of the appeal or application for leave to appeal including –

- (a) a transcript of the ruling which is the subject of the appeal;
- (b) any skeleton arguments provided to the judge of the Crown Court by the parties in respect of the issue which gave rise to the ruling; and
- (c) if the appeal is to be expedited, a copy of the reasons provided by the judge of the Crown Court.

(5) Subject to rule 7, the notice of appeal or application for leave to appeal served on the defendant shall be accompanied by Form 2 for the defendant to complete if he wishes to oppose the appeal or application for leave to appeal.

Response of the defendant

4.—(1) A defendant may oppose the appeal or application for leave to appeal by serving a response in Form 2 on –

(a) 1996 c. 25; section 7A was inserted into the Criminal Procedure and Investigations Act 1996 by section 37 of the Criminal Justice Act 2003 (c. 44).

- (a) the proper officer;
 - (b) the chief clerk;
 - (c) the prosecution; and
 - (d) any interested party.
- (2) Subject to paragraph (3), the defendant shall serve the response –
- (a) on the next business day after the date on which the notice of appeal or application for leave to appeal was served on him, where the judge of the Crown Court has decided that the appeal should be expedited under Article 18(1) of the 2004 Order and that decision has not been subsequently reversed under Article 18(4) of that Order; or
 - (b) in any other case, within 7 business days of the date on which the notice of appeal or application for leave to appeal was served on him.
- (3) The Court may, on application by the defendant, extend the time within which the response shall be served either before or after that period expires.

Application to reverse decision that appeal be expedited

5.—(1) At any time after notice of appeal or application for leave to appeal has been served on the proper officer under rule 3(1), the prosecution or defendant may apply to the Court to reverse the decision of a judge of the Crown Court that the appeal should be expedited.

- (2) An application under paragraph (1) shall be in writing and shall be served on –
- (a) the proper officer;
 - (b) the chief clerk;
 - (c) the prosecution or, as the case may be, the defendant; and
 - (d) any interested party.

Defendants in custody

6.—(1) A defendant in custody is not entitled to be present in person at the hearing of an appeal or application for leave to appeal, unless the Court so directs.

(2) Subject to rule 7(6), a defendant in custody will be entitled to participate in such a hearing, without a direction of the Court, by live television link.

(3) In directing whether a defendant in custody shall be present in person under paragraph (1) the Court shall take into account –

- (a) any representations made to it by the prosecution and the defendant;
- (b) the availability and reliability of live television link facilities;
- (c) any practical difficulties with the physical attendance of the defendant; and
- (d) whether or not the appeal is expedited under Article 18 of the 2004 Order.

(4) In this rule, “live television link” means an arrangement whereby the defendant, while absent from the courtroom, is able to see and hear the Court and to be seen and heard by it.

Public interest rulings

7.—(1) This rule applies where a public interest ruling is the subject of an appeal or application for leave to appeal.

(2) In any appeal or application for leave to appeal against a public interest ruling, the prosecution need not describe the material that is the subject of the ruling in the notice of appeal or application for leave to appeal under rule 3.

(3) Where the prosecution has reason to believe that to reveal to the defendant or any interested party the category of material that is the subject of the public interest ruling would have the effect of disclosing that which the prosecution considers should not be disclosed, the prosecution need not describe the category of the material in the notice of appeal or application for leave to appeal under rule 3.

(4) Where the prosecution has reason to believe that to reveal to the defendant or to any interested party the fact that a public interest ruling has been made would have the effect of disclosing that which the prosecution considers should not be disclosed, the prosecution need not serve notice of appeal or application for leave to appeal on the defendant or any interested party as required under rule 3, unless the Court otherwise directs.

(5) Where the prosecution has taken the measures set out in paragraph (2), (3) or (4), the notice of appeal or application for leave to appeal served on the proper officer under rule 3(1)(a) shall be accompanied by a confidential annexe indicating that the measures have been taken and giving the prosecution's reasons for taking them.

