

**2008 No. 1863**

**SERIOUS CRIME PREVENTION ORDERS**

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

*Made* - - - - - *14th July 2008*  
*Laid before Parliament* *15th July 2008*  
*Coming into force* - - - *18th August 2008*

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The Secretary of State, in exercise of the powers conferred on her by sections 24(9) and (10) and 89(2)(b) of the Serious Crime Act 2007(a), makes the following Order:

## PART 1

### Introduction

#### **Citation, commencement and extent**

1.—(1) This Order may be cited as the Serious Crime Act 2007 (Appeals under Section 24) Order 2008 and shall come into force on 18th August 2008.

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

(3) Parts 2 to 4 of this Order shall extend to England and Wales only.

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

#### **General interpretation**

2. In this Order—

“the Act” means the Serious Crime Act 2007;

“party under section 24(2)” means a person who is entitled to appeal by virtue of section 24(2) of the Act;

“person who is a party to the appeal” means—

(a) the person who is the subject of a serious crime prevention order,

(b) the relevant applicant authority, or

(c) a party under section 24(2),

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(a) 2007 c.27.

who is a party to the appeal in question whether as an appellant or otherwise.

## PART 2

### Appeals to the Court of Appeal: England and Wales

#### **Interpretation of Parts 2, 3 and 4**

**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 Parts 3 and 4 to a single judge are to any judge of the Court of Appeal or of the High Court.

(3) In this Part and Part 3, except in articles 26 to 28, “appeal” means an appeal under section 24(1) or (2) of the Act.

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

#### **Hearing of appeal and grounds for allowing an appeal**

**4.**—(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**

**5.**—(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 in accordance with Part 3;
- (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.

#### **Presence and live links**

**6.**—(1) A person has a right to attend a hearing in public unless—

- (a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal; or
- (b) that person is in custody in consequence of—
  - (i) a verdict of not guilty by reason of insanity; or
  - (ii) a finding of disability.

(2) At any time before the beginning of a hearing, the Court of Appeal may give a live link direction in relation to that hearing if—

- (a) a person who is a party to the appeal is expected to be in custody; and

- (b) that person has a right to attend the hearing in accordance with paragraph (1).
- (3) For this purpose—
- (a) “live link direction” is a direction that the person concerned (if the person is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which the person is held; and
  - (b) “live link” means an arrangement by which the person concerned is able to see and hear, and to be seen and heard by, the Court of Appeal (for this purpose any impairment of eyesight or hearing is to be disregarded).
- (4) The Court of Appeal—
- (a) must not give a live link direction unless the persons who are parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
  - (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a person who is a party to the appeal).

**Evidence**

7.—(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**

8. 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 the Court of Appeal under Part 2 which are exercisable by a single judge**

**9.**—(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 and Part 3 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 give a live link direction under article 6(2);
- (d) to make orders under article 7(1)(a) (production of documents etc.);
- (e) to give directions under article 8 (effect of appeal on serious crime prevention order); and
- (f) to make orders for the payment of costs under Part 3.

(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 2 which are exercisable by the registrar**

**10.**—(1) There may be exercised by the registrar, 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 7(1)(a) (production of documents etc.).

(3) If the registrar 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 registrar by this article, that person shall be entitled to have the application determined by a single judge.

### **Procedural directions: powers of single judge and registrar**

**11.**—(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 the single judge thinks fit—

- (a) when acting under paragraph (1);
- (b) on a reference from the registrar; or
- (c) of the single judge’s own motion, when the single judge is exercising, or considering whether to exercise, any power of the single judge in relation to the application or appeal.

(4) The registrar may give such procedural directions as the registrar thinks fit—

- (a) when acting under paragraph (1); or

- (b) of the registrar's own motion.

### **Appeals against procedural directions**

- 12.**—(1) Paragraph (2) applies if the registrar gives, or refuses to give, procedural directions.
- (2) A single judge may, on an application to the single judge under paragraph (3)—
- (a) confirm, set aside or vary any procedural directions given by the registrar; and
  - (b) give such procedural directions as the single judge thinks fit.
- (3) An application under this article may be made by a person who is a party to the appeal.

