
STATUTORY INSTRUMENTS

2005 No. 2798

CRIMINAL LAW, ENGLAND AND WALES

The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005

<i>Made</i>	- - - -	<i>10th October 2005</i>
<i>Laid before Parliament</i>		<i>12th October 2005</i>
<i>Coming into force</i>	- -	<i>3rd November 2005</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 330 of and paragraph 14(5) of Schedule 22 to, the Criminal Justice Act 2003 (1):

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order and shall come into force on 3rd November 2005.

(2) In this Order—

- (a) “the 2003 Act” means the Criminal Justice Act 2003;
 - (b) “the Registrar” means the registrar of criminal appeals;
 - (c) “appeal”, where used in Part 2 or Part 3 means appeal under that Part and “appellant” has a corresponding meaning and in Part 2 includes a person who has given notice of application for leave to appeal under paragraph 14(1) of Schedule 22 to the 2003 Act;
 - (d) “the defendant” means the person who was the appellant before the Court of Appeal.
- (3) References to the Court of Appeal are to the criminal division of the Court of Appeal;
- (4) References to a single judge are to any judge of the Court of Appeal or of the High Court.

PART 2

Appeals to Court of Appeal

Powers of the Court of Appeal on appeal

2.—(1) On an appeal under paragraph 14(1) of Schedule 22 to the 2003 Act the Court of Appeal, if they consider that the determination of the appellant's minimum term in relation to a mandatory life sentence made by the High Court should be different, may—

- (a) quash any minimum term determination which is the subject of the appeal; and
- (b) in place of it make any such minimum term determination as they think appropriate for the case and as the court below had the power to make;

but the Court shall so exercise their powers under this article that the appellant is not more severely dealt with on appeal than he was dealt with by the court below.

Initiating procedure

3.—(1) A person who wishes to obtain the leave of the Court of Appeal to appeal to the Court of Appeal under paragraph 14(1) of Schedule 22 to the 2003 Act shall give notice of application for leave to appeal.

(2) Any such notice of application for leave to appeal, shall be given within 28 days from the date of the decision appealed against.

(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 application for leave to appeal

4. If it appears to the Registrar that a notice of application for leave to appeal does not show any substantial ground of appeal, he may refer the application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider 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 or to appear for the Crown thereon.

Preparation of case for hearing

5. The Registrar shall—

- (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to him and which is not referred and dismissed summarily under article 4; and
- (b) 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 appeal or application.

Right of appellant to be present

6.—(1) Except as provided by this article, an appellant shall be entitled to be present, if he wishes it, on the hearing of his appeal, although he may be in custody.

(2) A person in custody shall not be entitled to be present—

- (a) where his appeal is on some ground involving a question of law alone;
- (b) on an application by him for leave to appeal;
- (c) on any proceedings preliminary or incidental to the appeal;

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

Evidence

7. For the purposes of an appeal under paragraph 14(1) of Schedule 22 to the 2003 Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) receive any evidence which was not adduced in the proceedings from which the appeal lies.

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;
- (b) to extend the time within which notice of appeal or of application for leave to appeal may be given under article 3(3);
- (c) to allow, under article 6, the appellant to be present at any proceedings which he would not otherwise be entitled to attend; and
- (d) to order the production of any document, exhibit or other thing under article 7(1)(a).

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

Powers of the Court of Appeal which are exercisable by Registrar

9.—(1) The following powers of the Court of Appeal under this Order may be exercised by the Registrar—

- (a) the power to extend the time within which notice of application for leave to appeal may be given under article 3(3);
- (b) the power to order the production of any document, exhibit or other thing under article 7(1)(a).

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

Procedural directions: powers of single judge and Registrar

10.—(1) The power of the Court of Appeal to determine an application for procedural directions may be exercised by—

- (a) a single judge, or
- (b) the Registrar.

(2) “Procedural directions” means directions for the efficient and effective preparation of—

- (a) an application for leave to appeal, or
- (b) an appeal

under paragraph 14(1) of Schedule 22 to the 2003 Act.

(3) A single judge may give such procedural directions as he thinks fit—

- (a) when acting under paragraph (1);
 - (b) on a reference from the Registrar;
 - (c) of his own motion, when exercising, or considering whether to exercise, any power of his in relation to the application or appeal.
- (4) The Registrar may give such procedural directions as he thinks fit—
- (a) when acting under paragraph (1);
 - (b) of his own motion.

Appeals against procedural directions

- 11.**—(1) Paragraph (2) applies if a single judge gives, or refuses to give, procedural directions.
- (2) The Court of Appeal may, on an application to it under paragraph (5)—
- (a) confirm, set aside or vary any procedural directions given by the single judge, and
 - (b) give such procedural directions as it thinks fit.
- (3) Paragraph (4) applies if the Registrar gives, or refuses to give procedural directions.
- (4) A single judge may, on an application to him under paragraph (5)—
- (a) confirm, set aside or vary any procedural directions given by the Registrar; and
 - (b) give such procedural directions as he thinks fit.
- (5) An application under this article may be made by –
- (a) an appellant;
 - (b) a respondent, if the directions:
 - (i) relate to an application for leave to appeal and appear to need the respondent’s assistance to give effect to them;
 - (ii) relate to an application for leave to appeal which is to be determined by the Court of Appeal; or
 - (iii) relate to an appeal.
- (6) In this article –
- “respondent” includes a person who will be a respondent if leave to appeal is granted.

