

# SCHEDULE 1 RSC ORDER 116

## THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996<sup>1</sup>

### Rule 1 Application

This Order shall apply in relation to acquittals in respect of offences alleged to be committed on or after 15th April 1997.

### Rule 2 Interpretation

In this Order, unless the context otherwise requires—

‘the Act’ means the Criminal Procedure and Investigations Act 1996;

‘acquitted person’ means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the Act, and ‘acquittal’ means the acquittal of that person of that offence;

‘magistrates’ court’ has the same meaning as in section 148 of the Magistrates’ Courts Act 1980<sup>2</sup>;

‘prosecutor’ means the individual or body which acted as prosecutor in the proceedings which led to the acquittal;

‘record of court proceedings’ means—

- (a) (where the proceedings took place in the Crown Court) a transcript of the evidence; or
- (b) a note of the evidence made by the justices’ clerk, in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(b) of the Act or, as the case may be, the proceedings which led to the acquittal;

‘single judge’ means a judge of the Queen’s Bench Division;

‘witness’ means a witness whose evidence is contained in a witness statement or affidavit filed under rule 5, 7, 8 or 9.

### Rule 3 Assignment of proceedings

The jurisdiction of the High Court under section 54(3) of the Act shall be exercised by a single judge.

### Rule 4 Time limit for making application

An application under section 54(3) of the Act shall be made not later than 28 days after—

- (a) the expiry of the period allowed for appealing (whether by case stated or otherwise), or making an application for leave to appeal, against the conviction referred to in section 54(1)(b) of the Act; or
- (b) where notice of appeal or application for leave to appeal against the conviction is given, the determination of the appeal or application for leave to appeal and, for this

<sup>1</sup> 1996 c. 25.

<sup>2</sup> 1980 c. 43.

purpose, 'determination' includes abandonment (within the meaning of rule 10 of the Criminal Appeal Rules 1968<sup>1</sup> or, as the case may be, rule 11 of the Crown Court Rules 1982<sup>2</sup>).

## **Rule 5 Application**

- (1) An application under section 54(3) of the Act shall be made by claim form which shall be issued out of the Crown Office by the prosecutor.
- (2) The application shall be accompanied by—
  - (a) a witness statement or affidavit which deals with the conditions in section 55(1), (2), and (4) of the Act and which exhibits any relevant documents (which may include a copy of any record of court proceedings);
  - (b) a copy of the certification under section 54(2) of the Act.

## **Rule 6 Notice to the acquitted person**

- (1) The prosecutor shall, within 4 days of the issue of the application, serve written notice on the acquitted person that the application has been issued.
- (2) The notice given under paragraph (1) shall—
  - (a) specify the date on which the application was issued;
  - (b) be accompanied by a copy of the application and of the documents which accompanied it;
  - (c) inform the acquitted person that—
    - (i) the result of the application may be the making of an order by the High Court quashing the acquittal; and
    - (ii) if he wishes to respond to the application, he must, within 28 days of the date of service on him of the notice, file in the Crown Office any witness statement or affidavit on which he intends to rely.

## **Rule 7 Witness statement or affidavit of service on an acquitted person**

The prosecutor shall, as soon as practicable after service of the notice under rule 6, file at the Crown Office a witness statement or affidavit of service which exhibits a copy of the notice.

## **Rule 8 Response of acquitted person**

- (1) If the acquitted person wishes to respond to the application, he shall, within 28 days of service on him of notice under rule 6, file in the Crown Office a witness statement or affidavit which—
  - (a) deals with the conditions in section 55(1), (2), and (4) of the Act; and
  - (b) exhibits any relevant documents (which may include a copy of any record of court proceedings).
- (2) The acquitted person shall, within 4 days of the filing of the documents mentioned in paragraph (1), serve copies of them on the prosecutor.

## **Rule 9 Evidence**

- (1) A witness statement or affidavit filed under rule 5, 7, 8 of this rule may contain statements of information or belief with the sources and grounds thereof.