## **PART 3**

### **Costs of appeals in the Court of Appeal: England and Wales**

#### **CHAPTER 1**

##### **Introduction**

### **Interpretation and transitional provision**

- 13.**—(1) In this Part—
- “appeal costs order” means an order under article 14;
  - “applicant” means—
    - (a) in Chapter 3, the person in whose favour an appeal costs order has been made, and
    - (b) in Chapter 5, the person who has applied for a third party costs order;
  - “costs judge” means a taxing master of the Senior Courts;
  - “expenses” include compensation to a witness for the witness's trouble or loss of time and out of pocket expenses;
  - “interested party” means—
    - (a) the person who is a party to the appeal benefiting from the wasted costs order or third party costs order; and
    - (b) where that person was receiving services funded for that person by the Legal Services Commission, or an order for the payment of costs out of central funds was made in that person's favour, shall include the authority responsible for determining costs payable in respect of those services or out of central funds as the case may be;
  - “legal or other representative” means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any person who is a party to an appeal;
  - “presiding judge” means the judge that presided at the hearing in respect of which the costs are payable under an appeal costs order;
  - “proceedings before the Court of Appeal” means any proceedings before the Court of Appeal including an application for leave to appeal and an appeal;
  - “professional witness” means a witness practising as a member of the legal or medical profession or as a dentist, veterinary surgeon or accountant who attends to give professional evidence as to matters of fact;
  - “relevant amount” has the meaning assigned to it by article 32;
  - “third party” means a person who is not a party to the proceedings before the Court of Appeal;
  - “third party costs order” means an order under article 18;
  - “wasted costs order” means an order under article 17; and

“witness” means any person properly attending to give evidence, whether or not the person gives evidence or is called at the instance of one of the persons who is a party to the appeal or of the Court of Appeal, but does not include—

- (c) a person attending as a witness to character only unless the Court of Appeal has certified that the interests of justice required the witness’s attendance;
- (d) a member of a police force attending the Court of Appeal in the member’s capacity as such;
- (e) a full-time officer of an institution to which the Prison Act 1952(a) applies attending the Court of Appeal in the officer’s capacity as such; or
- (f) a prisoner in respect of any occasion on which the prisoner is conveyed to the Court of Appeal in custody.

(2) For the purposes of article 14, the costs of the subject of a serious crime prevention order or any party under section 24(2) shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to the witness’s attendance.

(3) Where any person who is a party to an appeal is in receipt of services funded for that person by the Legal Services Commission, then—

- (a) for the purposes of article 14, that person’s costs shall be taken not to include the cost of those services; and
- (b) for the purposes of articles 15 to 20, that person’s costs shall be taken to include the cost of those services.

(4) In the application of this Part before the commencement of section 59(1) of the Constitutional Reform Act 2005(b) (renaming of Supreme Courts of England and Wales), the reference to the Senior Courts is to be read as a reference to the Supreme Court.

## CHAPTER 2

### Orders as to costs

#### **Award of costs in favour of subject or party under section 24(2)**

**14.**—(1) Where the Court of Appeal—

- (a) allows an appeal by the person who is the subject of a serious crime prevention order;
- (b) dismisses an appeal by the relevant applicant authority;
- (c) hears an appeal by a party under section 24(2); or
- (d) determines an application for leave to appeal to the Supreme Court,

it may make an appeal costs order in favour of the person who is the subject of the serious crime prevention order.

(2) Where the Court of Appeal—

- (a) allows an appeal by a party under section 24(2);
- (b) dismisses an appeal by the relevant applicant authority;
- (c) hears an appeal by the person who is the subject of a serious crime prevention order; or
- (d) determines an application for leave to appeal to the Supreme Court,

it may make an appeal costs order in favour of a party under section 24(2).

(3) Subject to paragraphs (4) and (5), an order under this article shall be for the payment out of central funds, to the person in whose favour the order is made, of such amounts as the Court of Appeal considers reasonably sufficient to compensate that person for any expenses properly incurred by that person in the proceedings before the Court of Appeal.

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(a) 1952 c. 52.  
(b) 2005 c. 4.



(4) Where the Court of Appeal makes an order under this article but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in paragraph (3) it shall—

- (a) assess what amount would, in its opinion, be just and reasonable; and
- (b) specify that amount in the order.

(5) Subject to paragraph (4), the amount to be paid out of central funds in pursuance of an order under this article shall—

- (a) be specified in the order, in any case where the Court of Appeal considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount; and
- (b) in any other case, be determined in accordance with Chapter 3 of this Part and article 37.

#### **Award of costs against subject or party under section 24(2)**

**15.**—(1) Where the Court of Appeal dismisses—

- (a) an appeal or an application for leave to appeal by the person who is the subject of a serious crime prevention order; or
- (b) an application by that person for leave to appeal to the Supreme Court under section 24(7) of the Act,

it may make such order as to costs to be paid by that person, to such person as may be named in the order (including the relevant applicant authority or a party under section 24(2)), as it considers just and reasonable.

(2) Where the Court of Appeal dismisses—

- (a) an appeal or an application for leave to appeal by a party under section 24(2); or
- (b) an application by that person for leave to appeal to the Supreme Court under section 24(7) of the Act,

it may make such order as to costs to be paid by that person, to such person as may be named in the order (including the relevant applicant authority or the person who is the subject of a serious crime prevention order), as it considers just and reasonable.

