

## PART 39

## APPEAL TO THE COURT OF APPEAL ABOUT CONVICTION OR SENTENCE

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**When this Part applies**

**39.1.**—(1) This Part applies where—

- (a) a defendant wants to appeal under—
  - (i) Part 1 of the Criminal Appeal Act 1968(a),
  - (ii) section 274(3) of the Criminal Justice Act 2003(b),
  - (iii) paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(c), or
  - (iv) section 42 of the Counter Terrorism Act 2008(d);
- (b) the Criminal Cases Review Commission refers a case to the Court of Appeal under section 9 of the Criminal Appeal Act 1995(e);
- (c) a prosecutor wants to appeal to the Court of Appeal under section 14A(5A) of the Football Spectators Act 1989(f);
- (d) a party wants to appeal under section 74(8) of the Serious Organised Crime and Police Act 2005(g);
- (e) a person found in contempt of court wants to appeal under section 13 of the Administration of Justice Act 1960(h) and section 18A of the Criminal Appeal Act 1968(a); or

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(a) 1968 c. 19.

(b) 2003 c. 44; section 274 was amended by section 40 of, and paragraph 82 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(c) 2003 c. 44; paragraph 14 of Schedule 22 was amended by section 40 of, and paragraph 82 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(d) 2008 c. 28.

(e) 1995 c. 35; section 9 was amended by section 58 of, and paragraph 31 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(f) 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).

(g) 2005 c. 15.

(h) 1960 c. 65; section 13 was amended paragraph 40 of Schedule 8 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Criminal Appeal Act 1968 (c. 19), paragraph 36 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), Schedule 7 to, the Supreme Court Act 1981 (c. 54), paragraph 25 of Schedule 2 to, the County Courts Act 1984 (c. 28), Schedule 15 to, the

- (f) a person wants to appeal to the Court of Appeal under—
- (i) section 24 of the Serious Crime Act 2007**(b)**, or
  - (ii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986**(c)**.
- (2) A reference to an ‘appellant’ in this Part is a reference to such a party or person.

*[Note. Under Part 1 (sections 1 to 32) of the Criminal Appeal Act 1968, a defendant may appeal against—*

- (a) a conviction (section 1 of the 1968 Act**(d)**);*
- (b) a sentence (sections 9 and 10 of the 1968 Act**(e)**);*
- (c) a verdict of not guilty by reason of insanity (section 12 of the 1968 Act);*
- (d) a finding of disability (section 15 of the 1968 Act**(f)**);*
- (e) a hospital order, interim hospital order or supervision order under section 5 or 5A of the Criminal Procedure (Insanity) Act 1964**(g)** (section 16A of the 1968 Act**(h)**).*

*See section 50 of the 1968 Act**(i)** for the meaning of ‘sentence’.*

*Under section 274(3) of the 2003 Act, a defendant sentenced to life imprisonment outside the United Kingdom, and transferred to serve the sentence in England and Wales, may appeal against the minimum term fixed by a High Court judge under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 or under section 269 of the 2003 Act.*

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Access to Justice Act 1999 (c. 22), paragraph 13 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and paragraph 45 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).

- (a)** 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).
- (b)** 2007 c. 27.
- (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 (SI 2004/2408).
- (d)** 1968 c. 19; section 1 was amended by section 154 of, and paragraph 71 of Schedule 7 to, the Magistrates’ Courts Act 1980 (c. 43), paragraph 44 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 1 of the Criminal Appeal Act 1995 (c. 35) and section 47 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).
- (e)** 1968 c. 19; section 9 was amended by section 170 of, and paragraph 21 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 119 of, and paragraph 12 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22) and section 271 of, and paragraph 44 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 10 was amended by section 56 of, and paragraph 57 of Schedule 8 to, the Courts Act 1971 (c. 23), section 77 of, and paragraph 23 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 22 of Schedule 15 and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 100 of, and paragraph 3 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120 of, and paragraph 13 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22), section 67 of, and paragraph 4 of Schedule 4 and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), sections 304, 319 and 322 of, and paragraphs 7 and 8 of Schedule 32 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 6(2) of, and paragraph 4 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).
- (f)** 1968 c. 19; section 15 was amended by section 7 of, and paragraph 2 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 1 of the Criminal Appeal Act 1995 (c. 35) and section 58 of, and paragraph 4 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and section 47 of, and paragraphs 1 and 5 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).
- (g)** 1964 c. 84; section 5 was substituted, and section 5A inserted, by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 5A was amended by section 15 of the Mental Health Act 2007 (c. 12).
- (h)** 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).
- (i)** 1968 c. 19; section 50 was amended by section 66 of the Criminal Justice Act 1982 (c. 48), sections 100 and 101 of, and paragraph 4 of Schedule 11 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 79 of, and Schedule 5 to, the Criminal Justice Act 1993 (c. 36), section 65 of, and Schedule 1 to, the Drug Trafficking Act 1994 (c. 37), section 7 of the Football (Offences and Disorder) Act 1999 (c. 21), section 24 of, and paragraph 3 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 30 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 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 43), section 198 of, and paragraphs 38 and 42 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 52 of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 3 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 55 of, and paragraph 6 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43) and section 85 of, and paragraph 3 of Schedule 4 to, the Serious Crime Act 2015 (c. 9), with effect from dates to be appointed.