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<sup>1</sup> S.I. 1968/1262.

<sup>2</sup> S.I. 1982/1109; the relevant amending instruments are S.I. 1988/952 and 1322.

- (2) The prosecutor may, not later than 10 days after expiry of the period allowed under rule 8(1), apply for an order granting permission to file further evidence without notice being served on any other party.
- (3) If the single judge grants permission, the order shall specify a period within which further evidence or records are to be filed, and the Crown Office shall serve a copy of the order on the prosecutor and on the acquitted person.
- (4) The prosecutor shall, within 4 days of filing further evidence in the Crown Office, serve a copy of that evidence on the acquitted person.

## **Rule 10 Determination of the application**

- (1) Subject to paragraph (3), the single judge shall determine whether or not to make an order under section 54(3) of the Act on the basis of the written material provided under rules 5, 7, 8 and 9 in the absence of the prosecutor, the acquitted person, or of any witness.
- (2) The determination shall not be made, and any hearing under paragraph (3) shall not take place, before the expiry of–
  - (a) 10 days after the expiry of the period allowed under rule 8(1); or
  - (b) 10 days after the expiry of the period allowed by any order made under rule 9(3).
- (3) The single judge may, of his own initiative or on the application of the prosecutor or acquitted person, order a hearing of the application if he thinks fit.
- (4) An application under paragraph (3) shall state whether a hearing is desired in order for a deponent for the other party to attend and be cross-examined, and, if so, the reasons for wishing the witness to attend.
- (5) An application under paragraph (3) shall be made no later than 7 days after the expiry of the period allowed–
  - (a) under rule 8(1); or
  - (b) by any order made under rule 9(3).
- (6) Where a hearing is ordered, the single judge may, of his own initiative or on the application of the prosecutor or acquitted person, order a witness to attend in order to be cross-examined.
- (7) The prosecutor or the acquitted person, as the case may be, shall within 4 days after filing the application under paragraph (3), serve a copy of it on the other party, and file in the Crown Office a witness statement or affidavit of service.
- (8) A party served under paragraph (7) shall, within 5 days of service, file any representations he wishes to make as to whether or not a hearing should be ordered.
- (9) Subject to paragraph (10) below–
  - (a) the single judge shall not determine an application for a hearing under paragraph (3) unless–
    - (i) a witness statement or affidavit of service has been filed as required by paragraph (7), and
    - (ii) the period for filing representations allowed under paragraph (8) has elapsed; or
    - (iii) representations have been filed under paragraph (8).
  - (b) The requirements imposed by sub-paragraph(a)(i) and (iii) are satisfied even though the witness statement or affidavit of service or, as the case may be, the representations are filed outside the time limits allowed.
- (10) Where after an application for a hearing has been made–
  - (a) no witness statement or affidavit of service has been filed; and

- (b) no representations under paragraph (8) have been received after the expiry of 7 days from the filing of the application,  
the single judge may reject the application.
- (11) Where after a hearing is ordered, either the prosecutor or the acquitted person desires a witness for the other party to attend the hearing in order to be cross-examined, he must apply for an order under paragraph (5) giving his reasons without notice being served on any other party.
- (12) The Crown Office shall serve notice on the prosecutor and the acquitted person of any order made under the foregoing paragraphs of this rule and, where a hearing is ordered, the notice shall—
  - (a) set out the date, time and place of the hearing; and
  - (b) give details of any witness ordered to attend for cross-examination.
- (13) A hearing ordered under paragraph (3) above shall be in public unless the single judge otherwise directs.
- (14) the Crown Office shall serve notice of any order made under section 54(3) of the Act quashing the acquittal or of a decision not to make such an order on the prosecutor, the acquitted person and—
  - (a) where the court before which the acquittal or conviction occurred was a magistrates' court, on the justices' chief executive; or
  - (b) where the court before which the acquittal or conviction occurred was the Crown Court, on the appropriate officer of the Crown Court sitting at the place where the acquittal or conviction occurred.