(3) The amount to be paid in pursuance of an order under this article shall be specified in the order.

#### **Unnecessary or improper acts and omissions**

**16.**—(1) Where at any time during any proceedings before the Court of Appeal, the Court of Appeal is satisfied that costs have been incurred in respect of those proceedings by any person who is a party to the appeal as a result of an unnecessary or improper act or omission by, or on behalf of, another person who is a party to the appeal, the Court of Appeal may order that all or part of the costs incurred by that person shall be paid by the other person.

(2) When making an order under paragraph (1) the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the order into account when making any other order as to costs in respect of those proceedings.

(3) The amount to be paid in pursuance of an order under this article shall be specified in the order.

(4) Before making an order under paragraph (1), the Court of Appeal shall allow any person who is a party to the appeal to make representations and may hear evidence.

#### **Wasted costs order**

**17.**—(1) If in any proceedings before the Court of Appeal, costs have been incurred by a person who is a party to the appeal—

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the Court of Appeal considers it is unreasonable to expect that person to pay

the Court of Appeal may disallow, or (as the case may be) order the legal or other representative to pay, the whole of any wasted costs or such part of them as may be determined in accordance with this article.

(2) When making a wasted costs order, the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the wasted costs order into account when making any other order as to costs in respect of those proceedings.

(3) The amount to be paid or disallowed in pursuance of a wasted costs order shall be specified in the order.

(4) Before making a wasted costs order, the Court of Appeal shall allow the legal or other representative and any person who is a party to the appeal to make representations and may hear evidence.

(5) Where a wasted costs order has been made the Court of Appeal shall notify any interested party of the order and the amount disallowed or ordered to be paid.

(6) Where the person required to make a payment in respect of sums due under a wasted costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the person benefiting from the order, save that where that person was in receipt of services funded for that person by the Legal Services Commission or an order for the payment of costs out of central funds was made in that person's favour, the power to recover shall be exercisable by the Lord Chancellor.

### **Third party costs order**

**18.** If—

- (a) there has been serious misconduct (whether or not constituting a contempt of court) by a third party; and
- (b) the Court of Appeal considers it appropriate, having regard to that misconduct, to make a third party costs order against the third party

the Court of Appeal may order the third party to pay the whole of any costs incurred or wasted by any person who is a party to the appeal as a result of the misconduct or such part of them as may be determined in accordance with Chapter 4 of this Part.

### **Costs of attendance at any proceedings before the Court of Appeal**

**19.—**(1) The Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate a person who is a party to an appeal who is not in custody and who appears before it on, or in connection with, any proceedings before the Court of Appeal.

(2) Article 37 will apply for the purpose of determining the amount of any subsistence allowance or travelling expenses ordered to be paid under this article.

### **Costs of witnesses etc.**

**20.—**(1) Where, in any proceedings before the Court of Appeal—

- (a) a witness attends at the instance of any person who is a party to the appeal or the Court of Appeal; or
- (b) an interpreter is required because of the lack of English of any person who is a party to the appeal

the expenses properly incurred by that witness or interpreter shall be allowed out of central funds in accordance with Chapter 5 of this Part, unless the Court of Appeal directs that the expenses are not to be allowed out of central funds.

(2) Any entitlement to an allowance under this article shall be the same whether the witness or interpreter attends on the same day in one case or more than one case.

## CHAPTER 3

### Appeal costs orders: procedure

#### **Person who is to determine costs**

**21.**—(1) Costs under an appeal costs order shall be determined by the registrar in accordance with this Chapter.

(2) The registrar may appoint or authorise the appointment of determining officers to act on the registrar's behalf under this Chapter in accordance with directions given by the registrar or on the registrar's behalf.

#### **Claims for costs**

**22.**—(1) Subject to article 28, no claim for costs shall be entertained unless it is submitted within three months of the date on which the appeal costs order was made.

(2) Subject to paragraph (3), a claim for costs shall be submitted to the registrar, in such form and manner as the registrar may direct and shall be accompanied by receipts or other evidence of the applicant's payment of the costs claimed, and any receipts or other documents in support of any disbursements claimed.

(3) A claim shall—

- (a) summarise the items of work done by a solicitor;
- (b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed; and
- (c) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where there are any special circumstances which should be drawn to the attention of the registrar, the applicant shall specify them.

(5) The applicant shall supply such further particulars, information and documents as the registrar may require.