(6) Where the prosecution has taken the measures set out in paragraph (4), the defendant shall not be entitled to be present in person at the hearing of the appeal or application for leave to appeal, or to appear by way of live television link, unless the Court otherwise directs.

Supply of documentary and other exhibits

8.—(1) The proper officer shall, on request, supply to the prosecution, the defendant or any interested party, copies of documents or other exhibits required for the appeal or application for leave to appeal and in such case may make charges in accordance with scales and charges fixed for the time being by the Treasury.

(2) The proper officer shall, on request, make arrangements for the prosecution, the defendant or any interested party to inspect any document or other exhibit required for the appeal.

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

(4) This rule shall not require the proper officer to supply to the defendant or any interested party, or allow the defendant or any interested party to inspect –

- (a) material that is the subject of a public interest ruling;
- (b) a notice of appeal or application for leave to appeal served by the prosecution on the proper officer in accordance with rule 7(4); or
- (c) a confidential annexe served by the prosecution on the proper officer in accordance with rule 7(5),

unless the Court otherwise directs.

Abandonment of proceedings

9. An appeal or an application for leave to appeal (including an application for leave to appeal to the House of Lords) may be abandoned before the hearing of the appeal or application by serving on the proper officer notice thereof in Form 3.

Applications which may be heard by the proper officer

10.—(1) The following applications may be heard by the proper officer, namely –

- (a) an application to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 3(3); and
- (b) an application to extend the time for service of the response of the defendant under rule 4(3).

(2) As soon as practicable after the proper officer determines an application set out in paragraph (1), he shall serve notice of his decision in Form 4 on –

- (a) the prosecution;
- (b) the defendant;
- (c) any interested party; and
- (d) the chief clerk.

(3) Where the proper officer has refused an application referred to in paragraph (1), the party making the application may have the application determined by a single judge of the Court by serving notice of renewal in Form 4 on the proper officer within 7 business days, or such

longer period as the single judge of the Court may fix, from the date on which notice of the refusal was served on him.

Notice of hearing and determination of the Court

11.—(1) The proper officer shall, as far in advance as reasonably practicable, give notice of the date fixed for the hearing by the Court of an appeal or application to –

- (a) the prosecution;
- (b) the defendant;
- (c) any interested party; and
- (d) the chief clerk.

(2) As soon as reasonably practicable after the determination of an appeal or application for leave to appeal, the proper officer shall serve notice of the decision of the Court on those parties listed in paragraph (1).

(3) Where a party to whom notice is required to be given under this rule is in custody, notice shall instead be given to the person having custody of him.

Assistance from the Crown Court

12. The proper officer may require the chief clerk to furnish the Court with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part IV of the 2004 Order or these Rules.

Appeal to the House of Lords

13.—(1) An application to the Court for leave to appeal to the House of Lords under Part IV of the 2004 Order shall be made either –

- (a) orally immediately after the decision of the Court from which an appeal lies to the House of Lords; or
- (b) by serving notice in writing which shall include the grounds of the application on the proper officer within 7 business days of decision of the Court.

(2) If, in a case where the judge of the Crown Court has decided that the appeal should be expedited under Article 18(1) of the 2004 Order and that decision has not subsequently been reversed under Article 18(4) of that Order –

- (a) leave to appeal to the House of Lords is granted by the Court; or
- (b) a party has made an application to the House of Lords for leave,

the proper officer shall inform the chief clerk that the jury shall be discharged from giving a verdict in respect of that defendant.

Service

14.—(1) For the purposes of these Rules, service of a document on the proper officer may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected –

- (a) in the case of a defendant or interested party who is in custody, by delivering it to the person having custody of him;
- (b) by delivering it personally to the proper officer; or
- (c) by addressing it to the proper officer and leaving it at, or sending it by recorded delivery or by fax to, his office in the Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

(2) For the purposes of these Rules, service of a document on the chief clerk may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected –

- (a) in the case of a defendant or interested party who is in custody, by delivering it to the person having custody of him;
- (b) by delivering it personally to the chief clerk;

