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CRIMINAL LAW, ENGLAND AND WALES

CRIMINAL LAW, NORTHERN IRELAND

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

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The Secretary of State, in exercise of the powers conferred upon him by section 74(12) of the Serious Organised Crime and Police Act 2005(a), makes the following Order:

(a) 2005 c. 15.

PART 1

Introduction

Citation, commencement and extent

1.—(1) This Order may be cited as the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 and shall come into force on the expiry of the period of 28 days beginning with the day on which it is made.

(2) This Part of this Order shall extend to England, Wales and Northern Ireland.

(3) Parts 2 and 3 of this Order shall extend to England and Wales only.

(4) Parts 4, 5 and 6 of this Order shall extend to Northern Ireland only.

General interpretation

2. In this Order—

(a) “the Act” means the Serious Organised Crime and Police Act 2005; and

(b) “offender” means a person whose case has been referred to the Crown Court under section 74(3) of the Act.

PART 2

Appeals to the Court of Appeal: England and Wales

Interpretation of Parts 2 and 3

3.—(1) In this Part and Part 3 “the registrar” means the registrar of Criminal Appeals of the Court of Appeal.

(2) References in this Part and Part 3 to the Court of Appeal are to the criminal division of the Court of Appeal.

(3) References in this Part and Part 3 to a single judge are to any judge of the Court of Appeal or of the High Court.

(4) In this Part “appeal” means an appeal under section 74(8) of the Act.

(5) In Part 3 “appeal” means an appeal under that Part.

Powers of the Court of Appeal on appeal

4.—(1) Subject to paragraph (2), where on an appeal under section 74(8) of the Act the Court of Appeal determine to allow the appeal, they may—

(a) in a case where the Crown Court has substituted a sentence under section 74(5) or (6) of the Act vary that substituted sentence; or

(b) in a case where the Crown Court has not so substituted a sentence, vary the sentence to which the referral under section 74(3) of the Act relates.

(2) Subject to paragraph (3), the Court of Appeal must not exercise their powers under paragraph (1) so that the sentence imposed on the offender exceeds the sentence that the Crown Court would have passed but for the agreement to give assistance.

(3) If the offender falls within section 74(2)(c) of the Act and the Crown Court does not substitute a sentence under section 74(6), the Court of Appeal must not so exercise their powers under paragraph (1) that the offender is dealt with more severely than he was originally dealt with for the offence, the sentence for which the referral under section 74(3) of the Act relates.

Initiating procedure

5.—(1) An offender or specified prosecutor who wishes to obtain the leave of the Court of Appeal to appeal to that Court shall give notice in writing of the application for leave to appeal.

(2) Notice of application for leave to appeal shall be given within 28 days from the date of the decision of the Crown Court under section 74 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.

Bail

6.—(1) The Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994(a), if they think fit—

- (a) grant the offender bail, subject to any conditions, if any, as they think fit, pending the determination of his appeal;
- (b) revoke bail granted under sub-paragraph (a); or
- (c) vary the conditions of bail granted under sub-paragraph (a).

(2) The powers conferred by paragraph (1) may be exercised—

- (a) on the application of the offender; or
- (b) if it appears to the registrar that any of them ought to be exercised, on a reference by him to the Court of Appeal.

Preparation of case for hearing

7. 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
- (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 offender to be present

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

(2) An offender in custody shall not be entitled to be present—

- (a) where the appeal is on some ground involving a question of law alone;
- (b) on an application by him or the specified prosecutor for leave to appeal;
- (c) on any proceedings preliminary or incidental to an appeal; or
- (d) on an application to the Court of Appeal under article 11(3);

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

(3) The powers of the Court of Appeal to vary the offender's sentence may be exercised although he is for any reason not present.

(a) 1994 c. 33. Section 25 has been amended by section 56 of the Crime and Disorder Act 1998 (c. 37), section 139 of, and paragraph 32(1) and (2) of Schedule 6 to, the Sexual Offences Act 2003 (c. 42), sections 304 and 332 of, paragraph 67 of Schedule 32 to, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), section 165(1) of, and paragraph 160 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 5 of, and paragraph 93(2) of Schedule 4 to, the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40).

Evidence

9.—(1) For the purposes of an appeal 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) order any witness who would have been a compellable witness in the proceedings under section 74 of the Act to attend for examination and be examined before the Court, whether or not he was called in those proceedings; and
- (c) receive any evidence which was not adduced in the proceedings under section 74 of the Act.

(2) The Court of Appeal shall, in considering whether to receive 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 proceedings under section 74 of the Act 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 those proceedings.

(3) Sub-paragraph (1)(c) applies to any evidence of a witness (including the offender) who is competent but not compellable.