#### **Determination of costs**

**23.**—(1) The registrar shall consider the claim, any further particulars, information or documents submitted by the applicant under article 22 and shall allow such costs in respect of—

- (a) such work as appears to the registrar to have been actually and reasonably done; and
- (b) such disbursements as appear to the registrar to have been actually and reasonably incurred

as the registrar considers reasonably sufficient to compensate the applicant for any expenses properly incurred by the applicant in the proceedings before the Court of Appeal.

(2) In determining costs under paragraph (1) the registrar shall take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

(3) When determining costs for the purpose of this article, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.

### **Payment of costs**

**24.**—(1) When the registrar has determined the costs payable to an applicant in accordance with this Chapter, the registrar shall notify the applicant of the costs payable and authorise payment accordingly.

(2) Where the costs payable under paragraph (1) are varied as a result of a re-determination under article 25, an appeal to a costs judge under article 26, or an appeal to the High Court under article 27, then—

- (a) where the costs are increased, the registrar shall authorise payment of the increase;
- (b) where the costs are decreased, the applicant shall repay the amount of such decrease; and
- (c) where the payment of the costs of an appeal is ordered under article 26(14) or 27(8), the registrar shall authorise such payment to the applicant.

### **Re-determination of costs by the registrar**

**25.**—(1) An applicant who is dissatisfied with the costs determined under this Chapter by the registrar may apply to the registrar to re-determine them.

(2) Subject to article 28, the application shall be made within 21 days of the receipt of notification of the costs payable under article 24(1), by giving notice in writing to the registrar specifying the items in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the registrar may direct.

(3) The notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the registrar shall notify the applicant of the time of a hearing to hear the applicant or the applicant's representative.

(4) The notice of application shall be accompanied by any particulars, information and documents supplied under article 22 and the applicant shall supply such further particulars, information and documents as the registrar may require.

(5) The registrar shall re-determine the costs, whether by way of increase, decrease or at the level previously determined, in the light of the objections made by the applicant or on the applicant's behalf and shall notify the applicant of the decision.

(6) The applicant may request the registrar to give reasons in writing for the decision and, if so requested, the registrar shall comply with the request.

(7) Subject to article 28, any request under paragraph (6) shall be made within 21 days of receiving notification of the decision.

### **Appeals to a costs judge**

**26.**—(1) Where the registrar has given the reasons for the decision on a re-determination under article 25, an applicant who is dissatisfied with that decision may appeal to a costs judge.

(2) Subject to article 28, an appeal shall be instituted within 21 days of the receipt of the registrar's reasons by giving notice in writing to the Senior Costs Judge specifying the items in respect of which the appeal is brought and the grounds of objection.

(3) The appellant shall send a copy of any notice given under paragraph (2) to the registrar.

(4) The notice of appeal shall be accompanied by—

- (a) a copy of the written notice given under article 25(2);
- (b) any particulars, information and documents supplied to the registrar under article 25; and
- (c) the registrar's reasons for the decision given under article 25(6).

(5) The notice of appeal shall state whether the appellant wishes to appear or to be represented or whether the appellant will accept a decision given in the absence of the appellant.

(6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on behalf of the Lord Chancellor and, if the Lord Chancellor intends to do so, the Lord Chancellor shall inform the Senior Costs Judge and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Senior Costs Judge and to the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.

(9) The appellant shall be permitted a reasonable opportunity to make representations in reply.

(10) The costs judge shall inform the appellant (or the appellant's representative) and the Lord Chancellor, where representations have been or are to be made on the Lord Chancellor's behalf, of the date of any hearing and, subject to the provisions of this article, may give directions as to the conduct of the appeal.

(11) The costs judge may consult the presiding judge, and the registrar or the determining officer who re-determined the costs on the registrar's behalf as the case may be, and may require the appellant to provide any further information which the costs judge requires for the purpose of the appeal and, unless the costs judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised on the re-determination under article 25.

(12) The costs judge shall have the same powers as the registrar under this Chapter and, in the exercise of such powers, may alter the re-determination of the registrar in respect of any sum allowed, whether by increase or decrease, as the costs judge thinks fit.

(13) The costs judge shall communicate the decision and the reasons for it in writing to the appellant, the Lord Chancellor, and the registrar or the determining officer who re-determined the costs on the registrar's behalf as the case may be.

(14) Save where the costs judge confirms or decreases the sums re-determined under article 25, the costs judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by the appellant in connection with the appeal.

### **Appeals to the High Court**

**27.—**(1) An applicant who is dissatisfied with the decision of a costs judge on an appeal under article 26 may apply to the costs judge to certify a point of principle of general importance.

(2) Subject to article 28, an application under paragraph (1) shall be made within 21 days of notification of a cost judge's decision under article 26(13).

