

PART 27
RETRIAL AFTER ACQUITTAL

Contents of this Part**General**

When this Part applies rule 27.1

Application for certificate to allow order for retrial

Application for certificate rule 27.2

Application to Court of Appeal to quash acquittal and order retrial

Application for reporting restriction pending application for order for retrial rule 27.3

Application for order for retrial rule 27.4

Respondent's notice rule 27.5

Application to Crown Court for summons or warrant rule 27.6

Application of other rules about procedure in the Court of Appeal rule 27.7

GENERAL

When this Part applies

27.1.—(1) Rule 27.2 applies where, under section 54 of the Criminal Procedure and Investigations Act 1996(a), the Crown Court or a magistrates' court can certify for the High Court that interference or intimidation has been involved in proceedings leading to an acquittal.

(2) Rules 27.3 to 27.7 apply where, under section 77 of the Criminal Justice Act 2003(b), the Court of Appeal can—

- (a) quash an acquittal for a serious offence and order a defendant to be retried; or
- (b) order that an acquittal outside the United Kingdom is no bar to the defendant being tried in England and Wales,

if there is new and compelling evidence and it is in the interests of justice to make the order.

APPLICATION FOR CERTIFICATE TO ALLOW ORDER FOR RETRIAL

Application for certificate

27.2.—(1) This rule applies where—

- (a) a defendant has been acquitted of an offence;
- (b) a person has been convicted of one of the following offences involving interference with or intimidation of a juror or a witness (or potential witness) in any proceedings which led to the defendant's acquittal—
 - (i) perverting the course of justice,
 - (ii) intimidation etc. of witnesses, jurors and others under section 51(1) of the Criminal Justice and Public Order Act 1994(c), or

(a) 1996 c. 25.

(b) 2003 c. 44.

(c) 1994 c. 33; section 51 was amended by section 29 of, and paragraph 19 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 67 of, and paragraphs 21 and 22 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraphs 62 and 64 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 45 of, and paragraph 36 of Schedule

- (iii) aiding, abetting, counselling, procuring, suborning or inciting another person to commit an offence under section 1 of the Perjury Act 1911^(a); and
 - (c) the prosecutor wants the court by which that person was convicted to certify for the High Court that there is a real possibility that, but for the interference or intimidation, the defendant would not have been acquitted.
- (2) The prosecutor must—
- (a) apply in writing as soon as practicable after that person's conviction; and
 - (b) serve the application on—
 - (i) the court officer, and
 - (ii) the defendant who was acquitted, if the court so directs.
- (3) The application must—
- (a) give details, with relevant facts and dates, of—
 - (i) the conviction for interference or intimidation, and
 - (ii) the defendant's acquittal; and
 - (b) explain—
 - (i) why there is a real possibility that, but for the interference or intimidation, the defendant would not have been acquitted, and
 - (ii) why it would not be contrary to the interests of justice to prosecute the defendant again for the offence of which he or she was acquitted, despite any lapse of time or other reason.
- (4) The court may—
- (a) extend the time limit under paragraph (2);
 - (b) allow an application to be in a different form to one set out in the Practice Direction, or to be made orally;
 - (c) determine an application under this rule—
 - (i) at a hearing, in private or in public; or
 - (ii) without a hearing.
- (5) If the court gives a certificate, the court officer must serve it on—
- (a) the prosecutor; and
 - (b) the defendant who was acquitted.

[Note: See Section 54 of the Criminal Procedure and Investigations Act 1996 (Acquittals tainted by intimidation, etc.).]

For the procedure on application to the High Court, see rules 77.6 to 77.15 of the Civil Procedure Rules 1998(b).]

APPLICATION TO COURT OF APPEAL TO QUASH ACQUITTAL AND ORDER RETRIAL

Application for reporting restriction pending application for order for retrial

- 27.3.**—(1) This rule applies where—
- (a) no application has been made under rule 27.4 (Application for order for retrial);

17 to, the Crime and Courts Act 2013 (c. 22) and section 50 of, and paragraph 14 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraph 11 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(a) 1911 c.6.

(b) S.I. 1998/3132; rules 77.6 to 77.15 were inserted by S.I. 2010/1953.