Effect of appeal on sentence

10.—(1) The time during which an offender is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of the sentence to which he is for the time being subject.

(2) Where the Court of Appeal give a contrary direction under paragraph (1) they—

- (a) shall state their reasons for doing so; and
- (b) shall not give any such direction where leave to appeal has been granted.

(3) When the offender is granted bail under article 6, the time during which he is released on bail shall be disregarded in computing the term of any sentence to which he is for the time being subject.

Powers of Court under Part 2 which are exercisable by single judge

11.—(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—

- (a) the powers of the Court of Appeal under this Part specified in paragraph (2); and
- (b) the power to give leave under section 74(8) of the Act.

(2) The powers referred to in sub-paragraph (1)(a) are—

- (a) to extend time within which notice of application for leave to appeal may be given;
- (b) to allow the offender to be present at the proceedings;
- (c) to order a witness to attend for examination;
- (d) to exercise the powers conferred by article 6 (bail);
- (e) to make orders under article 9(1)(a) (production of documents etc.); and
- (f) to give directions under article 10(1) (effect of appeal on sentence).

(3) If the single judge refuses an application on the part of an offender, or as the case may be, a specified prosecutor, to exercise any of the powers conferred on the judge by this article, the offender or specified prosecutor shall be entitled to have the application determined by the Court of Appeal.

Powers of the Court under Part 2 which are exercisable by registrar

12.—(1) The powers of the Court of Appeal under this Part which are specified in paragraph (2) may be exercised by the registrar.

(2) The powers mentioned in paragraph (1) are—

- (a) to extend the time within which notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination;
- (c) to vary the conditions of bail granted to an offender by the Court of Appeal; and
- (d) to make orders under article 9(1)(a) (production of documents etc.).

(3) Subject to paragraph (4), the powers specified are to be exercised by the registrar in the same manner as the Court of Appeal and subject to the same provisions.

(4) No variation of the conditions of bail granted to an offender may be made by the registrar unless he is satisfied that the specified prosecutor does not object to the variation.

(5) If the registrar refuses an application on the part of an offender, or as the case may be, a specified prosecutor, to exercise any of the powers conferred on the registrar by this article, the offender or specified prosecutor shall be entitled to have the application determined by a single judge.

Procedural directions: powers of single judge and registrar

13.—(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.

(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; or
- (c) of his own motion, when he is 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); or
- (b) of his own motion.

Appeals against procedural directions

14.—(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 them under paragraph (5)—

- (a) confirm, set aside or vary any procedural directions given by the single judge, and
- (b) give such procedural directions as they think 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 paragraph may be made by the offender or the specified prosecutor.

PART 3

Appeals to the House of Lords: England and Wales

Right of appeal to the House of Lords

15.—(1) An appeal lies to the House of Lords^(a) 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

16.—(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 to appeal shall be made in writing within 28 days beginning with the date on which the application for leave to appeal 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

17.—(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^(b).

(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.

(a) 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).

(b) 1876 c. 59. Section 5 has been prospectively repealed by sections 145 and 146 of, and paragraph 9 of Part 2 of Schedule 17 and Part 5 of Schedule 18 to, the Constitutional Reform Act 2005.

Bail on appeal by the offender

18. The Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, 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

19.—(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 18), 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

20. 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

21. Where an offender subject to a sentence is granted bail under article 18, 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 3 which are exercisable by single judge

22. 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; and
- (c) to give leave for an offender to be present at the hearing of any proceedings preliminary or incidental to an appeal;

but where the judge refuses an application to exercise any of the powers specified in this article, the offender or the specified prosecutor shall be entitled to have the application determined by the Court of Appeal.

PART 4

Appeals to the Court of Appeal: Northern Ireland

Powers of the Court of Appeal on appeal

23.—(1) Subject to paragraph (2), where on an appeal under section 74(8) of the Act the Court of Appeal determine to allow the appeal, they may—

- (a) in a case where the Crown Court has substituted a sentence under section 74(5) or (6) of the Act vary that substituted sentence; or
- (b) in a case where the Crown Court has not so substituted a sentence, vary the sentence to which the referral under section 74(3) of the Act relates.

(2) Subject to paragraph (3), the Court of Appeal must not exercise their powers under paragraph (1) so that the sentence imposed on the offender exceeds the sentence that the Crown Court would have passed but for the agreement to give assistance.

(3) If the offender falls within section 74(2)(c) of the Act and the Crown Court does not substitute a sentence under section 74(6), the Court of Appeal must not so exercise their powers under paragraph (1) that the offender is dealt with more severely than he was originally dealt with for the offence, the sentence for which the referral under section 74(3) of the Act relates.