(3) Where a costs judge certifies a point of principle of general importance, the applicant may appeal to the High Court against the decision of a costs judge on an appeal under article 26, and the Lord Chancellor shall be a respondent to the appeal.

(4) Subject to article 28, an appeal under paragraph (3) shall be instituted within 21 days of receiving a cost judge's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a costs judge on an appeal under article 26 the Lord Chancellor may, if no appeal has been made by the applicant under paragraph (3), appeal to the High Court against that decision and the applicant shall be a respondent to the appeal.

(6) Subject to article 28, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the cost judge's decision under article 26(13).

(7) An appeal under paragraph (3) or (5) shall be brought in the Queen's Bench Division, follow the procedure set out in Part 52 of the Civil Procedure Rules 1998(a), and shall be heard and determined by a single judge whose decision shall be final.

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(a) S.I. 1998/3132.

(8) The judge shall have the same powers as the registrar and a costs judge under this Chapter and may reverse, affirm or amend the decision appealed against or make such other order as the judge thinks fit.

### **Time limits**

**28.**—(1) Subject to paragraph (2), the time limit within which there must be made or instituted—

- (a) a claim for costs by an applicant under article 22, an application for a re-determination under article 25, or a request for the registrar to give reasons for a decision on a re-determination under article 25;
- (b) an appeal to a costs judge under article 26 or an application for a certificate under article 27(1); or
- (c) an appeal to the High Court under article 27;

may, for good reason, be extended by the registrar, the Senior Costs Judge or the High Court, as the case may be.

(2) Where an applicant without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the registrar, the Senior Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) An applicant may appeal to the Senior Costs Judge against a decision made under this article by a registrar and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

## **CHAPTER 4**

### **Third party costs orders: procedure**

#### **Determination of a third party costs order**

**29.**—(1) The Court of Appeal may make a third party costs order—

- (a) subject to paragraph (3), at any time during or after the proceedings before the Court of Appeal; and
- (b) on the application of any person who is a party to the appeal or of its own initiative.

(2) The Court of Appeal shall make a third party costs order during the proceedings before the Court of Appeal only if it decides that there are good reasons to do so, rather than making the order after the proceedings before the Court of Appeal, and it shall notify the persons who are parties to the appeal and the third party of those reasons and allow any of them to make representations.

(3) Before making a third party costs order the Court of Appeal shall allow the third party and any person who is a party to the appeal to make representations and may hear evidence.

(4) When making a third party costs order the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the third party costs order into account when making any other order as to costs in respect of those proceedings.

(5) The amount to be paid in pursuance of a third party costs order shall be specified in the order.

(6) When a third party costs order has been made the Court of Appeal shall notify the third party and any interested party of the order and the amount ordered to be paid.

### **Procedure for third party costs orders**

**30.**—(1) This article applies where a person who is a party to the appeal applies to the Court of Appeal for a third party costs order or the Court of Appeal decides that it might make a third party costs order of its own initiative.

(2) An application for a third party costs order shall be in writing and shall contain—

- (a) the name and address of the applicant;
- (b) the names and addresses of the other persons who are parties to the appeal;
- (c) the name and address of the third party against whom the order is sought;
- (d) the date of the end of the proceedings before the Court of Appeal; and
- (e) a summary of the facts upon which the applicant intends to rely in making the application, including details of the alleged misconduct of the third party.

(3) The application shall be sent to the registrar and, upon receiving it, the registrar shall serve copies of it on the third party and the other persons who are parties to the appeal.

(4) Where the Court of Appeal decides that it might make a third party costs order of its own initiative the registrar shall serve notice in writing accordingly on the third party and the persons who are parties to the appeal.

(5) At the same time as serving notice under paragraph (4) the registrar shall serve a summary of the reasons why the Court of Appeal might make a third party costs order, including details of the alleged misconduct of the third party.

(6) When the registrar serves copies of an application under paragraph (3) or serves notice under paragraph (4) the registrar shall at the same time serve notice on the persons who are parties to the appeal and the third party of the time and place fixed for the hearing.

(7) At the time notified the Court of Appeal may proceed in the absence of the third party and of any person who is a party to the appeal if it is satisfied that they have been duly served with the notice given under paragraph (6) and the copy of the application or (as the case may be) the notices given under paragraphs (3) and (4), but the Court of Appeal may set aside any third party costs order if it is later shown that the third party did not receive them.

### **Recovery of sums due under a third party costs order**

**31.** Where the person required to make a payment in respect of sums due under a third party costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the person benefiting from the order, save that where that person was in receipt of services funded for that person by the Legal Services Commission or an order for the payment of costs out of central funds was made in that person's favour, the power to recover shall be exercisable by the Lord Chancellor.

