

PART 36

APPEAL TO THE COURT OF APPEAL: GENERAL RULES

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When this Part applies

36.1.—(1) This Part applies to all the applications, appeals and references to the Court of Appeal to which Parts 37, 38, 39, 40, 41 and 43 apply.

(2) In this Part and in those, unless the context makes it clear that something different is meant 'court' means the Court of Appeal or any judge of that court.

[Note. See rule 2.2 for the usual meaning of 'court'.

Under section 53 of the Senior Courts Act 1981(a), the criminal division of the Court of Appeal exercises jurisdiction in the appeals and references to which Parts 37, 38, 39, 40 and 41 apply.

Under section 55 of that Act(b), the Court of Appeal must include at least two judges, and for some purposes at least three.

For the powers of the Court of Appeal that may be exercised by one judge of that court or by the Registrar, see sections 31, 31A, 31B, 31C and 44 of the Criminal Appeal Act 1968(c); section 49

(a) 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).

(b) 1981 c. 54; section 55 was amended by section 170 of, and paragraph 80 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 52 of the Criminal Justice and Public Order Act 1994 (c. 33) and section 58 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). It is further amended by section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(c) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), paragraphs 86, 87 and 88 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48), section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177 of, and paragraph 69 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed. Section 31A was inserted by section 6 of the Criminal Appeal Act 1995 (c. 35) and amended by sections 87 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 331 of, and paragraphs 86 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 31B was inserted by section 87 of the Courts Act 2003 (c. 39). Section 31C

of the Criminal Justice Act 2003(a); the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(b); the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(c); the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(d); and the power conferred by section 53(4) of the 1981 Act.]

Case management in the Court of Appeal

36.2.—(1) The court and the parties have the same duties and powers as under Part 3 (Case management).

(2) The Registrar—

- (a) must fulfil the duty of active case management under rule 3.2; and
- (b) in fulfilling that duty may exercise any of the powers of case management under—
 - (i) rule 3.5 (the court’s general powers of case management),
 - (ii) rule 3.10(3) (requiring a certificate of readiness), and
 - (iii) rule 3.11 (requiring a party to identify intentions and anticipated requirements) subject to the directions of the court.

(3) The Registrar must nominate a case progression officer under rule 3.4.

Power to vary requirements

36.3. The court or the Registrar may—

- (a) shorten a time limit or extend it (even after it has expired) unless that is inconsistent with other legislation;
- (b) allow a party to vary any notice that that party has served;
- (c) direct that a notice or application be served on any person;
- (d) allow a notice or application to be in a different form, or presented orally.

[Note. The time limit for serving an appeal notice—

- (a) under section 18 of the Criminal Appeal Act 1968(e) on an appeal against conviction or sentence, and*
- (b) under section 18A of that Act(f) on an appeal against a finding of contempt of court*

may be extended but not shortened: see rule 39.2.

The time limit for serving an application for permission to refer a sentencing case under section 36 of the Criminal Justice Act 1988(g) may be neither extended nor shortened: see rule 41.2(4).

was inserted by section 87 of the Courts Act 2003 (c. 39) and amended by sections 47 and 149 of, and paragraphs 1 and 12 of Schedule 8 and part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). Section 44 was amended by section 24(2) of, and paragraph 11 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 170(1) of, and paragraphs 20 and 31 of the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4(2) of the Road Traffic (Consequential Provisions) Act 1988 (c. 54) and section 198(1), and paragraphs 38 and 41 of Schedule 6 to, the Licensing Act 2003 (c. 17).

- (a) 2003 c. 44.
- (b) S.I. 2005/2798.
- (c) S.I. 2006/2135.
- (d) S.I. 2008/1863.
- (e) 1968 c. 19.
- (f) 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).
- (g) 1988 c. 33; section 36 was amended by section 272 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 3 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 46, 148 and 149 of, and paragraphs 22 and 23 of Schedule 26 and Part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 2 of Schedule 19 and paragraphs 4 and 5 of Schedule 26 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 46 of the Criminal Justice and Immigration Act 2008 (c. 4) and section 28 of, and paragraph 2 of Schedule 5 to, the Criminal Justice and Courts Act 2015 (c. 2) with effect from dates to be appointed.

The time limits in rule 43.2 for applying to the Court of Appeal for permission to appeal or refer a case to the Supreme Court may be extended or shortened only as explained in the note to that rule.]