PART 3

Appeal to the House of Lords from Court of Appeal

Right of appeal to the House of Lords

12.—(1) An appeal lies to the House of Lords⁽²⁾ at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under paragraph 14(1) of Schedule 22 to the 2003 Act.

(2) The appeal 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.

(2) The appellate jurisdiction of the House of Lords under the Criminal Appeal Act 1968 c. 19 will be transferred to the Supreme Court following commencement on a date to be appointed under section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 c. 4.

Application for leave to appeal

13.—(1) An application to the Court of Appeal for leave to appeal to the House of Lords shall be made within 28 days beginning with the date on which the Court of Appeal gives reasons for the decision which is the subject of the appeal; and an application to the House of Lords for leave shall be made within 28 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

14.—(1) An appeal under this Part of this Order 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(3).

(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 Act of 1876 may direct that the decision of that committee shall be taken on behalf of the House.

(3) For the purpose of disposing of an appeal, the House of Lords may exercise any powers of the Court of Appeal or may remit the case to the Court.

Presence of defendant at hearing

15. 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 this Order 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 of Lords 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

16.—(1) 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 13(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 15,

but where the judge refuses an application to exercise any of the powers specified in paragraph (1), the applicant shall be entitled to have the application determined by the Court of Appeal.

Home Office
10th October 2005

Fiona Mactaggart
Parliamentary Under-secretary 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 makes provision corresponding to provision in the Criminal Appeal Act 1968 (“the 1968 Act”) with modifications for the purpose of a new transitional appeal introduced by paragraph 14(1) of Schedule 22 to the Criminal Justice Act 2003 (“the 2003 Act”). Paragraph 14(1) of Schedule 22 to the 2003 Act provides a right of appeal to the Court of Appeal and the House of Lords, if appropriate, to prisoners who have either had their minimum term of a mandatory life sentence reviewed or determined by the High Court under the transitional provisions in Schedule 22.

Article 2 makes provision corresponding to section 11(3) of the 1968 Act and sets out the powers of the Court of Appeal on appeal.

Article 3 makes provision corresponding to section 18 of the 1968 Act and gives the time limit for giving notice of application for leave to appeal to the Court of Appeal.

Article 4 makes provision corresponding to section 20 of the 1968 Act and allows the Registrar of criminal appeals of the Court of Appeal to refer groundless applications for leave to appeal to the Court of Appeal for summary determination.

Article 5 makes provision corresponding to section 21 of the 1968 Act and provides that the Registrar must organise hearings, documents and exhibits for the appeal or for an application for leave to appeal.

Article 6 makes provision corresponding to section 22 of the 1968 Act and provides in what circumstances an appellant who is in custody is entitled to be present on the hearing of his appeal.

Article 7 makes provision corresponding to section 23(1) of the 1968 Act and sets out the Court of Appeal’s powers on an appeal to order the production of documents and other evidence and to receive evidence which was not adduced in the proceedings from which the appeal lies.

Article 8 makes provision corresponding to section 31 of the 1968 Act and sets out which of the Court of Appeal’s powers may be exercised by a single judge.

Article 9 makes provision corresponding to section 31A of the 1968 Act (as inserted by section 6 of the Criminal Appeal Act 1995 c. 35) and sets out which of the Court of Appeal’s powers may be exercised by the Registrar.

Article 10 makes provision corresponding to section 31B of the 1968 Act (as inserted by section 87(3) of the Courts Act 2003 c. 39) and sets out that the powers of the Court of Appeal to make procedural directions may be exercised by a single judge or the Registrar.

Article 11 makes provision corresponding to section 31C of the 1968 Act (as inserted by section 87(3) of the Courts Act 2003 c. 39) and sets out that procedural directions, made by the Registrar or a single judge, may be appealed to a single judge or the Court of Appeal respectively.

Article 12 makes provision corresponding to section 33 of the 1968 Act and provides that an appeal to the House of Lords only lies with the leave of the Court of Appeal or the House of Lords.

Article 13 makes provision corresponding to section 34 of the 1968 Act and gives the time limit for giving notice of application for leave to appeal to the House of Lords.

Article 14 makes provision corresponding to section 35 of the 1968 Act and deals with the hearing and disposal of an appeal to the House of Lords.

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Article 15 makes provision corresponding to section 38 of the 1968 Act and provides that a defendant who is in custody is not entitled to attend the hearing of an appeal by the House of Lords unless he is authorised to do so by the House of Lords or the Court of Appeal.

Article 16 makes provision corresponding to section 44 of the 1968 Act and sets out which powers of the Court of Appeal in relation to appeals in the House of Lords may be exercised by a single judge.