## **CHAPTER 5**

### **Costs of witnesses etc: procedure**

### **Determination of rates or scales of allowances payable out of central funds**

**32.** The Lord Chancellor shall, with the consent of the Treasury, determine the rates or scales of allowances payable out of central funds to witnesses or interpreters and a reference in this Chapter to the relevant amount means an amount calculated in accordance with the rates or scales so determined.

### **Witnesses other than professional or expert witnesses**

**33.**—(1) A witness (other than a witness to whom article 34 or 35 applies) may be allowed—

- (a) a loss allowance not exceeding the relevant amount in respect of—

- (i) any expenditure incurred (other than on travelling, lodging or subsistence) to which the witness would not otherwise be subject; or
- (ii) any loss of earnings or of benefit under the enactments relating to National Insurance; and

(b) a subsistence allowance not exceeding the relevant amount.

(2) Any other person who in the opinion of the Court of Appeal necessarily attends for the purpose of any proceedings otherwise than to give evidence may be allowed the same allowances under paragraph (1) as if that person attended as a witness other than a professional or expert witness.

(3) Paragraph (2) shall not apply to—

- (a) a member of a police force attending the Court of Appeal in the member's capacity as such;
- (b) a full-time officer of an institution to which the Prison Act 1952 applies attending the Court of Appeal in the officer's capacity as such; or
- (c) a prisoner in respect of any occasion on which the prisoner is conveyed to the Court of Appeal in custody.

### **Professional witnesses**

**34.** A professional witness may be allowed a professional witness allowance not exceeding the relevant amount.

### **Expert witnesses and interpreters**

**35.—**(1) The Court of Appeal may make an allowance in respect of an expert witness for attending to give expert evidence and for work in connection with its preparation of such an amount as it may consider reasonable having regard to the nature and difficulty of the case and the work necessarily involved.

(2) Paragraph (1) shall apply, with the necessary modifications, to an interpreter as it applies to an expert witness.

### **Night Allowances**

**36.—**(1) A professional or expert witness who is necessarily absent from the witness's place of residence overnight may be allowed a night allowance not exceeding the relevant amount.

(2) An interpreter who receives an allowance under article 35 may be allowed the same night allowance as if the interpreter attended as a professional or expert witness.

### **Expenses of subject or party under section 24(2)**

**37.** A person in whose favour an order is made under article 14 or 19 may be allowed the same subsistence allowance and travelling expenses as if that person attended as a witness other than a professional or expert witness.

### **Travelling expenses**

**38.—**(1) Subject to paragraphs (2) and (3), a witness who travels to or from the Court of Appeal by public transport (including by air) may be allowed the fare actually paid.

(2) Unless the Court of Appeal otherwise directs, only the second class fare shall be allowed under paragraph (1) for travel by railway.

(3) A witness who travels to or from the Court of Appeal by air may be allowed the fare actually paid only if—



- (a) there was no reasonable alternative to travel by air and the class of fare paid was reasonable in all the circumstances; or
  - (b) travel by air was more economical in the circumstances taking into account any savings of time resulting from the adoption of such mode of travel and its consequent effect in reducing the amount of allowances payable under the other provisions of this Chapter,
- and, where the air fare is not allowed, there may be allowed such amount as the Court of Appeal considers reasonable.
- (4) A witness who travels to or from the Court of Appeal by hired vehicle may be allowed—
    - (a) the fare actually paid and any reasonable gratuity so paid in a case of urgency or where public transport is not reasonably available; or
    - (b) in any other case, the amount of fare for travel by public transport,
  - (5) A witness who travels to or from the Court of Appeal by private vehicle may be allowed an appropriate private vehicle allowance not exceeding the relevant amount.
  - (6) Where—
    - (a) a witness is in the opinion of the Court of Appeal suffering from a serious illness; or
    - (b) heavy exhibits have to be taken to the Court of Appeal,the Court of Appeal may allow reasonable additional sums in excess of those allowed under paragraphs (1) to (5).
  - (7) An interpreter who incurs travelling expenses in providing the Court of Appeal with a report otherwise than in writing may be allowed a travelling allowance not exceeding the relevant amount.

## PART 4

### Appeals to the Supreme Court: England and Wales

#### **Application for leave to appeal**

**39.**—(1) An application to the Supreme Court 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.

(2) The Supreme Court may, upon an application made at any time by a person who was a party to the appeal before the Court of Appeal, extend the time within which an application may be made by that person to the Supreme Court under paragraph (1).