Application for extension of time

36.4. A person who wants an extension of time within which to serve a notice or make an application must—

- (a) apply for that extension of time when serving that notice or making that application; and
- (b) give the reasons for the application for an extension of time.

Renewing an application refused by a judge or the Registrar

36.5.—(1) This rule applies where a party with the right to do so wants to renew—

- (a) to a judge of the Court of Appeal an application refused by the Registrar; or
- (b) to the Court of Appeal an application refused by a judge of that court.

(2) That party must—

- (a) renew the application in the form set out in the Practice Direction, signed by or on behalf of the applicant;
- (b) serve the renewed application on the Registrar not more than 14 days after—
 - (i) the refusal of the application that the applicant wants to renew; or
 - (ii) the Registrar serves that refusal on the applicant, if the applicant was not present in person or by live link when the original application was refused.

[Note. The time limit of 14 days under this rule is reduced to 5 days where Parts 37, 38 or 40 apply: see rules 37.7, 38.10 and 40.7.]

For the right to renew an application to a judge or to the Court of Appeal, see sections 31(3), 31C and 44 of the Criminal Appeal Act 1968, the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(a), the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(b) and the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

A party has no right under section 31C of the 1968 Act to renew to the Court of Appeal an application for procedural directions refused by a judge, but in some circumstances a case management direction might be varied: see rule 3.6.

If an applicant does not renew an application that a judge has refused, including an application for permission to appeal, the Registrar will treat it as if it had been refused by the Court of Appeal.

Under section 22 of the Criminal Appeal Act 1968(c), the Court of Appeal may direct that an appellant who is in custody is to attend a hearing by live link.]

Hearings

36.6.—(1) The general rule is that the Court of Appeal must hear in public—

- (a) an application, including an application for permission to appeal; and
- (b) an appeal or reference,

but it may order any hearing to be in private.

(a) S.I. 2005/2798.

(b) S.I. 2006/2135.

(c) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

(2) Where a hearing is about a public interest ruling, that hearing must be in private unless the court otherwise directs.

(3) Where the appellant wants to appeal against an order restricting public access to a trial, the court—

- (a) may decide without a hearing—
 - (i) an application, including an application for permission to appeal, and
 - (ii) an appeal; but
- (b) must announce its decision on such an appeal at a hearing in public.

(4) Where the appellant wants to appeal or to refer a case to the Supreme Court, the court—

- (a) may decide without a hearing an application—
 - (i) for permission to appeal or to refer a sentencing case, or
 - (ii) to refer a point of law; but
- (b) must announce its decision on such an application at a hearing in public.

(5) Where a party wants the court to reopen the determination of an appeal—

- (a) the court—
 - (i) must decide the application without a hearing, as a general rule, but
 - (ii) may decide the application at a hearing; and
- (b) need not announce its decision on such an application at a hearing in public.

(6) A judge of the Court of Appeal and the Registrar may exercise any of their powers—

- (a) at a hearing in public or in private; or
- (b) without a hearing.

[Note. For the procedure on an appeal against an order restricting public access to a trial, see Part 40.

For the procedure on an application to reopen the determination of an appeal, see rule 36.15.]

Notice of hearings and decisions

36.7.—(1) The Registrar must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;
- (b) any party’s custodian;
- (c) any other person whom the court requires to be notified; and
- (d) the Crown Court officer, where Parts 37, 38 or 40 apply.

(2) The Registrar must serve every decision on—

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

(3) But where a hearing or decision is about a public interest ruling, the Registrar 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.

Duty of Crown Court officer

36.8.—(1) The Crown Court officer must provide the Registrar with any document, object or information for which the Registrar asks, within such period as the Registrar may require.

(2) Where someone may appeal to the Court of Appeal, the Crown Court officer must keep any document or object exhibited in the proceedings in the Crown Court, or arrange for it to be kept by some other appropriate person, until—

- (a) 6 weeks after the conclusion of those proceedings; or
- (b) the conclusion of any appeal proceedings that begin within that 6 weeks,

unless the court, the Registrar or the Crown Court otherwise directs.

(3) Where Part 37 applies (Appeal to the Court of Appeal against ruling at preparatory hearing), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

- (a) each order or ruling against which the appellant wants to appeal; and
- (b) the decision by the Crown Court judge on any application for permission to appeal.

(4) Where Part 38 applies (Appeal to the Court of Appeal against ruling adverse to prosecution), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

- (a) each ruling against which the appellant wants to appeal;
- (b) the decision by the Crown Court judge on any application for permission to appeal; and
- (c) the decision by the Crown Court judge on any request to expedite the appeal.

