



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 9

#### PROSECUTION APPEALS

VALID FROM 04/04/2005

#### *Introduction*

#### **57 Introduction**

- (1) In relation to a trial on indictment, the prosecution is to have the rights of appeal for which provision is made by this Part.
- (2) But the prosecution is to have no right of appeal under this Part in respect of—
  - (a) a ruling that a jury be discharged, or
  - (b) a ruling from which an appeal lies to the Court of Appeal by virtue of any other enactment.
- (3) An appeal under this Part is to lie to the Court of Appeal.
- (4) Such an appeal may be brought only with the leave of the judge or the Court of Appeal.

#### **Commencement Information**

- I1** S. 57 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

**Status:** Point in time view as at 01/03/2005. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 04/04/2005

*General right of appeal in respect of rulings*

**58 General right of appeal in respect of rulings**

- (1) This section applies where a judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.
- (2) The prosecution may appeal in respect of the ruling in accordance with this section.
- (3) The ruling is to have no effect whilst the prosecution is able to take any steps under subsection (4).
- (4) The prosecution may not appeal in respect of the ruling unless—
  - (a) following the making of the ruling, it—
    - (i) informs the court that it intends to appeal, or
    - (ii) requests an adjournment to consider whether to appeal, and
  - (b) if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.
- (5) If the prosecution requests an adjournment under subsection (4)(a)(ii), the judge may grant such an adjournment.
- (6) Where the ruling relates to two or more offences—
  - (a) any one or more of those offences may be the subject of the appeal, and
  - (b) if the prosecution informs the court in accordance with subsection (4) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.
- (7) Where—
  - (a) the ruling is a ruling that there is no case to answer, and
  - (b) the prosecution, at the same time that it informs the court in accordance with subsection (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time and which relate to the offence or offences which are the subject of the appeal,  
that other ruling, or those other rulings, are also to be treated as the subject of the appeal.
- (8) The prosecution may not inform the court in accordance with subsection (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions mentioned in subsection (9) is fulfilled.
- (9) Those conditions are—
  - (a) that leave to appeal to the Court of Appeal is not obtained, and
  - (b) that the appeal is abandoned before it is determined by the Court of Appeal.

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- (10) If the prosecution informs the court in accordance with subsection (4) that it intends to appeal, the ruling mentioned in subsection (1) is to continue to have no effect in relation to the offence or offences which are the subject of the appeal whilst the appeal is pursued.
- (11) If and to the extent that a ruling has no effect in accordance with this section—
  - (a) any consequences of the ruling are also to have no effect,
  - (b) the judge may not take any steps in consequence of the ruling, and
  - (c) if he does so, any such steps are also to have no effect.
- (12) Where the prosecution has informed the court of its agreement under subsection (8) and either of the conditions mentioned in subsection (9) is fulfilled, the judge or the Court of Appeal must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence.
- (13) In this section “applicable time”, in relation to a trial on indictment, means any time (whether before or after the commencement of the trial) before the start of the judge’s summing-up to the jury.

#### Commencement Information

- I2** S. 58 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

### 59 Expedited and non-expedited appeals

- (1) Where the prosecution informs the court in accordance with section 58(4) that it intends to appeal, the judge must decide whether or not the appeal should be expedited.
- (2) If the judge decides that the appeal should be expedited, he may order an adjournment.
- (3) If the judge decides that the appeal should not be expedited, he may—
  - (a) order an adjournment, or
  - (b) discharge the jury (if one has been sworn).
- (4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in subsection (3)(a) or (b).

#### Commencement Information

- I3** S. 59 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

### 60 Continuation of proceedings for offences not affected by ruling

- (1) This section applies where the prosecution informs the court in accordance with section 58(4) that it intends to appeal.