- (b) an investigation by officers has begun into an offence with a view to an application under that rule; and
 - (c) the Director of Public Prosecutions wants the Court of Appeal to make, vary or remove an order for a reporting restriction under section 82 of the Criminal Justice Act 2003 (Restrictions on publication in the interests of justice).
- (2) The Director must—
- (a) apply in writing;
 - (b) serve the application on—
 - (i) the Registrar, and
 - (ii) the defendant, unless the court otherwise directs.
- (3) The application must, as appropriate—
- (a) explain why the Director wants the court to direct that it need not be served on the defendant until the application under rule 27.4 is served;
 - (b) specify the proposed terms of the order, and for how long it should last;
 - (c) explain why an order in the terms proposed is necessary;
 - (d) explain why an order should be varied or removed.

[Note: For other rules about reporting restrictions, see Part 6.]

Application for order for retrial

- 27.4.**—(1) This rule applies where—
- (a) a defendant has been acquitted—
 - (i) in the Crown Court, or on appeal from the Crown Court, of an offence listed in Part 1 of Schedule 5 to the Criminal Justice Act 2003^(a) (qualifying offences),
 - (ii) in proceedings elsewhere than in the United Kingdom of an offence under the law of that place, if what was alleged would have amounted to or included one of those listed offences;
 - (b) with the Director of Public Prosecutions' written consent, a prosecutor wants the Court of Appeal to make an order, as the case may be—
 - (i) quashing the acquittal in the Crown Court and ordering the defendant to be retried for the offence, or
 - (ii) declaring whether the acquittal outside the United Kingdom is a bar to the defendant's trial in England and Wales and, if it is, whether that acquittal shall not be such a bar.
- (2) Such a prosecutor must—
- (a) apply in writing;
 - (b) serve the application on the Registrar;
 - (c) not more than 2 business days later serve on the defendant who was acquitted—
 - (i) the application, and
 - (ii) a notice charging the defendant with the offence, unless the defendant has already been arrested and charged under section 87 of the Criminal Justice Act 2003^(b) (arrest, under warrant or otherwise, and charge).
- (3) The application must—
- (a) give details, with relevant facts and dates, of the defendant's acquittal;

^(a) 2003 c. 44; Part 1 of Schedule 5 was amended by section 26 of, and paragraph 3 of Schedule 2 to, the Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19).

^(b) 2003 c. 44.

- (b) explain—
 - (i) what new and compelling evidence there is against the defendant, and
 - (ii) why in all the circumstances it would be in the interests of justice for the court to make the order sought;
- (c) include or attach any application for the following, with reasons—
 - (i) an order under section 80(6) of the Criminal Justice Act 2003(a) (Procedure and evidence) for the production of any document, exhibit or other thing which in the prosecutor's opinion is necessary for the determination of the application,
 - (ii) an order under that section for the attendance before the court of any witness who would be a compellable witness at the trial the prosecutor wants the court to order,
 - (iii) an order for a reporting restriction under section 82 of the Criminal Justice Act 2003(b) (Restrictions on publication in the interests of justice); and
- (d) attach—
 - (i) written witness statements of the evidence on which the prosecutor relies as new and compelling evidence against the defendant,
 - (ii) relevant documents from the trial at which the defendant was acquitted, including a record of the offence or offences charged and of the evidence given, and
 - (iii) any other document or thing that the prosecutor thinks the court will need to decide the application.

[Note. See sections 75, 76, 77, 80 and 82 of the Criminal Justice Act 2003(c). Under Part 1 of Schedule 5 to that Act, the qualifying offences include murder and other serious offences against the person, offences of importation and exportation of Class A drugs, offences of causing explosions and other serious damage, terrorism offences and war crimes and other international offences.]

The time limit for serving an application on the defendant is prescribed by section 80(2) of the 2003 Act. It may be extended but not shortened.]

Respondent's notice

27.5.—(1) A defendant on whom a prosecutor serves an application may serve a respondent's notice, and must do so if the defendant wants to make representations to the court.

(2) Such a defendant must serve the respondent's notice on—

- (a) the Registrar; and
- (b) the prosecutor,

not more than 28 days after service of the application.

(3) The respondent's notice must—

- (a) give the date on which the respondent was served with the prosecutor's application;
- (b) summarise any relevant facts not contained in that application;
- (c) explain the defendant's grounds for opposing that application;
- (d) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) bail pending the hearing of the prosecutor's application, if the defendant is in custody,

(a) 2003 c. 44.

