

## PART 37

## APPEAL TO THE COURT OF APPEAL AGAINST RULING AT PREPARATORY HEARING

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**When this Part applies**

**37.1.**—(1) This Part applies where a party wants to appeal under—

- (a) section 9(11) of the Criminal Justice Act 1987(a) or section 35(1) of the Criminal Procedure and Investigations Act 1996(b); or
- (b) section 47(1) of the Criminal Justice Act 2003(c).

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

*[Note. Under section 9(11) of the Criminal Justice Act 1987 (which applies to serious or complex fraud cases) and under section 35(1) of the Criminal Procedure and Investigations Act 1996 (which applies to other complex, serious or long cases) a party may appeal to the Court of Appeal against an order made at a preparatory hearing in the Crown Court.*

*Under section 47(1) of the Criminal Justice Act 2003 a party may appeal to the Court of Appeal against an order in the Crown Court that because of jury tampering a trial will continue without a jury or that there will be a new trial without a jury.*

*Part 3 contains rules about preparatory hearings.*

*The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]*

**Service of appeal notice**

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

- (a) the Crown Court officer;

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- (a) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.
  - (b) 1996 c. 25; section 35(1) was amended by section 45 of the Criminal Justice Act 2003 (c. 44). The amendment is in force for certain purposes, for remaining purposes it has effect from a date to be appointed. Section 35 was also amended by paragraphs 65 and 69 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).
  - (c) 2003 c. 44.

- (b) the Registrar; and
  - (c) every party directly affected by the order or ruling against which the appellant wants to appeal.
- (2) The appellant must serve the appeal notice not more than 5 business days after—
- (a) the order or ruling against which the appellant wants to appeal; or
  - (b) the Crown Court judge gives or refuses permission to appeal.

### Form of appeal notice

**37.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.

(2) The appeal notice must—

- (a) specify each order or ruling against which the appellant wants to appeal;
- (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
- (c) summarise the relevant facts;
- (d) identify any relevant authorities;
- (e) include or attach any application for the following, with reasons—
  - (i) permission to appeal, if the appellant needs the court’s permission,
  - (ii) an extension of time within which to serve the appeal notice,
  - (iii) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody;
- (f) include a list of those on whom the appellant has served the appeal notice; and
- (g) attach—
  - (i) a transcript or note of each order or ruling against which the appellant wants to appeal,
  - (ii) all relevant skeleton arguments considered by the Crown Court judge,
  - (iii) any written application for permission to appeal that the appellant made to the Crown Court judge,
  - (iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal, and
  - (v) any other document or thing that the appellant thinks the court will need to decide the appeal.

*[Note. An appellant needs the court’s permission to appeal in every case to which this Part applies unless the Crown Court judge gives permission.]*

### Crown Court judge’s permission to appeal

**37.4.**—(1) An appellant who wants the Crown Court judge to give permission to appeal must—

- (a) apply orally, with reasons, immediately after the order or ruling against which the appellant wants to appeal; or
- (b) apply in writing and serve the application on—
  - (i) the Crown Court officer, and
  - (ii) every party directly affected by the order or ruling not more than 2 business days after that order or ruling.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

*[Note. For the Crown Court judge's power to give permission to appeal, see section 9(11) of the Criminal Justice Act 1987, section 35(1) of the Criminal Procedure and Investigations Act 1996 and section 47(2) of the Criminal Justice Act 2003.]*

### Respondent's notice

**37.5.**—(1) A party on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

- (a) that party wants to make representations to the court; or
- (b) the court so directs.

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

- (a) the appellant;
- (b) the Crown Court officer;
- (c) the Registrar; and
- (d) any other party on whom the appellant served the appeal notice.

(3) Such a party must serve the respondent's notice not more than 5 business days after—

- (a) the appellant serves the appeal notice; or
- (b) a direction to do so.

(4) The respondent's notice must be in the form set out in the Practice Direction.

(5) The respondent's notice must—

- (a) give the date on which the respondent was served with the appeal notice;
- (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
- (c) summarise any relevant facts not already summarised in the appeal notice;
- (d) identify any relevant authorities;
- (e) include or attach any application for the following, with reasons—
  - (i) an extension of time within which to serve the respondent's notice,
  - (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;
- (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

### Powers of Court of Appeal judge

**37.6.** A judge of the Court of Appeal may give permission to appeal as well as exercising the powers given by other legislation (including these Rules).

*[Note. See section 31 of the Criminal Appeal Act 1968(a) and section 49 of the Criminal Justice Act 2003(b).]*

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- (a) 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.
  - (b) 2003 c. 44.

**Renewing applications**

**37.7.** Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

**Right to attend hearing**

**37.8.**—(1) A party who is in custody has a right to attend a hearing in public.

(2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

*[Note. See rule 36.6 (Hearings).]*