#### **Hearing and disposal of appeal**

**40.** For the purposes of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court of Appeal.

#### **Powers of Court of Appeal under Part 4 which are exercisable by a single judge**

**41.** The powers of the Court of Appeal under this Part to extend the time for making an application for leave to appeal, may be exercised by a single judge but where the judge refuses an application on the part of a person who is party to the appeal to exercise this power that person shall be entitled to have the application determined by the Court of Appeal.

#### **Award of costs in favour of subject or party under section 24(2)**

**42.**—(1) Where the Supreme Court determines an appeal to which the person who is the subject of the serious crime prevention order was a party it may make a costs order in favour of that person.

(2) Where the Supreme Court determines an appeal to which a party under section 24(2) was a party it may make a costs order in favour of that person.

(3) Subject to paragraphs (4) and (5), an order under this article shall be for the payment out of central funds of such amounts as the Supreme Court considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses that person has properly incurred in the appeal.

(4) Where the Supreme Court makes an order under this article but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in paragraph (3) it shall—

- (a) assess what amount would, in its opinion, be just and reasonable; and
- (b) specify that amount in the order.

(5) Subject to paragraph (4), the amount to be paid out of central funds in pursuance of an order under this article shall—

- (a) be specified in the order, in any case where the Supreme Court considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount; and
- (b) in any other case, shall be determined by such officer as may be prescribed by order of the Supreme Court.

### **Transitional provisions in relation to the Supreme Court**

**43.**—(1) In the application of Parts 2 to 4 before the commencement of paragraph 16(3)(b) of Schedule 9 to the Constitutional Reform Act 2005 (amendment of section 33(2) of the Criminal Appeal Act 1968(a)), references to the Supreme Court are to be read as references to the House of Lords.

(2) During the time that this Part is to be read as referring to the House of Lords in accordance with paragraph (1)—

- (a) 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); and
- (b) 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.

## **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.

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(a) 1968 c. 19.

(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.

### **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.

## PART 6

### Appeals to the Supreme Court: Northern Ireland

#### **Application for leave to appeal**

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

(2) An application to the Supreme Court 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 Supreme Court or the Court of Appeal may, upon an application made at any time by a person who was a party to the proceedings before the Court of Appeal extend the time within which an application may be made by that party to the Supreme Court or the Court of Appeal under paragraphs (1) and (2).

#### **Hearing and disposal of appeal**

**57.** For the purposes of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court of Appeal.

#### **Powers of Court of Appeal under Part 6 which are exercisable by a single judge**

**58.**—(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 of the Court of Appeal under this Part specified in paragraph (2).

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

- (a) to extend time for making an application for leave to appeal;
- (b) to grant legal aid; and
- (c) to make an order under article 60(1) (costs).

(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.

## **Legal Aid**

**59.**—(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 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 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 the person free legal aid.

(3) The fees of any counsel, and the expenses and fees of any solicitor, assigned to the subject of the serious crime prevention order or a party under section 24(2) by virtue of this article, in either case up to an amount allowed by the Supreme Court shall be paid by the Lord Chancellor.

## **Costs**

**60.**—(1) Where the Court of Appeal or the Supreme Court dismisses an application for leave to appeal, the Court concerned may, if it thinks fit—

- (a) where the application was made by the relevant applicant authority, order the payment by the Secretary of State to the subject of the serious crime prevention order or a party under section 24(2) of such sums as appear to the Court concerned reasonably sufficient to compensate the person concerned for any expenses properly incurred by that person in resisting the application;
- (b) where the application was made by the subject of the serious crime prevention order, order that person to pay the whole or any part of the costs of the application; or
- (c) where the application was made by a party under section 24(2), order that person to pay the whole or any part of the costs of the application.

(2) Where an appeal to the Supreme Court is determined in favour of the subject of the serious crime prevention order or a party under section 24(2), the Supreme Court may, if it thinks fit, order the payment by the Secretary of State of such sums as appear to the Supreme Court reasonably sufficient to compensate the person concerned for any expenses properly incurred by that person in the appeal to the Supreme Court 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 Supreme Court, an interpreter is required because of the lack of English of the subject of a 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 Supreme Court.

(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**

**61.**—(1) Any amount which the Court of Appeal orders to be paid under article 60(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 of Appeal.

(2) Any amount which the Supreme Court orders to be paid under article 60(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 such officer as may be prescribed by order of the Supreme Court.

(3) Where the Supreme Court orders the payment of costs by the subject of the serious crime prevention order or a party under section 24(2) under article 60, 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.

### **Transitional provisions in relation to the Supreme Court**

**62.**—(1) In the application of this Part before the commencement of paragraph 33(2)(b) of Schedule 9 to the Constitutional Reform Act 2005 (amendment of section 31 of the Criminal Appeal (Northern Ireland) Act 1980(a)), references to the Supreme Court are to be read as references to the House of Lords.