Initiating procedure

24.—(1) An offender or specified prosecutor who wishes to obtain the leave of the Court of Appeal to appeal to that Court shall give notice in writing of the application for leave to appeal.

(2) Notice of application for leave to appeal shall be given within 28 days from the date of the decision of the Crown Court under section 74 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.

(4) The Master shall furnish the necessary forms and instructions in relation to notices of application under this Order, to any person who demands them, and to officers of the courts, governors of prisons and such other persons as he thinks fit.

(5) Governors of prisons shall—

- (a) cause forms and instructions in relation to notices of application under this Order to be placed at the disposal of prisoners desiring to appeal or to make any application under this Order; and
- (b) cause any such notice given by a prisoner in custody to be forwarded on behalf of the prisoner to the Master.

Bail

25.—(1) The Court of Appeal may, if they think fit—

- (a) grant the offender bail, subject to any conditions, if any, as they think fit, pending the determination of his appeal;
- (b) revoke bail granted under sub-paragraph (a); or
- (c) vary the conditions of bail granted under sub-paragraph (a).

(2) The powers conferred by paragraph (1) may be exercised—

- (a) on the application of the offender; or
- (b) if it appears to the Master that any of them ought to be exercised, on a reference by him to the Court of Appeal.

Preparation of case for hearing

26. The Master shall—

- (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to him; 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 offender to be present

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

(2) An offender in custody shall not be entitled to be present—

- (a) where the appeal is on some ground involving a question of law alone;
- (b) on an application by him or the specified prosecutor for leave to appeal;
- (c) on any proceedings preliminary or incidental to an appeal; or
- (d) on an application to the Court of Appeal under article 31(3);

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

(3) The powers of the Court of Appeal to vary the offender's sentence may be exercised although he is for any reason not present.

Evidence

28.—(1) For the purposes of an appeal 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) order any witness who would have been a compellable witness in the proceedings under section 74 of the Act to attend for examination and be examined before the Court, whether or not he was called in those proceedings; and
- (c) receive any evidence which was not adduced in the proceedings under section 74 of the Act.

(2) The Court of Appeal shall, in considering whether to receive 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 proceedings under section 74 of the Act 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 those proceedings.

(3) Sub-paragraph (1)(c) applies to any evidence of a witness (including the offender) who is competent but not compellable.

Additional powers of the Court of Appeal

29. The Court of Appeal may, in relation to their proceedings, exercise any other powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters, and may issue any warrants necessary for enforcing the orders or sentences of the Court of Appeal.

Effect of appeal on sentence

30.—(1) The time during which an offender is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of the sentence to which he is for the time being subject.

(2) Where the Court of Appeal give a contrary direction under paragraph (1) they—

- (a) shall state their reasons for doing so; and
- (b) shall not give any such direction where leave to appeal has been granted.

(3) When the offender is granted bail under article 25, the time during which he is released on bail shall be disregarded in computing the term of any sentence to which he is for the time being subject.

Powers of the Court of Appeal under Part 4 which are exercisable by single judge

31.—(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—

- (a) the powers of the Court of Appeal under this Part specified in paragraph (2); and
- (b) the power to give leave under section 74(8) of the Act.

(2) The powers referred to in sub-paragraph (1)(a) are—

- (a) to extend time within which notice of application for leave to appeal may be given;
- (b) to allow the offender to be present at the proceedings;
- (c) to order a witness to attend for examination;
- (d) to exercise the powers conferred by article 25 (bail);
- (e) to make orders under article 28(1)(a) (production of documents etc.);
- (f) to give directions under article 30(1) (effect of appeal on sentence); and
- (g) to grant legal aid.

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

Legal aid

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

- (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 Master shall report to the Court of Appeal or a judge of that Court any case in which it appears to him that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to the offender under the powers conferred on the Court of Appeal under this article.

Costs

33.—(1) The following expenses shall be defrayed, up to the amount allowed by the Master (Taxing Office), by the Secretary of State—

- (a) the expenses of any witnesses attending on the order of the Court of Appeal, or examined in any proceedings incidental to the appeal; and

(b) the expenses of the appearance of the offender on the hearing of the appeal, or in proceedings preliminary or incidental to it.

(2) The expenses of any solicitor or counsel assigned to the offender under article 32 shall be defrayed, up to the amount allowed by the Master (Taxing Office), by the Lord Chancellor.

(3) Where a solicitor or counsel is dissatisfied with the amount of any expenses allowed by the Master (Taxing Office) under paragraph (2), he may apply to that Master to review his decision.

(4) On a review under paragraph (3) the Master (Taxing Office) may confirm or vary the amount of expenses allowed by him.

