
STATUTORY INSTRUMENTS

2008 No. 1863

The Serious Crime Act 2007 (Appeals
under Section 24) Order 2008

PART 5

Appeals to the Court of Appeal: Northern Ireland

Interpretation of Parts 5 and 6

44.—(1) In this Part “the Master” means the Master (High Court).

(2) References in this Part and Part 6 to a single judge are to any judge of the Court of Appeal or of the High Court.

(3) In this Part “appeal” means an appeal under section 24(1) or (2) of the Act.

(4) In Part 6 “appeal” means an appeal under section 24(6) of the Act.

Hearing of appeal and grounds for allowing an appeal

45.—(1) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an appeal it would be in the interests of justice to hold a re-hearing.

(2) The Court of Appeal will allow an appeal where the decision of the Crown Court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

Powers of the Court of Appeal on appeal

46.—(1) The Court of Appeal has all the powers of the Crown Court.

(2) The Court of Appeal may—

(a) make a serious crime prevention order;

(b) affirm, set aside or vary any order or judgment made or given by the Crown Court;

(c) refer any issue for determination by the Crown Court;

(d) order a new hearing in the Crown Court;

(e) make an order for costs;

(f) make an order for the payment of interest on those costs.

(3) The Court of Appeal may exercise its powers in relation to the whole or part of an order of the Crown Court.

Initiating procedure

47.—(1) A person who wishes to appeal under section 24(1) or (2) of the Act to the Court of Appeal, or to obtain the leave of that Court to appeal shall give notice of appeal, or as the case may be, notice of application for leave to appeal in writing.

(2) Notice of appeal, or application for leave to appeal, shall be given within 28 days from the date of the decision of the Crown Court under section 19, 20 or 21 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.

Preparation of case for hearing

48. The Master shall—

- (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to the Master; 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.

Evidence

49.—(1) For the purposes of an appeal, or an application for leave to appeal, the Court of Appeal may, if it thinks 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 it necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court of Appeal, (whether or not the witness was called in the proceedings under section 19, 20 or 21 of the Act); and
- (c) receive any evidence which was not adduced in the proceedings under section 19, 20 or 21 of the Act.

(2) The power conferred by sub-paragraph 1(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that sub-paragraph to—

- (a) the Court of Appeal; or
- (b) any person who is a party to the appeal.

(3) The Court of Appeal shall, in considering whether to receive evidence, have regard in particular to—

- (a) whether the evidence appears to the Court of Appeal to be capable of belief;
- (b) whether it appears to the Court of Appeal that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings under section 19, 20 or 21 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.

(4) Sub-paragraph (1)(c) applies to any evidence of a witness (including the person who is the subject of the serious crime prevention order) who is competent but not compellable.

Effect of appeal on serious crime prevention order

50. The coming into force of a serious crime prevention order shall not be affected by an appeal, subject to any direction which the Court of Appeal may give to the contrary.

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

51.—(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 24(3) of the Act.

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

- (a) to extend time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination;
- (c) to make orders under article 49(1)(a) (production of documents etc.);
- (d) to give directions under article 50 (effect of appeal on serious crime prevention order); and
- (e) to grant legal aid.

(3) If the single judge refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the judge by this article, that person shall be entitled to have the application determined by the Court of Appeal.

Powers of the Court of Appeal under Part 5 which are exercisable by the Master

52.—(1) There may be exercised by the Master, in the same manner as the Court of Appeal and subject to the same provisions, the powers of the Court of Appeal under this Part which are specified in paragraph (2).

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

- (a) to extend the time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination; and
- (c) to make orders under article 49(1)(a) (production of documents etc.).

(3) If the Master refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the Master by this article, that person shall be entitled to have the application determined by a single judge.

Jurisdiction of the Court of Appeal under Parts 5 and 6

53.—(1) Under Parts 5 and 6, 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 of Appeal.

(2) Except as provided for in Part 6, the determination of the Court of Appeal of an appeal or other matter under Part 5 shall be final and no appeal shall lie from any such determination to any other court

Legal Aid

54.—(1) The Court of Appeal may assign to the subject of the serious crime prevention order or a party under section 24(2) (whether that person 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 person concerned should have legal aid; and
- (b) that the person concerned does not have sufficient means to enable that person to obtain that aid.

(2) If on a question of granting a subject of a serious crime prevention order or a party under section 24(2) free legal aid under this article there is doubt as to the matters in sub-paragraph (1)(a) or (b) the doubt shall be resolved in favour of granting that person 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 the Master that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to the subject of the serious crime prevention order or a party under section 24(2) under the powers conferred on the Court of Appeal under this article.

Costs

55.—(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 subject of the serious crime prevention order or a party under section 24(2) 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 subject of the serious crime prevention order or a party under section 24(2) under article 54 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), the solicitor or counsel may apply to that Master to review the Master's decision.

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

(5) Where a solicitor or counsel is dissatisfied with the decision of the Master (Taxing Office) on a review under paragraph (3), the solicitor or counsel 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), the Lord Chancellor 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 lack of English of the subject of the serious crime prevention

order or a party under section 24(2), the expenses properly incurred on the interpreter's employment shall be defrayed by the Secretary of State up to an amount allowed by the Court of Appeal.