(b) 2003 c. 44.

(c) 2003 c. 44; section 76 was amended by S.I. 2012/1809.

- (iii) a direction to attend in person any hearing that the defendant could attend by live link, if the defendant is in custody,
 - (iv) an order under section 80(6) of the Criminal Justice Act 2003 (Procedure and evidence) for the production of any document, exhibit or other thing which in the defendant's opinion is necessary for the determination of the prosecutor's application,
 - (v) an order under that section for the attendance before the court of any witness who would be a compellable witness at the trial the prosecutor wants the court to order; and
- (e) attach or identify any other document or thing that the defendant thinks the court will need to decide the application.

Application to Crown Court for summons or warrant

27.6.—(1) This rule applies where—

- (a) the prosecutor has served on the Registrar an application under rule 27.4 (Application for order for retrial);
 - (b) the defendant is not in custody as a result of arrest under section 88 of the Criminal Justice Act 2003(a) (Bail and custody before application); and
 - (c) the prosecutor wants the Crown Court to issue—
 - (i) a summons requiring the defendant to appear before the Court of Appeal at the hearing of the prosecutor's application, or
 - (ii) a warrant for the defendant's arrestunder section 89 of the 2003 Act(b) (Bail and custody before hearing).
- (2) The prosecutor must—
- (a) apply in writing; and
 - (b) serve the application on the Crown Court officer.
- (3) The application must—
- (a) explain what the case is about, including a brief description of the defendant's acquittal, the new evidence and the stage that the application to the Court of Appeal has reached;
 - (b) specify—
 - (i) the decision that the prosecutor wants the Crown Court to make,
 - (ii) each offence charged, and
 - (iii) any relevant previous bail decision and the reasons given for it;
 - (c) propose the terms of any suggested condition of bail.

[Note. Under section 87 of the Criminal Justice Act 2003(c), in the circumstances prescribed by that section a justice of the peace may issue a warrant for the arrest of the defendant who was acquitted and that defendant may be charged with an offence that is to be the subject of an application to the Court of Appeal under rule 27.4.

Under section 88 of the 2003 Act, in the circumstances prescribed by that section a defendant who has been arrested and charged must be brought before the Crown Court and that court must either grant bail for that defendant to attend the Court of Appeal on the hearing of an application under rule 27.4, or remand the defendant in custody.

(a) 2003 c. 44; section 88 is amended by section 148 of, and paragraphs 59 and 63 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.
(b) 2003 c. 44.
(c) 2003 c. 44.

Under section 89 of the 2003 Act, where the prosecutor has made an application to the Court of Appeal under rule 27.4—

- (a) if the defendant is in custody, the Crown Court must decide whether to remand him or her in custody to be brought before the Court of Appeal or to grant bail for that purpose; or*
- (b) if the defendant is not in custody, and if the prosecutor so applies, the Crown Court may either issue a summons for the defendant to attend the Court of Appeal or issue a warrant for the defendant's arrest.]*

Application of other rules about procedure in the Court of Appeal

27.7. On an application under rule 27.4 (Application for order for retrial)—

- (a) the rules in Part 36 (Appeal to the Court of Appeal: general rules) apply with the necessary modifications;
- (b) rules 39.8, 39.9 and 39.10 (bail and bail conditions in the Court of Appeal) apply as if the references in those rules to appeal included references to an application under rule 27.4; and
- (c) rule 39.14 (Renewal or setting aside of order for retrial) applies as if the reference to section 7 of the Criminal Appeal Act 1968(a) were a reference to section 84 of the Criminal Justice Act 2003(b) (Retrial).

[Note. See also the notes to the rules listed in this rule.

For the powers of the Court of Appeal that may be exercised by one judge of that court or by the Registrar, and for the right to renew an application for directions to a judge or to the Court of Appeal, see the Criminal Justice Act 2003 (Retrial for Serious Offences) Order 2005(c) and rule 36.5 (Renewing an application refused by a judge or the Registrar).

For rules governing applications for reporting restrictions, see Part 6. For rules governing proceedings in the Crown Court about bail, see Part 14.]

(a) 1968 c. 19; section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and paragraph 44 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).
(b) 2003 c. 44.
(c) S.I. 2005/679.