

PART 34

APPEAL TO THE CROWN COURT

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When this Part applies

34.1.—(1) This Part applies where—

- (a) a defendant wants to appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980(a),
 - (ii) section 45 of the Mental Health Act 1983(b),
 - (iii) paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000(c), or paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003(d),
 - (iv) section 42 of the Counter Terrorism Act 2008(e);
- (b) the Criminal Cases Review Commission refers a defendant's case to the Crown Court under section 11 of the Criminal Appeal Act 1995(f);
- (c) a prosecutor wants to appeal under—
 - (i) section 14A(5A) of the Football Spectators Act 1989(g), or
 - (ii) section 147(3) of the Customs and Excise Management Act 1979(h); or
- (d) a person wants to appeal under—

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- (a) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).
 - (b) 1983 c. 20.
 - (c) 2000 c. 6.
 - (d) 2003 c. 44.
 - (e) 2008 c. 28.
 - (f) 1995 c. 35.
 - (g) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).
 - (h) 1979 c. 2.

- (i) section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956(a),
- (ii) section 12(5) of the Contempt of Court Act 1981(b),
- (iii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986(c),
- (iv) section 22 of the Football Spectators Act 1989(d), or
- (v) section 10(4) or (5) of the Crime and Disorder Act 1998(e).

(2) A reference to an 'appellant' in this Part is a reference to such a party or person.

[Note. An appeal to the Crown Court is by way of re-hearing: see section 79(3) of the Senior Courts Act 1981(f). For the powers of the Crown Court on an appeal, see section 48 of that Act.

A defendant may appeal from a magistrates' court to the Crown Court—

- (a) *under section 108 of the Magistrates' Courts Act 1980, against sentence after a guilty plea and after a not guilty plea against conviction, against a finding of guilt or against sentence;*
- (b) *under section 45 of the Mental Health Act 1983, where the magistrates' court makes a hospital order or guardianship order without convicting the defendant;*
- (c) *under paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, or under paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003, where the magistrates' court revokes a community order and deals with the defendant in another way;*
- (d) *under section 42 of the Counter Terrorism Act 2008, where the magistrates' court decides that an offence has a terrorist connection.*

See section 13 of the Criminal Appeal Act 1995(g) for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.

Under section 14A(5A) of the Football Spectators Act 1989, a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order.

Under section 147(3) of the Customs and Excise Management Act 1979, a prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under any Act relating to customs or excise.

Under section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956, a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court.

Under section 12(5) of the Contempt of Court Act 1981, a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court.

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- (a) 1956 c. 44; section 1 was amended by Part 1 of Schedule 7 to, the Criminal Justice Act 1967 (c. 80), Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).
 - (b) 1981 c. 49; section 12(5) was amended by section 165(1) of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
 - (c) S.I. 1986/1335; regulation 3C was inserted by regulation 2 of The Costs in Criminal Cases (General) (Amendment) Regulations 1991 (SI 1991/789) and amended by regulation 5 of The Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408). Regulation 3H was inserted by regulation 7 of The Costs in Criminal Cases (General) (Amendment) Regulations 2004 (S.I. 2004/2408).
 - (d) 1989 c. 37; section 22 was amended by section 5 of the Football (Offences and Disorder) Act 1999 (c. 21), section 1 of, and paragraphs 9 – 11 and 17 of Schedule 2 to, the Football (Disorder) Act 2000 (c. 25) and section 109(1) and (3) of, and paragraph 335 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).
 - (e) 1998 c. 37; section 10 was amended by section 15 of, and paragraphs 276 and 277 of Schedule 4 to, the Constitutional Reform Act 2005 section 17 of, and paragraph 52 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 41 of the Crime and Security Act 2010 (c. 17), with effect from a date to be appointed.
 - (f) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
 - (g) 1995 c. 35; section 13 was amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c.52).

Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court.

Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court.

Under section 22 of the Football Spectators Act 1989, any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court.

Under section 10(4) or (5) of the Crime and Disorder Act 1998, a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court.]

Service of appeal notice

34.2.—(1) An appellant must serve an appeal notice on—

- (a) the magistrates' court officer; and
- (b) every other party.

(2) The appellant must serve the appeal notice—

- (a) as soon after the decision appealed against as the appellant wants; but
- (b) not more than 21 days after—
 - (i) sentence or the date sentence is deferred, whichever is earlier, if the appeal is against conviction or against a finding of guilt,
 - (ii) sentence, if the appeal is against sentence, or
 - (iii) the order or failure to make an order about which the appellant wants to appeal, in any other case.

