

PART 38

APPEAL TO THE COURT OF APPEAL AGAINST RULING ADVERSE TO PROSECUTION

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When this Part applies

38.1.—(1) This Part applies where a prosecutor wants to appeal under section 58(2) of the Criminal Justice Act 2003(a).

(2) A reference to an ‘appellant’ in this Part is a reference to such a prosecutor.

[Note. Under section 58(2) of the Criminal Justice Act 2003 a prosecutor may appeal to the Court of Appeal against a ruling in the Crown Court. See also sections 57 and 59 to 61 of the 2003 Act.

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

Decision to appeal

38.2.—(1) An appellant must tell the Crown Court judge of any decision to appeal—

- (a) immediately after the ruling against which the appellant wants to appeal; or
- (b) on the expiry of the time to decide whether to appeal allowed under paragraph (2).

(2) If an appellant wants time to decide whether to appeal—

- (a) the appellant must ask the Crown Court judge immediately after the ruling; and
- (b) the general rule is that the judge must not require the appellant to decide there and then but instead must allow until the next business day.

[Note. If the ruling against which the appellant wants to appeal is a ruling that there is no case to answer, the appellant may appeal against earlier rulings as well: see section 58(7) of the Criminal Justice Act 2003.

Under section 58(8) of the 2003 Act the appellant must agree that a defendant directly affected by the ruling must be acquitted if the appellant (a) does not get permission to appeal or (b) abandons the appeal.

The Crown Court judge may give permission to appeal and may expedite the appeal: see rules 38.5 and 38.6.]

(a) 2003 c. 44.

Service of appeal notice

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

- (a) the Crown Court officer;
- (b) the Registrar; and
- (c) every defendant directly affected by the ruling against which the appellant wants to appeal.

(2) The appellant must serve the appeal notice not later than—

- (a) the next business day after telling the Crown Court judge of the decision to appeal, if the judge expedites the appeal; or
- (b) 5 business days after telling the Crown Court judge of that decision, if the judge does not expedite the appeal.

[Note. If the ruling against which the appellant wants to appeal is a public interest ruling, see rule 38.8.]

Form of appeal notice

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

(2) The appeal notice must—

- (a) specify each 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) expedition of the appeal, or revocation of a direction expediting the appeal;
- (f) include a list of those on whom the appellant has served the appeal notice;
- (g) attach—
 - (i) a transcript or note of each 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,
 - (v) a transcript or note of the decision by the Crown Court judge on any request to expedite the appeal, and
 - (vi) any other document or thing that the appellant thinks the court will need to decide the appeal; and
- (h) attach a form of respondent’s notice for any defendant served with the appeal notice to complete if that defendant wants to do so.

[Note. An appellant needs the court’s permission to appeal unless the Crown Court judge gives permission: see section 57(4) of the Criminal Justice Act 2003. For ‘respondent’s notice’ see rule 38.7.]

Crown Court judge's permission to appeal

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

- (a) apply orally, with reasons, immediately after the 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 defendant directly affected by the rulingon the expiry of the time allowed under rule 38.2 to decide whether to appeal.

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

(3) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(4) The general rule is that the Crown Court judge must decide whether or not to give permission to appeal on the day that the application for permission is made.

[Note. For the Crown Court judge's power to give permission to appeal, see section 57(4) of the Criminal Justice Act 2003.

Rule 38.5(3) does not apply where the appellant wants to appeal against a public interest ruling: see rule 38.8(5).]

Expediting an appeal

38.6.—(1) An appellant who wants the Crown Court judge to expedite an appeal must ask, giving reasons, on telling the judge of the decision to appeal.

(2) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(3) The Crown Court judge may revoke a direction expediting the appeal unless the appellant has served the appeal notice.

[Note. For the Crown Court judge's power to expedite the appeal, see section 59 of the Criminal Justice Act 2003.

Rule 38.6(2) does not apply where the appellant wants to appeal against a public interest ruling: see rule 38.8(5).]

Respondent's notice

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

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

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

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

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

- (a) not later than the next business day after—
 - (i) the appellant serves the appeal notice, or
 - (ii) a direction to do so

- if the Crown Court judge expedites the appeal; or
- (b) not more than 5 business days after—
 - (i) the appellant serves the appeal notice, or
 - (ii) a direction to do so
- if the Crown Court judge does not expedite the appeal.
- (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.

Public interest ruling

38.8.—(1) This rule applies where the appellant wants to appeal against a public interest ruling.

(2) The appellant must not serve on any defendant directly affected by the ruling—

- (a) any written application to the Crown Court judge for permission to appeal; or
- (b) an appeal notice,

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

(3) The appellant must not include in an appeal notice—

- (a) the material that was the subject of the ruling; or
- (b) any indication of what sort of material it is,

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

(4) The appellant must serve on the Registrar with the appeal notice an annex—

- (a) marked to show that its contents are only for the court and the Registrar;
- (b) containing whatever the appellant has omitted from the appeal notice, with reasons; and
- (c) if relevant, explaining why the appellant has not served the appeal notice.

(5) Rules 38.5(3) and 38.6(2) do not apply.

[Note. Rules 38.5(3) and 38.6(2) require the Crown Court judge to allow a defendant to make representations about (i) giving permission to appeal and (ii) expediting an appeal.]

Powers of Court of Appeal judge

38.9. A judge of the Court of Appeal may—

- (a) give permission to appeal;
- (b) revoke a Crown Court judge's direction expediting an appeal; and

- (c) where an appellant abandons an appeal, order a defendant's acquittal, his release from custody and the payment of his costs,

as well as exercising the powers given by other legislation (including these Rules).

[Note. See section 73 of the Criminal Justice Act 2003.]

Renewing applications

38.10. 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

38.11.—(1) A respondent who is in custody has a right to attend a hearing in public.

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

[Note. See rule 36.6 (Hearings).]