(5) Where Part 39 applies (Appeal to the Court of Appeal about conviction or sentence), the Crown Court officer must as soon as practicable serve on or make available to the Registrar—

- (a) any Crown Court judge’s certificate that the case is fit for appeal;
- (b) the decision on any application at the Crown Court centre for bail pending appeal;
- (c) such of the Crown Court case papers as the Registrar requires; and
- (d) such transcript of the Crown Court proceedings as the Registrar requires.

(6) Where Part 40 applies (Appeal to the Court of Appeal about reporting or public access) and an order is made restricting public access to a trial, the Crown Court officer must—

- (a) immediately notify the Registrar of that order, if the appellant has given advance notice of intention to appeal; and
- (b) as soon as practicable provide the applicant for that order with a transcript or note of the application.

[Note. See also section 87(4) of the Senior Courts Act 1981(a) and rules 5.5 (Recording and transcription of proceedings in the Crown Court), 36.9 (duty of person transcribing record of proceedings in the Crown Court) and 36.10 (Duty of person keeping exhibit).]

Duty of person transcribing proceedings in the Crown Court

36.9. A person who transcribes a recording of proceedings in the Crown Court under arrangements made by the Crown Court officer must provide the Registrar with any transcript for which the Registrar asks, within such period as the Registrar may require.

[Note. See also section 32 of the Criminal Appeal Act 1968(b) and rule 5.5 (Recording and transcription of proceedings in the Crown Court).]

(a) 1981 c. 54; section 87(4) was amended by articles 2 and 3 of, and paragraphs 11 and 17 of the Schedule to, S.I. 2004/2035.
(b) 1968 c. 19.

Duty of person keeping exhibit

36.10. A person who under arrangements made by the Crown Court officer keeps a document or object exhibited in the proceedings in the Crown Court must—

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

[Note. See also rule 36.8(2) (Duty of Crown Court officer).]

Registrar's duty to provide copy documents for appeal or reference

36.11. Unless the court otherwise directs, for the purposes of an appeal or reference—

- (a) the Registrar must—
 - (i) provide a party with a copy of any document or transcript held by the Registrar for such purposes, or
 - (ii) allow a party to inspect such a document or transcript, on payment by that party of any charge fixed by the Treasury; but
- (b) the Registrar must not provide a copy or allow the inspection of—
 - (i) a document provided only for the court and the Registrar, or
 - (ii) a transcript of a public interest ruling or of an application for such a ruling.

[Note. Section 21 of the Criminal Appeal Act 1968 requires the Registrar to collect, prepare and provide documents needed by the court.]

Declaration of incompatibility with a Convention right

36.12.—(1) This rule applies where a party—

- (a) wants the court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998(a); or
- (b) raises an issue that the Registrar thinks may lead the court to make such a declaration.

(2) The Registrar must serve notice on—

- (a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947(b); or
- (b) the Treasury Solicitor, if it is not clear who is the relevant person.

(3) That notice must include or attach details of—

- (a) the legislation affected and the Convention right concerned;
- (b) the parties to the appeal; and
- (c) any other information or document that the Registrar thinks relevant.

(4) A person who has a right under the 1998 Act to become a party to the appeal must—

- (a) serve notice on—
 - (i) the Registrar, and
 - (ii) the other parties,

(a) 1998 c. 42; section 4 was amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9).

(b) 1947 c. 44; section 17 was amended by article 3(2) of S.I. 1968/1656.

if that person wants to exercise that right; and

- (b) in that notice—
 - (i) indicate the conclusion that that person invites the court to reach on the question of incompatibility, and
 - (ii) identify each ground for that invitation, concisely outlining the arguments in support.
- (5) The court must not make a declaration of incompatibility—
 - (a) less than 21 days after the Registrar serves notice under paragraph (2); and
 - (b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

Abandoning an appeal

36.13.—(1) This rule applies where an appellant wants to—

- (a) abandon—
 - (i) an application to the court for permission to appeal, or
 - (ii) an appeal; or
- (b) reinstate such an application or appeal after abandoning it.

(2) The appellant—

- (a) may abandon such an application or appeal without the court’s permission by serving a notice of abandonment on—
 - (i) the Registrar, and
 - (ii) any respondentbefore any hearing of the application or appeal; but
- (b) at any such hearing, may only abandon that application or appeal with the court’s permission.

(3) A notice of abandonment must be in the form set out in the Practice Direction, signed by or on behalf of the appellant.