- (c) by addressing it to the chief clerk and leaving it at, or sending it by recorded delivery or by fax to, the Crown Court at which the ruling appealed against was made.
- (3) A person having custody of a defendant or interested party to whom a document is sent in pursuance of paragraph (1)(a) or (2)(a), shall endorse on it the date of delivery and send it forthwith to the proper officer or, as the case may be, the chief clerk.
- (4) For the purposes of these Rules –
- (a) service of a document on any other person may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected –
- (i) by delivering the document personally to the person to whom it is directed or his solicitor;
- (ii) by leaving it for him with some person at his last known or usual place of abode;
- (iii) by sending it by recorded delivery to that person's last known or usual place of abode or to his solicitor's business address; or
- (iv) by sending it by fax in accordance with sub-paragraph (b);
- (b) service by fax under sub-paragraph (a)(iv) may be effected –
- (i) in the case of a defendant or interested party who is represented by a solicitor, by sending it to that solicitor at a specified fax number where he has indicated in writing that he is willing to accept service by fax; or
- (ii) in the case of the prosecution, by sending it to the prosecution at a specified fax number where it has indicated in writing that it is willing to accept service by fax.
- (5) A document sent by recorded delivery shall be deemed to be served at the time when it is delivered.
- (6) Where a document is sent by fax before 5.00 p.m. it shall, unless the contrary is shown, be deemed to have been served on that day, and, in any other case, on the business day next following.

Transitional provision

15. Until the coming into force of Part 5 of the 2003 Act (Disclosure) a 'public interest ruling' means a ruling under section 3(6), 7(5), 8(5), or 9(8) of the Criminal Procedure and Investigations Act 1996 that it is not in the public interest to disclose material in the possession of the prosecution.

Brian Kerr
Patrick Coghlin
J. M. Nicholson
Anthony Campbell
Paul Girvan
Mark Horner
Bernard McCloskey
Tony Caher
Caroline A. McGonagle

Dated 14th March 2005

Signed by the authority of the Lord Chancellor

I concur

Baroness Ashton of Upholland
Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 21st March 2005

SCHEDULE

FORM 1

Rule 3(1)

NOTICE OF PROSECUTION APPEAL OR APPLICATION FOR LEAVE OF COURT

(Article 17 of the Criminal Justice (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
Appeals and Lists Office,
Royal Courts of Justice,
Belfast
BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of Judge:</p> <p>Date the trial or proceedings started:</p> <p>Name of the defendant(s):</p> <p>Details of indictment:</p>	<p>Details of indictment should include the Bill number and the offences on the indictment which are the subject of the appeal.</p>
<p>Details of the ruling</p> <p>The ruling(s) that is (are) the subject of this application for leave to appeal:</p> <p>The date on which ruling(s) made:</p> <p>Please attach a transcript of the ruling which is the subject of the appeal and any skeleton arguments provided to the judge of the Crown Court by the parties in respect of the issue which gave rise to the ruling.</p>	<p>If one ruling is a ruling of no case to answer, please specify the relationship between those earlier rulings and the ruling of no case to answer.</p>
<p>Defendant(s) in custody</p> <p>If the defendant(s) is in custody:</p> <p>(a) give the defendant's prison number and the address of the establishment at which he is detained; and</p> <p>(b) indicate whether there are any difficulties with the defendant appearing by way of live link at the hearing.</p>	
<p>Undertaking</p> <p>I, (insert name of prosecutor) a person conducting a prosecution, consent to the acquittal of the named defendant(s) if:</p> <p>(a) leave to appeal to the Court of Appeal is not obtained; and</p> <p>(b) that the appeal is abandoned before it is determined by the Court of Appeal.</p>	<p>Article 17 of the Criminal Justice (Northern Ireland) Order 2004.</p>
<p>Application to the Crown Court</p> <p>State whether there was an application to the judge of the Crown Court for leave to appeal (yes/no)</p>	

