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STATUTORY INSTRUMENTS

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**2006 No. 2135**

**The Serious Organised Crime and Police Act  
2005 (Appeals under Section 74) Order 2006**

**PART 5**

**Appeals to the House of Lords: Northern Ireland**

**Right of appeal to the House of Lords**

**34.**—(1) An appeal lies to the House of Lords at the instance of the offender or a specified prosecutor, from any decision of the Court of Appeal on an appeal to that court under section 74(8) of the Act.

(2) The appeal lies only with the leave of the Court of Appeal or the House of Lords.

(3) 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**

**35.**—(1) An application to the Court of Appeal for leave to appeal to the House of Lords shall be made in writing within 28 days beginning with the date on which the Court of Appeal give reasons for the decision which is the subject of the appeal.

(2) An application to the House of Lords for leave shall be made in writing within 28 days beginning with the date on which the application for leave is refused by the Court of Appeal.

(3) The House of Lords or the Court of Appeal may, upon an application made at any time by the offender or the specified prosecutor extend the time within which an application may be made by him to that House or the Court under paragraphs (1) and (2).

(4) 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.

(5) For the purposes of this Part, 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**

**36.**—(1) An appeal 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) 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 that Act may direct that the decision of that committee shall be taken on behalf of the House.

(3) For the purposes 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.

### **Bail on appeal by the offender**

37. The Court of Appeal may, if they think fit, on the application of the offender, grant him bail pending the determination of his appeal.

### **Detention of offender on appeal by the specified prosecutor**

38.—(1) This article applies where, immediately after the decision of the Court of Appeal from which an appeal lies to the House of Lords, the specified prosecutor is granted, or gives notice in writing that he intends to apply, for leave to appeal.

(2) If, but for the decision of the Court of Appeal, the offender would be liable to be detained, the Court of Appeal may make an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by that Court under article 37), so long as an appeal to the House of Lords is pending.

(3) An order under this article shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the offender would have been liable to be detained but for the decision of the Court of Appeal.

(4) Where the Court of Appeal have power to make an order under this article, and either no such order is made or the offender is released, by virtue of paragraph (3), before the appeal is disposed of, the offender shall not be liable to be again detained as a result of the decision of the House of Lords on the appeal.

### **Presence of offender at hearing**

39. An offender who is detained pending an appeal to the House of Lords shall not be entitled to be present on the hearing of the appeal 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.

### **Effect of appeal on sentence**

40. Where an offender subject to a sentence is granted to bail under article 37, the time during which he is released on bail shall be disregarded in computing the term of his sentence.

### **Powers of Court of Appeal under Part 5 which are exercisable by single judge**

41. There may be exercised by a single judge, the powers of the Court of Appeal under this Part—

- (a) to extend the time for making an application for leave to appeal;
- (b) to make an order for or in relation to bail;
- (c) to give leave for an offender to be present at the hearing of any proceedings preliminary or incidental to an appeal;
- (d) to grant legal aid; and
- (e) to make an order under article 43(1) (costs).

but where the offender or the specified prosecutor is aggrieved by the decision of the single judge under this article, the offender or the specified prosecutor shall be entitled to have the application determined by the Court of Appeal.

### **Legal aid**

**42.**—(1) The Court of Appeal may assign to the offender (whether he is appellant or respondent in the appeal) a solicitor or counsel, or counsel only, in the case of an appeal, or of proceedings preliminary or incidental to such an appeal, at any time when it appears to the Court—

- (a) that it is desirable in the interests of justice that the offender should have legal aid, and
- (b) that he does not have sufficient means to enable him to obtain that aid.

(2) If on a question of granting an offender free legal aid under this article there is doubt as to the matters in paragraph (1)(a) or (b) the doubt shall be resolved in favour of granting him free legal aid.

(3) The fees of any counsel, and the expenses and fees of any solicitor, assigned to the offender by virtue of this article, in either case up to an amount allowed by the House of Lords shall be paid by the Lord Chancellor.

### **Costs**

**43.**—(1) Where the Court of Appeal or the House of Lords dismisses an application for leave to appeal, the Court or the House may, if they think fit—

- (a) where the application was made by the specified prosecutor, order the payment by the Secretary of State to the offender of such sums as appear to the Court or the House reasonably sufficient to compensate the offender for any expenses properly incurred by him in resisting the application; or
- (b) where the application was made by the offender, order him to pay the whole or any part of the costs of the application.

(2) Where an appeal to the House of Lords is determined in favour of the offender, the House of Lords may, if they think fit, order the payment by the Secretary of State of such sums as appear to the House reasonably sufficient to compensate the offender for any expenses properly incurred by him in the appeal to the House of Lords or in the proceedings before the Court of Appeal, as the case may be (including the cost of any application for leave to appeal).

(3) Where in any proceedings on an appeal or application for leave to appeal to the House of Lords, an interpreter is required because of an offender's lack of English, the expenses properly incurred on his employment shall be defrayed by the Secretary of State up to an amount allowed by the House of Lords.

(4) Except as provided by this article, no costs shall be allowed on the hearing or determination of an appeal or of any proceedings preliminary or incidental to such an appeal.

### **Taxation of costs**

**44.**—(1) Any amount which the Court of Appeal orders to be paid under article 43(1) shall, except where it is a specific amount ordered to be paid towards the costs of the application as a whole, be ascertained as soon as practicable by the Court.

(2) Any amount which the House of Lords orders to be paid under article 43(1) or (2) shall, except where it is a specific amount ordered to be paid towards the costs of the application as a whole, be ascertained as soon as practicable by the Clerk of the Parliaments.

(3) Where the House of Lords orders the payment of costs by the offender under article 43, the order shall be enforceable in the same manner as an order for payment of costs made by the High Court in a civil case.