(4) On receiving a notice of abandonment the Registrar must—

- (a) date it;
- (b) serve a dated copy on—
 - (i) the appellant,
 - (ii) the appellant’s custodian, if any,
 - (iii) the Crown Court officer, and
 - (iv) any other person on whom the appellant or the Registrar served the appeal notice; and
- (c) treat the application or appeal as if it had been refused or dismissed by the Court of Appeal.

(5) An appellant who wants to reinstate an application or appeal after abandoning it must—

- (a) apply in writing, with reasons; and
- (b) serve the application on the Registrar.

[Note. The Court of Appeal has power only in exceptional circumstances to allow an appellant to reinstate an application or appeal that has been abandoned.]

Grounds of appeal and opposition

36.14.—(1) If the court gives permission to appeal then unless the court otherwise directs the decision indicates that—

- (a) the appellant has permission to appeal on every ground identified by the appeal notice; and
 - (b) the court finds reasonably arguable each ground on which the appellant has permission to appeal.
- (2) If the court gives permission to appeal but not on every ground identified by the appeal notice the decision indicates that—
- (a) at the hearing of the appeal the court will not consider representations that address any ground thus excluded from argument; and
 - (b) an appellant who wants to rely on such an excluded ground needs the court's permission to do so.
- (3) An appellant who wants to rely at the hearing of an appeal on a ground of appeal excluded from argument by a judge of the Court of Appeal when giving permission to appeal must—
- (a) apply for permission to do so, with reasons, and identify each such ground;
 - (b) serve the application on—
 - (i) the Registrar, and
 - (ii) any respondent;
 - (c) serve the application not more than 14 days after—
 - (i) the giving of permission to appeal, or
 - (ii) the Registrar serves notice of that decision on the applicant, if the applicant was not present in person or by live link when permission to appeal was given.
- (4) Paragraph (5) applies where one of the following Parts applies—
- (a) Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing);
 - (b) Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution);
 - (c) Part 39 (Appeal to the Court of Appeal about conviction or sentence); or
 - (d) Part 40 (Appeal to the Court of Appeal about reporting or public access restriction).
- (5) An appellant who wants to rely on a ground of appeal not identified by the appeal notice must—
- (a) apply for permission to do so and identify each such ground;
 - (b) in respect of each such ground—
 - (i) explain why it was not included in the appeal notice, and
 - (ii) where Part 39 applies, comply with rule 39.3(2);
 - (c) serve the application on—
 - (i) the Registrar, and
 - (ii) any respondent;
 - (d) serve the application—
 - (i) as soon as reasonably practicable, and in any event
 - (ii) at the same time as serving any renewed application for permission to appeal which relies on that ground.
- (6) Paragraph (7) applies where a party wants to abandon—
- (a) a ground of appeal on which that party has permission to appeal; or
 - (b) a ground of opposition identified in a respondent's notice.
- (7) Such a party must serve notice on—
- (a) the Registrar; and
 - (b) each other party,
- before any hearing at which that ground will be considered by the court.

[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as 'leave to appeal'.

Under rule 36.5 (Renewing an application refused by a judge or the Registrar), if permission to appeal is refused the application for such permission may be renewed within the time limit (14 days) set by that rule.]

Reopening the determination of an appeal

36.15.—(1) This rule applies where—

- (a) a party wants the court to reopen a decision which determines an appeal or reference to which this Part applies (including a decision on an application for permission to appeal or refer);
- (b) the Registrar refers such a decision to the court for the court to consider reopening it.

(2) Such a party must—

- (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on the Registrar.

(3) The application must—

- (a) specify the decision which the applicant wants the court to reopen; and
- (b) explain—
 - (i) why it is necessary for the court to reopen that decision in order to avoid real injustice,
 - (ii) how the circumstances are exceptional and make it appropriate to reopen the decision notwithstanding the rights and interests of other participants and the importance of finality,
 - (iii) why there is no alternative effective remedy among any potentially available, and
 - (iv) any delay in making the application.

(4) The Registrar—

- (a) may invite a party's representations on—
 - (i) an application to reopen a decision, or
 - (ii) a decision that the Registrar has referred, or intends to refer, to the court; and
- (b) must do so if the court so directs.

(5) A party invited to make representations must serve them on the Registrar within such period as the Registrar directs.

(6) The court must not reopen a decision to which this rule applies unless each other party has had an opportunity to make representations.

[Note. The Court of Appeal has power only in exceptional circumstances to reopen a decision to which this rule applies.]