<i>Details required</i>	<i>Notes</i>
<p>If yes, was the application granted? (yes/no)</p> <p>If applicable, state the grounds on which leave was granted.</p>	
<p>Expedited appeal</p> <p>State whether the judge of the Crown Court decided that the appeal should be expedited (yes/no).</p> <p>If yes, please attach the written reasons provided by the judge of the Crown Court.</p>	<p>Article 18 of the Criminal Justice (Northern Ireland) Order 2004.</p>
<p>Public interest ruling</p> <p>State whether a public interest ruling is the subject of the appeal or application for leave to appeal (yes/no).</p> <p>Do you have reason to believe that to reveal to the defendant or any other interested party the fact that a public interest ruling has been made would have the effect of disclosing that which you consider should not be disclosed (yes/no).</p> <p>If the answer above is no, describe the category of the material that is the subject of the ruling, <i>unless</i> you have reason to believe that to reveal this to the defendant or any interested party would have the effect of disclosing that which you consider should not be disclosed.</p>	<p><i>If yes, this notice must be accompanied by a confidential annexe as required by rule 7.</i></p> <p><i>If yes, the prosecution need not serve this notice on the defendant or any interested party as otherwise required under rule 3.</i></p>
<p>Extension of time</p> <p>Are you applying for an extension of time in which to give notice of appeal or application for leave to appeal? (yes/no)</p> <p>If yes, please also state your reasons:</p>	<p>Rule 3(3)</p>
<p>Grounds of appeal</p> <p>Specify the question of law in respect of which the appeal is brought (and where appropriate, such facts of the case as are necessary for the proper consideration of the question of law.</p> <p>Summarise the arguments that you intend to put to the Court (specifying any authorities to be cited).</p>	
<p>Name of Prosecutor:</p> <p>Name of Prosecuting Agency:</p> <p>Address:</p>	

Dated this day of 20 .

Signed on behalf of Prosecution

NOTES

This form should be served on the proper officer –

- where the appeal is to be expedited, before 5.00 p.m. on the date on which the prosecution informed the judge of the Crown Court that he intends to appeal (unless the judge of the Crown Court otherwise directs); or
- where the appeal is not to be expedited, within 7 business days of the date on which the prosecution informed the judge of the Crown Court that he intends to appeal.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

Note to party who receives a copy of this notice:

If you wish to oppose this application you are required to serve a response in Form 2 on the proper officer, the chief clerk, the prosecution and any interested party –

- where the appeal is to be expedited, on the first business day after the date on which the notice was served on you; or
- where the appeal is not to be expedited, within 7 business days of the date on which the notice was served on you.

RESPONSE OF THE DEFENDANT

(Article 17 of the Criminal Justice (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
Appeals and Lists Office,
Royal Courts of Justice,
Belfast
BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Details of the defendant(s)</p> <p>Name:</p> <p>Address:</p> <p>Date of birth:</p> <p>If you are in custody, please give your prison number and the address of the establishment in which you are detained:</p>	
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of Judge:</p> <p>Date the trial or proceedings started:</p> <p>Details of indictment:</p>	<p>Details of indictment should include the Bill number and the offences on the indictment which are the subject of the appeal.</p>
<p>Ancillary applications</p> <p>State whether you are applying for (<i>tick where appropriate</i>):</p> <p><input type="checkbox"/> an extension of time in which to serve the form of response (Rule 4(3))</p> <p><input type="checkbox"/> an order for the production of any document, exhibit or other thing (Rule 8(1)).</p>	
<p>Defendants in custody</p> <p>If you are a defendant in custody you are entitled to appear by way of live link. The Court of Appeal, however, may direct that you appear in person. Please state here if there are reasons why you want to appear in person at the appeal or application for leave to appeal and why a live link would not be appropriate.</p>	<p>Rule 6(1)</p>
<p>Grounds</p> <p>Summarise the arguments you intend to put to the Court of Appeal, specifying any authorities to be cited.</p>	

Dated this day of 20 .

Defendant
[Solicitor for Defendant]

NOTES

This form should be served on the proper officer –

- where the appeal is to be expedited, on the next business day after the date on which the notice was served on you; or
- where the appeal is not to be expedited, within 7 business days of the date on which the notice was served on you.