(2) During the time that this Part is to be read as referring to the House of Lords in accordance with paragraph (1)—

- (a) 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) 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; and
- (c) in article 61(2) any amount payable shall be ascertained by the Clerk of the Parliaments rather than by such officer as may be prescribed by order of the Supreme Court.

Home Office  
14th July 2008

*Vernon Coaker*  
Parliamentary Under Secretary of State

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(a) 1980 c. 47.



## EXPLANATORY NOTE

*(This note is not part of the Order)*

Parts 2 and 4 of this Order make provision corresponding to provision in enactments relating to appeals to the Court of Appeal under Part 1 of the Criminal Appeal Act 1968 and appeals from any decision of the Court of Appeal, with modifications, for the purposes of appeals in England and Wales under section 24(1) and (2) of the Serious Crime Act 2007 (“the 2007 Act”). Part 1 of the 2007 Act makes provision for serious crime prevention orders. Section 19 of the 2007 Act gives the Crown Court the power to make a serious crime prevention order. Sections 20 and 21 of the 2007 Act give the Crown Court certain powers to vary a serious crime prevention order. Section 9 of the 2007 Act allows certain persons who are not the subject of a serious crime prevention order to make representations at proceedings relating to serious crime prevention orders. Section 24(1) of the 2007 Act allows the subject of the serious crime prevention order and the relevant applicant authority (who will have applied for the order or its variation) to appeal to the Court of Appeal against a decision of the Crown Court. Section 24(2) of the 2007 Act allows a person who made representations by virtue of section 9(4) of the 2007 Act to appeal to the Court of Appeal as well.

Part 2 of the Order relates to appeals to the Court of Appeal in relation to England and Wales and Part 4 of the Order makes provision in relation to appeals to the Supreme Court from the Court of Appeal in relation to England and Wales. Articles 4 and 5 make provision for the hearing of the appeal by the Court of Appeal and the powers of the Court of Appeal on appeal. The Court of Appeal will only review the decision of the Crown Court unless it considers that it is in the interest of justice to hold a re-hearing. The Court of Appeal is given all the powers of the Crown Court and may affirm, set aside or vary any order or judgment, refer any issue for determination by the Crown Court and order a new hearing. Articles 9 and 10 provide that certain powers of the Court of Appeal can be exercised by a single judge or the registrar of criminal appeals. Section 24(6) of the 2007 Act provides a right of appeal from the Court of Appeal to the Supreme Court. Under article 40, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to that Court. Article 43 provides a transitional provision, so that until the commencement of paragraph 16(3)(a) of Schedule 9 to the Constitutional Reform Act 2005, references in Parts 2 to 4 to the Supreme Court are to be read as references to the House of Lords.

Part 3 relates to the orders that may be made by the Court of Appeal in relation to the costs of an appeal. Chapter 2 of the Part 3 sets out the orders as to costs that can be made. Article 14 provides for an order (called an appeal costs order) to be made in favour of the subject of a serious crime prevention order or a person who is entitled to appeal under section 24(2) of the 2007 Act. The procedure for determining the amount of costs under an appeal costs order is set out in Chapter 3 of Part 3. Article 15 makes provision in relation to an award of costs against the subject of a serious crime prevention order or a person entitled to appeal under section 24(2). Article 16 make provision for an award of costs following an improper or unnecessary act or omission on the part of one party which has led to costs being incurred by another party. Article 17 makes provision for an award of costs against a legal or other representative for wasted costs. Article 18 makes provision for an award of costs against a person who is not a party to the appeal – a third party costs order. The procedure for such an order is set out in Chapter 4 of Part 3. Article 19 makes provision for paying out of central funds the costs of attendance by a party at an appeal. Article 20 makes provision for the payment of the expenses of witnesses and other persons who attend court. The procedure for such awards is set out in Chapter 5 of Part 3.

Parts 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 24(1) and (2) of the 2007 Act.

Part 5 relates to appeals to the Court of Appeal, in relation to Northern Ireland. Its provisions correspond to Part 2, powers to grant legal aid are set out in article 54 and provisions in relation to the award of costs are set out in article 55. Part 6 relates to appeals to the Supreme Court from the Court of Appeal in relation to Northern Ireland. Its provisions correspond to Part 4. Powers to

grant legal aid are set out in article 59 and powers to award costs are set out in articles 60 and 61. References to the Supreme Court are the subject of a transitional provision that is similar to the one in Part 4, such that references to the Supreme Court are to be read as references to the House of Lords prior to the amendment of the Criminal Appeal (Northern Ireland) Act 1980 by the Constitutional Reform Act 2005.



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**SERIOUS CRIME PREVENTION ORDERS**

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