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STATUTORY INSTRUMENTS

2003 No. 458

PROCEEDS OF CRIME

The Proceeds of Crime Act (Appeals under Part 4) Order 2003

<i>Made</i>	- - - -	<i>2nd March 2003</i>
<i>Laid before Parliament</i>		<i>3rd March 2003</i>
<i>Coming into force</i>	- -	<i>24th March 2003</i>

The Secretary of State, in exercise of the powers conferred on him by sections 237(2), 238 and 459(2) of the Proceeds of Crime Act 2002(1), hereby makes the following Order:

PART 1

INTRODUCTION

Citation, commencement and interpretation

1. This Order may be cited as the Proceeds of Crime Act 2002 (Appeals under Part 4) Order 2003 and shall come into force on 24th March 2003.

2. In this Order—

“the Act” means the Proceeds of Crime Act 2002;

“confiscation hearing” means proceedings before the Crown Court under section 156 of the Act;

“the Master” means the Master (Queens Bench and Appeals);

PART 2

APPEALS TO COURT OF APPEAL

Initiating procedure

3. A person who wishes to obtain the leave of the Court of Appeal to appeal to the Court of Appeal under Part 4 of the Act, shall give notice of application for leave to appeal.

(2) Notice of application for leave to appeal shall be given within—

- (a) 28 days from the date of the decision appealed against, in the case of an appeal under section 181 of the Act; or
- (b) 14 days from the date of the decision appealed against, in the case of an appeal under section 192 or 213 of the Act.

(3) The time for giving notice under this article may be extended, either before or after it expires, by the Court of Appeal.

Disposal of groundless appeal or application for leave to appeal

4. If it appears to the Master that a notice of application for leave to appeal to the Court of Appeal under Part 4 of the Act does not show any substantial ground of appeal, he may refer the application for leave to the Court of Appeal for summary determination; and where the case is so referred the Court of Appeal may, if it considers that the application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the application for leave summarily, without calling on anyone to attend the hearing.

Preparation of case for hearing

5. The Master shall—

- (a) take all necessary steps for obtaining a hearing of any application for leave to appeal to the Court of Appeal under Part 4 of the Act of which notice is given to him and which is not referred and dismissed summarily under Article 4;
- (b) where an application for leave to appeal to the Court of Appeal under Part 4 of the Act is granted, take all necessary steps for obtaining a hearing of an appeal; and
- (c) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the application for leave to appeal under Part 4 of the Act or the appeal under Part 4 of the Act.

Right of defendant to be present

6.—(1) In the case of any appeal to the Court of Appeal under Part 4 of the Act, if the defendant is a party, he shall be entitled to be present, if he wishes it, on the hearing of the appeal, although he may be in custody.

(2) But if the defendant is in custody, he shall not be entitled to be present—

- (a) where the appeal is on some ground involving a question of law alone; or
- (b) on any proceedings preliminary or incidental to an appeal,

unless the Court of Appeal gives him leave to be present.

Evidence

7.—(1) For the purposes of an appeal under Part 4 of the Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—

- (a) order the production of any documents, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the appeal;
- (b) order any witness to attend for examination and be examined before the Court of Appeal; and
- (c) receive any evidence which was not adduced in the confiscation hearing giving rise to the appeal.

(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—

- (a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the confiscation hearing giving rise to the appeal on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence in the confiscation hearing giving rise to the appeal.

(3) The Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under paragraph (1)(b) to be conducted before any judge or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.

Powers of Court of Appeal which are exercisable by single judge

8.—(1) There may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions the powers—

- (a) to give leave to appeal to the Court of Appeal under Part 4 of the Act;
- (b) to extend the time within which notice of application for leave to appeal may be given under article 3(3);
- (c) give leave for the defendant to be present at any proceedings under Article 6; and
- (d) to order a witness to attend for examination under Article 7.

(2) If the single judge refuses an application on the part of any party to exercise in his favour any of the powers specified in paragraph (1), the party shall be entitled to have his application determined by the Court of Appeal.

Transcripts

9.—(1) Rules of court may provide—

- (a) for the making of a record (whether by means of shorthand notes, by mechanical means or otherwise) of any proceedings in respect of which an appeal lies to the Court of Appeal under Part 4 of the Act; and
- (b) for the making and verification of a transcript of any such record and for supplying the transcript (on payment of such charge, if any, as may be fixed for the time being by the Treasury) to the registrar for the use of the Court of Appeal or any judge exercising the

powers of a judge of the Court, and to such other persons and in such circumstances as may be prescribed by the rules.

(2) Without prejudice to paragraph (1), the Secretary of State may, if he thinks fit, in any case direct that a transcript shall be made of any such record made in pursuance of the rules and be supplied to him.

(3) The cost—

(a) of making any such record in pursuance of the rules; and

(b) of making and supplying in pursuance of this section any transcript ordered to be supplied to the registrar or the Secretary of State,

shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament; and the cost of providing and installing at a court any equipment required for the purpose of making such a record or transcript shall also be defrayed out of moneys so provided.

PART 3

APPEAL TO HOUSE OF LORDS

Leave to appeal to House of Lords

10. An appeal to the House of Lords under section 183, 193 or 214 of the Act lies only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.

Application for leave to appeal

11.—(1) An application to the Court of Appeal for leave to appeal to the House of Lords under section 183, 193 or 214 of the Act shall be made within the period of 14 days beginning with the date of the decision of the Court of Appeal; and an application to the House of Lords for leave shall be made within the period of 14 days beginning with the date on which the application for leave is refused by the Court of Appeal

(2) The House of Lords or the Court of Appeal may, upon application made at any time by the appellant, extend the time within which an application may be made by him to that House or the Court under paragraph (1).

(3) An appeal to the House of Lords shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this Order an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

Hearing and disposal of appeal

12.—(1) An appeal under section 183, 193 or 214 of the Act shall not be heard and determined by the House of Lords unless there are present at least three of the persons designated Lords of Appeal by section 5 of the Appellate Jurisdiction Act 1876(2).

(2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of the said Act of 1876 may direct that the decision of that committee shall be taken on behalf of the House.

Presence of defendant at hearing

13. A defendant who is in custody shall not be entitled to be present on the hearing of an appeal to the House of Lords under section 183, 193 or 214 of the Act or of any proceedings preliminary or incidental thereto, except where an order of the House of Lords authorises him to be present, or where the House or the Court of Appeal, as the case may be, give him leave to be present.

Powers of Court of Appeal under Part 3 which are exercisable by single judge

14. There may be exercised by a single judge the powers of the Court of Appeal—

- (a) to extend the time for making an application for leave to appeal under Article 11(2); and
- (b) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal under Article 13,

but where the judge refuses an application to exercise any of the said powers the applicant shall be entitled to have the application determined by the Court of Appeal.

Northern Ireland Office
2nd March 2003

Paul Murphy
One of Her Majesty's Principal Secretaries of
State

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the mechanisms for Appeal to the Court of Appeal and House of Lords under Part 4 of the Proceeds of Crime Act 2002.

It contains provisions corresponding to those in the Criminal Appeal (Northern Ireland) Act 1980.