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- (2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

#### Commencement Information

- I4** S. 60 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

### 61 Determination of appeal by Court of Appeal

- (1) On an appeal under section 58, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.
- (2) Subsections (3) to (5) apply where the appeal relates to a single ruling.
- (3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.
- (4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—
- (a) order that proceedings for that offence may be resumed in the Crown Court,
  - (b) order that a fresh trial may take place in the Crown Court for that offence,
  - (c) order that the defendant in relation to that offence be acquitted of that offence.
- (5) But the Court of Appeal may not make an order under subsection (4)(a) or (b) in respect of an offence unless it considers it necessary in the interests of justice to do so.
- (6) Subsections (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.
- (7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.
- (8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in subsection (4)(a) to (c) (but subject to subsection (5)).

#### Commencement Information

- I5** S. 61 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

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PROSPECTIVE

*Right of appeal in respect of evidentiary rulings*

**62 Right of appeal in respect of evidentiary rulings**

- (1) The prosecution may, in accordance with this section and section 63, appeal in respect of—
  - (a) a single qualifying evidentiary ruling, or
  - (b) two or more qualifying evidentiary rulings.
- (2) A “qualifying evidentiary ruling” is an evidentiary ruling of a judge in relation to a trial on indictment which is made at any time (whether before or after the commencement of the trial) before the opening of the case for the defence.
- (3) The prosecution may not appeal in respect of a single qualifying evidentiary ruling unless the ruling relates to one or more qualifying offences (whether or not it relates to any other offence).
- (4) The prosecution may not appeal in respect of two or more qualifying evidentiary rulings unless each ruling relates to one or more qualifying offences (whether or not it relates to any other offence).
- (5) If the prosecution intends to appeal under this section, it must before the opening of the case for the defence inform the court—
  - (a) of its intention to do so, and
  - (b) of the ruling or rulings to which the appeal relates.
- (6) In respect of the ruling, or each ruling, to which the appeal relates—
  - (a) the qualifying offence, or at least one of the qualifying offences, to which the ruling relates must be the subject of the appeal, and
  - (b) any other offence to which the ruling relates may, but need not, be the subject of the appeal.
- (7) The prosecution must, at the same time that it informs the court in accordance with subsection (5), inform the court of the offence or offences which are the subject of the appeal.
- (8) For the purposes of this section, the case for the defence opens when, after the conclusion of the prosecution evidence, the earliest of the following events occurs—
  - (a) evidence begins to be adduced by or on behalf of a defendant,
  - (b) it is indicated to the court that no evidence will be adduced by or on behalf of a defendant,
  - (c) a defendant’s case is opened, as permitted by section 2 of the Criminal Procedure Act 1865 (c. 18).
- (9) In this section—

“evidentiary ruling” means a ruling which relates to the admissibility or exclusion of any prosecution evidence,

“qualifying offence” means an offence described in Part 1 of Schedule 4.

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- (10) The Secretary of State may by order amend that Part by doing any one or more of the following—
  - (a) adding a description of offence,
  - (b) removing a description of offence for the time being included,
  - (c) modifying a description of offence for the time being included.
- (11) Nothing in this section affects the right of the prosecution to appeal in respect of an evidentiary ruling under section 58.

### **63 Condition that evidentiary ruling significantly weakens prosecution case**

- (1) Leave to appeal may not be given in relation to an appeal under section 62 unless the judge or, as the case may be, the Court of Appeal is satisfied that the relevant condition is fulfilled.
- (2) In relation to an appeal in respect of a single qualifying evidentiary ruling, the relevant condition is that the ruling significantly weakens the prosecution's case in relation to the offence or offences which are the subject of the appeal.
- (3) In relation to an appeal in respect of two or more qualifying evidentiary rulings, the relevant condition is that the rulings taken together significantly weaken the prosecution's case in relation to the offence or offences which are the subject of the appeal.

### **64 Expedited and non-expedited appeals**

- (1) Where the prosecution informs the court in accordance with section 62(5), the judge must decide whether or not the appeal should be expedited.
- (2) If the judge decides that the appeal should be expedited, he may order an adjournment.
- (3) If the judge decides that the appeal should not be expedited, he may—
  - (a) order an adjournment, or
  - (b) discharge the jury (if one has been sworn).
- (4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in subsection (3)(a) or (b).