At the same time the defendant shall serve this form on –

- the chief clerk;
- the prosecution; and
- any interested party.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

NOTICE OF ABANDONMENT OF PROCEEDINGS

(Article 17 of the Criminal Justice (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
Appeals and Lists Office,
Royal Courts of Justice,
Belfast
BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of Judge:</p> <p>Date the trial or proceedings started:</p> <p>Name of the defendant(s):</p> <p>Details of indictment:</p>	<p>Details of indictment should include the Bill number and the offences on the indictment which are the subject of the appeal.</p>
<p>Details of the ruling</p> <p>The ruling(s) that is (are) the subject of this application for leave to appeal:</p> <p>Date on which ruling(s) made:</p> <p>Date that leave to appeal was granted:</p> <p>If applicable, date of written notice of appeal:</p>	
<p>Abandonment of proceedings</p> <p>I, (insert name), a person conducting a prosecution, abandon the appeal to the Court of Appeal against the ruling(s) made by the Crown Court at the time, date and place set out above.</p>	
<p>Name of Prosecutor:</p> <p>Name of Prosecuting Agency:</p> <p>Address:</p>	

Dated this day of 20 .

Signed on behalf of Prosecution

DETERMINATION BY THE PROPER OFFICER AND NOTICE OF RENEWAL

(Article 17 of the Criminal Justice (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
 Appeals and Lists Office,
 Royal Courts of Justice,
 Belfast
 BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>1. Details of the applicant</p> <p>Name:</p> <p>Address:</p> <p>In the case of a defendant in custody, please give your prison number and the address of the establishment in which you are detained:</p>	
<p>ORDER BY THE PROPER OFFICER</p> <p>2. Application considered</p> <p><input type="checkbox"/> Application for extension of time for service of notice of appeal or of an application for leave to appeal.</p> <p><input type="checkbox"/> Application for extension of time for service of defendant's response.</p> <p><i>(tick where appropriate)</i></p>	
<p>3. Decision:</p>	<p><i>If an application has been refused by the proper officer, it may be renewed for consideration by a Judge of the Court.</i></p> <p><i>The applicant must fill in section 4 of this form and return it to the proper officer.</i></p>
<p>4. Notice of Renewal:</p> <p>The following application(s) are renewed:</p> <p>The date that this form was delivered to the applicant:</p>	<p><i>Applicants must use this section for the renewal of applications.</i></p> <p><i>Notice of the renewal must be served on the proper officer within 7 business days of the date on which notice of the decision was served on the party making the application, unless a longer period has been specified.</i></p>

Dated this day of 20 .

Applicant
 [Solicitor for Applicant]

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules prescribe the procedures which apply in the Court of Appeal in relation to prosecution appeals under Article 17 of the Criminal Justice (Northern Ireland) Order 2004.

Article 17 of the 2004 Order provides for a prosecution right of appeal to the Court of Appeal against rulings by a judge of the Crown Court, made at any time (whether before or after the commencement of the trial) before the judge starts his summing-up to the jury, that have the effect of terminating the trial.

Rule 3 prescribes the manner in which, and the time at which, notice of appeal (where the judge of the Crown Court has granted leave) or application for leave to appeal shall be given. It also prescribes the documents which should accompany the notice and provides that the Court may extend the time within which the notice of appeal or application for leave to appeal shall be given.

Rule 4 provides that the defendant, if he wishes to oppose the appeal or application for leave, shall do so by serving a response in Form 2.

Rule 5 prescribes the manner in which an application to the Court to reverse a Crown Court judge's decision that the appeal be expedited shall be made.

Rule 6 provides that a defendant in custody is entitled to appear before the Court of Appeal by way of live television link, but may not appear in person unless the Court so directs.

Rule 7 contains further provision where the ruling to which the appeal relates is a public interest ruling.

Rules 8 to 15 make supplementary provision.

© Crown Copyright 2005

£3.00

Published by The Stationery Office Limited

ISBN 0-337-95968-4



9 780337 959684