(3) The appellant must serve with the appeal notice any application for the following, with reasons—

- (a) an extension of the time limit under this rule, if the appeal notice is late;
- (b) bail pending appeal, if the appellant is in custody;
- (c) the suspension of any disqualification imposed in the case, where the magistrates' court or the Crown Court can order such a suspension pending appeal.

(4) Where both the magistrates' court and the Crown Court can grant bail or suspend a disqualification pending appeal, an application must indicate by which court the appellant wants the application determined.

[Note. Under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(a), a magistrates' court may defer passing sentence for up to 6 months.

Under section 113 of the Magistrates' Courts Act 1980(b), the magistrates' court may grant an appellant bail pending appeal. Under section 81(1)(b) of the Senior Courts Act 1981(c), the Crown Court also may do so. See also rule 14.7.

(a) 2000 c. 6.

(b) 1980 c. 43; section 113 was amended by section 168 of, and paragraph 44 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 165 of, and paragraph 72 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(c) 1981 c.54.

Under section 39 of the Road Traffic Offenders Act 1988(a), a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. Under section 40 of the 1988 Act(b), the appeal court may do so. See also rule 29.2.]

Form of appeal notice

34.3. The appeal notice must be in writing and must—

- (a) specify—
 - (i) the conviction or finding of guilt,
 - (ii) the sentence, or
 - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
- (b) summarise the issues;
- (c) in an appeal against conviction—
 - (i) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence, and
 - (ii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;
- (d) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—
 - (i) the magistrates' court's written findings of fact, and
 - (ii) the appellant's response to those findings;
- (e) say whether the appellant has asked the magistrates' court to reconsider the case; and
- (f) include a list of those on whom the appellant has served the appeal notice.

[Note. The Practice Direction sets out a form of appeal notice for use in connection with this rule.

In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980(c).

See also rule 3.11 (Conduct of a trial or an appeal).]

Duty of magistrates' court officer

34.4. The magistrates' court officer must—

- (a) as soon as practicable serve on the Crown Court officer—
 - (i) the appeal notice and any accompanying application served by the appellant,
 - (ii) details of the parties including their addresses,
 - (iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail pending appeal, and
 - (iv) any report received for the purposes of sentencing;
- (b) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—
 - (i) 6 weeks after the conclusion of those proceedings, or

(a) 1988 c. 53.

(b) 1988 c. 53; section 40 was amended by sections 40 and 59 of, and paragraph 50 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c.4).

(c) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

- (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks;
- (c) provide the Crown Court with any document, object or information for which the Crown Court officer asks, within such period as the Crown Court officer may require; and
- (d) arrange for the magistrates' court to hear as soon as practicable any application to that court under rule 34.2(3)(c) (suspension of disqualification pending appeal).

Duty of person keeping exhibit

34.5. A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

- (a) keep that exhibit until—
 - (i) 6 weeks after the conclusion of those proceedings, or
 - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks,unless the magistrates' court or the Crown Court otherwise directs; and
- (b) provide the Crown Court with any such document or object for which the Crown Court officer asks, within such period as the Crown Court officer may require.

Reference by the Criminal Cases Review Commission

34.6.—(1) The Crown Court officer must, as soon as practicable, serve a reference by the Criminal Cases Review Commission on—

- (a) the appellant;
- (b) every other party; and
- (c) the magistrates' court officer.

(2) The appellant may serve an appeal notice on—

- (a) the Crown Court officer; and
- (b) every other party,

not more than 21 days later.

(3) The Crown Court must treat the reference as the appeal notice if the appellant does not serve an appeal notice.

Application to introduce further evidence or for ruling on procedure, evidence or other question of law

34.7.—(1) Paragraph (2) of this rule applies where—

- (a) a party wants to introduce evidence which was not introduced by either party in the magistrates' court; and
- (b) one of these Parts applies—
 - (i) Part 18 (Measures to assist a witness or defendant to give evidence),
 - (ii) Part 20 (Hearsay evidence),
 - (iii) Part 21 (Evidence of bad character), or
 - (iv) Part 22 (Evidence of a complainant's previous sexual behaviour).

(2) Such a party must serve the notice or application to introduce evidence required by that Part not more than 14 days after service of the appeal notice.

(3) Paragraph (4) of this rule applies to an application—

- (a) about—
 - (i) case management, or any other question of procedure, or

- (ii) the introduction or admissibility of evidence, or any other question of law;
 - (b) that has not been determined before the hearing of the appeal begins.
- (4) The application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

[Note. See also Part 16 (Written witness statements), Part 19 (Expert evidence) and Part 23 (Restriction on cross-examination by a defendant), which may apply where this Part applies.]