### **65 Continuation of proceedings for offences not affected by ruling**

- (1) This section applies where the prosecution informs the court in accordance with section 62(5).
- (2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

### **66 Determination of appeal by Court of Appeal**

- (1) On an appeal under section 62, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

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- (2) In addition, the Court of Appeal must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—
- (a) order that proceedings for that offence be resumed in the Crown Court,
  - (b) order that a fresh trial may take place in the Crown Court for that offence,
  - (c) order that the defendant in relation to that offence be acquitted of that offence.
- (3) But no order may be made under subsection (2)(c) in respect of an offence unless the prosecution has indicated that it does not intend to continue with the prosecution of that offence.

### Miscellaneous and supplemental

VALID FROM 04/04/2005

#### 67 Reversal of rulings

The Court of Appeal may not reverse a ruling on an appeal under this Part unless it is satisfied—

- (a) that the ruling was wrong in law,
- (b) that the ruling involved an error of law or principle, or
- (c) that the ruling was a ruling that it was not reasonable for the judge to have made.

#### Commencement Information

- I6** S. 67 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

VALID FROM 04/04/2005

#### 68 Appeals to the House of Lords

- (1) In section 33(1) of the 1968 Act (right of appeal to House of Lords) after “this Act” there is inserted “ or Part 9 of the Criminal Justice Act 2003 ”.
- (2) In section 36 of the 1968 Act (bail on appeal by defendant) after “under” there is inserted “ Part 9 of the Criminal Justice Act 2003 or ”.
- (3) In this Part “the 1968 Act” means the Criminal Appeal Act 1968 (c. 19).

#### Commencement Information

- I7** S. 68 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

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VALID FROM 04/04/2005

## 69 Costs

- (1) The Prosecution of Offences Act 1985 (c. 23) is amended as follows.
- (2) In section 16(4A) (defence costs on an appeal under section 9(11) of Criminal Justice Act 1987 may be met out of central funds) after “hearings)” there is inserted “ or under Part 9 of the Criminal Justice Act 2003 ”.
- (3) In section 18 (award of costs against accused) after subsection (2) there is inserted—
  - “(2A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part 9 of the Criminal Justice Act 2003, it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.”
- (4) In subsection (6) after “subsection (2)” there is inserted “ or (2A) ”.

### Commencement Information

- 18** S. 69 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

VALID FROM 04/04/2005

## 70 Effect on time limits in relation to preliminary stages

- (1) Section 22 of the Prosecution of Offences Act 1985 (c. 23) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings) is amended as follows.
- (2) After subsection (6A) there is inserted—
  - “(6B) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part 9 of the Criminal Justice Act 2003 shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned.”

### Commencement Information

- 19** S. 70 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)



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VALID FROM 04/04/2005

## 71 Restrictions on reporting

- (1) Except as provided by this section no publication shall include a report of—
  - (a) anything done under section 58, 59, 62, 63 or 64,
  - (b) an appeal under this Part,
  - (c) an appeal under Part 2 of the 1968 Act in relation to an appeal under this Part, or
  - (d) an application for leave to appeal in relation to an appeal mentioned in paragraph (b) or (c).
- (2) The judge may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—
  - (a) anything done under section 58, 59, 62, 63 or 64, or
  - (b) an application to the judge for leave to appeal to the Court of Appeal under this Part.
- (3) The Court of Appeal may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—
  - (a) an appeal to the Court of Appeal under this Part,
  - (b) an application to that Court for leave to appeal to it under this Part, or
  - (c) an application to that Court for leave to appeal to the House of Lords under Part 2 of the 1968 Act.
- (4) The House of Lords may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—
  - (a) an appeal to that House under Part 2 of the 1968 Act, or
  - (b) an application to that House for leave to appeal to it under Part 2 of that Act.
- (5) Where there is only one defendant and he objects to the making of an order under subsection (2), (3) or (4)—
  - (a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of the defendant, that it is in the interests of justice to do so, and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (6) Where there are two or more defendants and one or more of them object to the making of an order under subsection (2), (3) or (4)—
  - (a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of each of the defendants, that it is in the interests of justice to do so, and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (7) Subsection (1) does not apply to the inclusion in a publication of a report of—
  - (a) anything done under section 58, 59, 62, 63 or 64,
  - (b) an appeal under this Part,
  - (c) an appeal under Part 2 of the 1968 Act in relation to an appeal under this Part, or

