

**EXPLANATORY MEMORANDUM TO THE  
CRIMINAL JUSTICE ACT 2003 (RETRIAL FOR  
SERIOUS OFFENCES) ORDER 2005**

**2005 No.679**

**1.** This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The above Order is made in exercise of the powers conferred under section 97 of the Criminal Justice Act 2003 (“the 2003 Act”). The Order makes provision corresponding to procedural provisions in the Criminal Appeal Act 1968 (“the 1968 Act”) with modifications for the purposes of applications for retrial under section 76(1) and (2) of the 2003 Act.

2.2 The Order will come into force on the day on which sections 75 to 97 of the 2003 Act come into force.

**3. Matters of special interest to the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 Part 10 of the 2003 Act reforms the law relating to double jeopardy. It permits applications to be made to the Court of Appeal for retrials for a number of serious offences where new and compelling evidence has come to light and it is in the interests of justice to do so. The Act sets out measures relating to the re-investigation of serious, “qualifying” offences; provisions relating to arrest, charge, and bail and custody; and the procedures for making applications for retrial to the Court of Appeal.

4.2 Section 76 allows a prosecutor to apply to the Court of Appeal for an order that quashes a person’s acquittal and orders him to be retried for the qualifying offence. Applications to the Court of Appeal require the consent of the Director of Public Prosecutions (DPP). (The DPP must also give consent before taking certain steps in the re-investigation of cases where new and compelling evidence has come to light.) The Court must make an order quashing an acquittal and ordering a retrial if it considers that the requirements set out in section 78 and 79 are met. The Court must dismiss an application where it is not satisfied as to those two factors.

4.3 Section 97 provides that the Secretary of State may make an order in relation to retrial proceedings before the Court of Appeal under Part 10 of the 2003 Act which corresponds to any provisions which are contained in the 1968 Act. This is the first use of this power.

## **5. Extent**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy background**

7.1 As set out above, section 97 of the 2003 Act provides that the Secretary of State may make an order in relation to retrial proceedings before the Court of Appeal under Part 10 of the 2003 Act which corresponds to any provisions which are contained in the 1968 Act.

7.2 Article 2 makes provision for various powers of the Court of Appeal in respect of evidence to be exercisable by a single judge, with an entitlement to appeal to the whole Court. It corresponds to section 31 of the 1968 Act.

7.3 Article 3 makes provision for those same powers to be exercised by the Registrar of Criminal Appeals, with an entitlement to appeal to a single judge. It corresponds to section 31A of the 1968 Act (as inserted by section 6 of the Criminal Appeal Act 1995).

7.4 Article 4 make provision to allow a single judge or the Registrar to exercise the Court of Appeal's powers to make procedural directions in relation to applications under section 76 of the 2003 Act. Article 5 sets out that any procedural directions made by the Registrar or a single judge may be appealed to a single judge or the whole Court respectively. The Articles correspond to sections 31B and 31C of the 1968 Act (as inserted by section 87(3) of the Courts Act 2003).

7.5 This Order is intended to ensure that certain existing powers of the Court of Appeal under the 1968 Act also apply to proceedings for retrials under Part 10 of the 2003 Act.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities, or voluntary bodies.

## **9. Contact**

Gillian Harrison at the Office for Criminal Justice Reform can answer any queries regarding the instrument. Her contact details are:

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