Hearings and decisions

34.8.—(1) The Crown Court as a general rule must hear in public an appeal or reference to which this Part applies, but—

- (a) may order any hearing to be in private; and
- (b) where a hearing is about a public interest ruling, must hold that hearing in private.

(2) The Crown Court officer must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;
- (b) any party’s custodian; and
- (c) any other person whom the Crown Court requires to be notified.

(3) The Crown Court officer must serve every decision on—

- (a) the parties;
- (b) any other person whom the Crown Court requires to be served; and
- (c) the magistrates’ court officer and any party’s custodian, where the decision determines an appeal.

(4) But where a hearing or decision is about a public interest ruling, the Crown Court officer must not—

- (a) give notice of that hearing to; or
- (b) serve that decision on,

anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

[Note. See also Part 15 (Disclosure).]

Abandoning an appeal

34.9.—(1) The appellant—

- (a) may abandon an appeal without the Crown Court’s permission, by serving a notice of abandonment on—
 - (i) the magistrates’ court officer,
 - (ii) the Crown Court officer, and
 - (iii) every other partybefore the hearing of the appeal begins; but

- (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court’s permission.

(2) A notice of abandonment must be signed by or on behalf of the appellant.

(3) Where an appellant who is on bail pending appeal abandons an appeal—

- (a) the appellant must surrender to custody as directed by the magistrates’ court officer; and
- (b) any conditions of bail apply until then.

[Note. The Practice Direction sets out a form of notice of abandonment for use in connection with this rule.]

Where an appellant abandons an appeal to the Crown Court, both the Crown Court and the magistrates' court have power to make a costs order against that appellant in favour of the respondent: see section 52 of the Senior Courts Act 1981(a) and section 109 of the Magistrates' Courts Act 1980(b). Part 45 contains rules about costs on abandoning an appeal.]

Court's power to vary requirements under this Part

34.10. The Crown Court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow an appellant to vary an appeal notice that that appellant has served;
- (c) direct that an appeal notice be served on any person;
- (d) allow an appeal notice or a notice of abandonment to be in a different form to one set out in the Practice Direction, or to be presented orally.

Constitution of the Crown Court

34.11.—(1) On the hearing of an appeal the general rule is that—

- (a) the Crown Court must comprise—
 - (i) a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate, and
 - (ii) no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal; and
- (b) if the appeal is from a youth court, each justice of the peace must be qualified to sit as a member of a youth court.

(2) Despite the general rule—

- (a) the Crown Court may include only one justice of the peace if—
 - (i) the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably, or
 - (ii) one or more of the justices of the peace who started hearing the appeal is absent; and
- (b) the Crown Court may comprise only a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate if—
 - (i) the appeal is against conviction, under section 108 of the Magistrates' Courts Act 1980(c), and
 - (ii) the respondent agrees that the court should allow the appeal, under section 48(2) of the Senior Courts Act 1981(d).

(3) Before the hearing of an appeal begins—

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- (a) 1981 c. 54; section 52 was amended by section 31(5) of, and Part II of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23), section 4 of the Courts and Legal Services Act 1990 (c. 41), article 3 of, and paragraphs 11 and 12(a) of the Schedule to, S.I. 2004/2035, and section 59(5) of, and paragraph 26(1) and (2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
 - (b) 1980 c. 43; section 109(2) was amended by section 109(1) of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (c) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45) and section 54 of, and paragraphs 2 and 4 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2).
 - (d) 1981 c. 54; section 48(2) was amended by section 156 of the Criminal Justice Act 1988 (c. 33).

- (a) the Crown Court may comprise only a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate; and
- (b) so constituted, the court may, among other things, exercise the powers to which the rules in this Part and in Part 3 (Case management) apply.

[Note. See sections 73 and 74 of the Senior Courts Act 1981(a) (which allow rules of court to provide for the constitution of the Crown Court in proceedings on appeal), section 45 of the Children and Young Persons Act 1933(b) and section 9 of the Courts Act 2003(c). Under section 8(1A) of the Senior Courts Act 1981(d), a qualifying judge advocate may not exercise the jurisdiction of the Crown Court on an appeal from a youth court.]

(a) 1981 c. 54; section 73 was amended by article 3 of, and paragraphs 11 and 12 of the Schedule to, S.I. 2004/2035 and section 26 of, and paragraph 2 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). Section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12 of the Schedule to S.I. 2004/2035, section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and section 26 of, and paragraph 3 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(b) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(c) 2003 c. 39.

(d) 1981 c. 54; section 8(1A) was inserted by paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18).