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- (d) an application for leave to appeal in relation to an appeal mentioned in paragraph (b) or (c),  
at the conclusion of the trial of the defendant or the last of the defendants to be tried.
- (8) Subsection (1) does not apply to a report which contains only one or more of the following matters—
- (a) the identity of the court and the name of the judge,
  - (b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses,
  - (c) the offence or offences, or a summary of them, with which the defendant or defendants are charged,
  - (d) the names of counsel and solicitors in the proceedings,
  - (e) where the proceedings are adjourned, the date and place to which they are adjourned,
  - (f) any arrangements as to bail,
  - (g) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the defendant or any of the defendants.
- (9) The addresses that may be included in a report by virtue of subsection (8) are addresses—
- (a) at any relevant time, and
  - (b) at the time of their inclusion in the publication.
- (10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication.
- (11) In this section—
- “programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42),
- “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings,
- “relevant time” means a time when events giving rise to the charges to which the proceedings relate are alleged to have occurred,
- “relevant programme” means a programme included in a programme service.

#### Commencement Information

**I10** S. 71 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, art. 2(1), Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

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VALID FROM 04/04/2005

## 72 Offences in connection with reporting

- (1) This section applies if a publication includes a report in contravention of section 71.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme—
  - (a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and
  - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) If an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (7) If the affairs of a body corporate are managed by its members, “director” in subsection (6) means a member of that body.
- (8) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Proceedings for an offence under this section may not be instituted—
  - (a) in England and Wales otherwise than by or with the consent of the Attorney General, or
  - (b) in Northern Ireland otherwise than by or with the consent of—
    - (i) before the relevant date, the Attorney General for Northern Ireland, or
    - (ii) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.
- (11) In subsection (10) “the relevant date” means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

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### Commencement Information

- III** S. 72 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

## 73 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.
- (2) Without limiting subsection (1), rules of court may in particular make provision—
  - (a) for time limits which are to apply in connection with any provisions of this Part,
  - (b) as to procedures to be applied in connection with this Part,
  - (c) enabling a single judge of the Court of Appeal to give leave to appeal under this Part or to exercise the power of the Court of Appeal under section 58(12).
- (3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court.

VALID FROM 04/04/2005

## 74 Interpretation of Part 9

- (1) In this Part—
  - “programme service” has the meaning given by section 71(11),
  - “publication” has the meaning given by section 71(11),
  - “qualifying evidentiary ruling” is to be construed in accordance with section 62(2),
  - “the relevant condition” is to be construed in accordance with section 63(2) and (3),
  - “relevant programme” has the meaning given by section 71(11),
  - “ruling” includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement,
  - “the 1968 Act” means the Criminal Appeal Act 1968 (c. 19).
- (2) Any reference in this Part (other than section 73(2)(c)) to a judge is a reference to a judge of the Crown Court.
- (3) There is to be no right of appeal under this Part in respect of a ruling in relation to which the prosecution has previously informed the court of its intention to appeal under either section 58(4) or 62(5).
- (4) Where a ruling relates to two or more offences but not all of those offences are the subject of an appeal under this Part, nothing in this Part is to be regarded as affecting the ruling so far as it relates to any offence which is not the subject of the appeal.
- (5) Where two or more defendants are charged jointly with the same offence, the provisions of this Part are to apply as if the offence, so far as relating to each defendant, were a separate offence (so that, for example, any reference in this Part

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to a ruling which relates to one or more offences includes a ruling which relates to one or more of those separate offences).

- (6) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions)—
- (a) the jurisdiction of the Court of Appeal under this Part is to be exercised by the criminal division of that court, and
  - (b) references in this Part to the Court of Appeal are to be construed as references to that division.

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#### **Commencement Information**

**I12** S. 74 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to **art. 2(2)**, Sch. 2)

**Status:**

Point in time view as at 01/03/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 26 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.