(5) Where a solicitor or counsel is dissatisfied with the decision of the Master (Taxing Office) on a review under paragraph (3), he may appeal against that decision to the High Court and the Lord Chancellor may appear and be represented on any such appeal.

(6) Where the Lord Chancellor is dissatisfied with the decision of the Master (Taxing Office) on a review under paragraph (3), he may appeal against that decision to the High Court and the solicitor or barrister may appear or be represented on any such appeal.

(7) On any appeal under paragraph (5) or (6) the High Court may confirm or vary the amount of expenses allowed by the Master (Taxing Office) and the decision of the High Court shall be final.

(8) The power of the Master (Taxing Office) or the High Court to vary the amount of the expenses allowed under paragraph (2) includes power to increase or reduce the amount to such extent as the Master (Taxing Office) or, as the case may be, the High Court thinks fit.

(9) The reference in paragraph (2) to the amount allowed by the Master (Taxing Office) shall, in a case where that amount has been varied in accordance with paragraph (8), be construed as a reference to that amount as so varied.

(10) Where in any proceedings on an appeal or preliminary or incidental to such an appeal an interpreter is required because of the 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 Court of Appeal.

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.

PART 6

Supplementary Provisions to Parts 4 and 5

Interpretation of Parts 4, 5 and 6

45.—(1) In Parts 4 and 5 “the Master” means the Master (High Court).

(2) References in Parts 4 and 5 to a single judge are to any judge of the Court of Appeal or of the High Court.

(3) In Part 4, except in article 33(5) to (7), and article 46 “appeal” means an appeal under section 74(8) of the Act.

(4) In Part 5 “appeal” means an appeal under that Part.

Jurisdiction of the Court of Appeal under Parts 4 and 5

46.—(1) Under Parts 4 and 5, the Court of Appeal shall have full power to determine, in accordance with those Parts, any question necessary to be determined or for the purpose of doing justice in the case before the Court.

(2) Except as provided for in Part 5, the determination of the Court of Appeal of an appeal or other matter under Part 4 shall be final and no appeal shall lie from any such determination to any other court.

Home Office
31st July 2006

Vernon Coaker
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

Parts 2 and 3 of this Order make provision corresponding to provision in the Criminal Appeal Act 1968, with modifications, for the purposes of appeals in England and Wales under section 74(8) of the Serious Organised Crime and Police Act 2005 (“the 2005 Act”). Chapter 2 of Part 2 of the 2005 Act makes provision for the giving by offenders of assistance to prosecutors and those investigating offences. Under section 74 of the 2005 Act a specified prosecutor can refer an offender’s case to the Crown Court if the offender has offered further assistance, has offered assistance following sentence, or he has offered assistance, and as a consequence has received a discounted sentence, but has failed to provide it. In the latter situation, under section 74(5), if the Crown Court is satisfied that the person has knowingly failed to give assistance it may substitute such greater sentence (not exceeding that which it would have passed but for the agreement to provide assistance) as it thinks appropriate. In the first two situations, under section 74(6), the Crown Court may take account of the extent and nature of the assistance offered and substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.

Under section 74(8) the offender or a specified prosecutor can appeal to the Court of Appeal against a decision of the Crown Court on an application for review of a sentence under section 74. A specified prosecutor is defined in section 71(4) of the 2005 Act.

Part 2 of the Order relates to appeals to the Court of Appeal in relation to England and Wales and Part 3 of the Order allows, and makes provision in relation to, appeals to the House of Lords from the Court of Appeal in relation to England and Wales. Article 4 makes provision for the powers of the Court of Appeal on appeal. If the Court of Appeal determine to allow the appeal, and if they think fit, they can vary the sentence imposed by the Crown Court. Articles 11 and 12 provide that certain powers of the Court of Appeal can be exercised by a single judge or the registrar of criminal appeals. Article 15 provides a right of appeal to the House of Lords. Under article 17(3), the House of Lords may exercise any powers of the Court of Appeal or may remit the case to that Court.

Parts 4, 5 and 6 of this Order make provision corresponding to provision in the Criminal Appeal Act (Northern Ireland) 1980, with modifications, for the purposes of appeals in Northern Ireland under section 74(8) of the 2005 Act.

Part 4 relates to appeals to the Court of Appeal, in relation to Northern Ireland. Its provisions correspond to Part 2, with the addition of powers to grant legal aid (article 32) and award costs (article 33). Part 5 relates to appeals to the House of Lords from the Court of Appeal in relation to Northern Ireland. Its provisions correspond to Part 3 with the addition of powers to grant legal aid (article 42) and award costs (articles 43 and 44). Part 6 makes supplementary provision to Parts 4 and 5 relating to the interpretation of those Parts and the jurisdiction and composition of the Court of Appeal under those Parts.

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