
STATUTORY INSTRUMENTS

2005 No. 2798

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

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.