*Under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003 a defendant sentenced to life imprisonment may appeal against the minimum term fixed on review by a High Court judge in certain cases.*

*Under section 42 of the Counter Terrorism Act 2008 a defendant may appeal against a decision of the Crown Court that an offence has a terrorist connection.*

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

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

*Under section 74(8) of the Serious Organised Crime and Police Act 2005 a prosecutor or defendant may appeal against a review by a Crown Court judge of a sentence that was reduced because the defendant assisted the investigator or prosecutor.*

*Under section 13 of the Administration of Justice Act 1960 a person in respect of whom an order or decision is made by the Crown Court in the exercise of its jurisdiction to punish for contempt of court may appeal to the Court of Appeal.*

*Under section 24 of the Serious Crime Act 2007 a person who is the subject of a serious crime prevention order, or the relevant applicant authority, may appeal to the Court of Appeal against a decision of the Crown Court in relation to that order. In addition, any person who was given an opportunity to make representations in the proceedings by virtue of section 9(4) of the Act may appeal to the Court of Appeal against a decision of the Crown Court to make, vary or not vary a serious crime prevention order.*

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

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

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

### **Service of appeal notice**

- 39.2.**—(1) The general rule is that an appellant must serve an appeal notice—
- (a) on the Crown Court officer at the Crown Court centre where there occurred—
    - (i) the conviction, verdict, or finding,
    - (ii) the sentence, or
    - (iii) the order, or the failure to make an order about which the appellant wants to appeal; and
  - (b) not more than—
    - (i) 28 days after that occurred, or

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(a) 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).

(b) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(c) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

- (ii) 21 days after the order, in a case in which the appellant appeals against a wasted or third party costs order.
- (2) But an appellant must serve an appeal notice—
  - (a) on the Registrar instead where—
    - (i) the appeal is against a minimum term review decision under section 274(3) of, or paragraph 14 of Schedule 22 to, the Criminal Justice Act 2003, or
    - (ii) the Criminal Cases Review Commission refers the case to the court; and
  - (b) not more than 28 days after—
    - (i) the minimum term review decision about which the appellant wants to appeal, or
    - (ii) the Registrar serves notice that the Commission has referred a conviction.

*[Note. The time limit for serving an appeal notice (a) on an appeal under Part 1 of the Criminal Appeal Act 1968 and (b) on an appeal against a finding of contempt of court is prescribed by sections 18 and 18A of the Criminal Appeal Act 1968. It may be extended, but not shortened.*

*For service of a reference by the Criminal Cases Review Commission, see rule 39.5.]*

### **Form of appeal notice**

- 39.3.**—(1) An appeal notice must—
- (a) specify—
    - (i) the conviction, verdict, or finding,
    - (ii) the sentence, or
    - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
  - (b) identify each ground of appeal on which the appellant relies (and see paragraph (2));
  - (c) identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against a conviction;
  - (d) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
  - (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) bail pending appeal,
    - (iv) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
    - (v) the introduction of evidence, including hearsay evidence and evidence of bad character,
    - (vi) an order requiring a witness to attend court,
    - (vii) a direction for special measures for a witness,
    - (viii) a direction for special measures for the giving of evidence by the appellant;
  - (f) identify any other document or thing that the appellant thinks the court will need to decide the appeal.
    - (i) identify any other document or thing that the appellant thinks the court will need to decide the appeal.
- (2) The grounds of appeal must—
- (a) include in no more than the first two pages a summary of the grounds that makes what then follows easy to understand;
  - (b) in each ground of appeal identify the event or decision to which that ground relates;

- (c) in each ground of appeal summarise the facts relevant to that ground, but only to the extent necessary to make clear what is in issue;
- (d) concisely outline each argument in support of each ground;
- (e) number each ground consecutively, if there is more than one;
- (f) identify any relevant authority and—
  - (i) state the proposition of law that the authority demonstrates, and
  - (ii) identify the parts of the authority that support that proposition; and
- (g) where the Criminal Cases Review Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference.

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

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

*An appellant needs the court's permission to appeal in every case to which this Part applies, except where—*

- (a) *the Criminal Cases Review Commission refers the case;*
- (b) *the appellant appeals against—*
  - (i) *an order or decision made in the exercise of jurisdiction to punish for contempt of court, or*
  - (ii) *a wasted or third party costs order; or*
- (c) *the Crown Court judge certifies under sections 1(2)(a), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968(a), under section 81(1B) of the Senior Courts Act 1981(b), under section 14A(5B) of the Football Spectators Act 1989(c), or under section 24(4) of the Serious Crime Act 2007, that a case is fit for appeal.*

*A judge of the Court of Appeal may give permission to appeal under section 31 of the Criminal Appeal Act 1968(d).*

*See also rule 39.7 (Introducing evidence).]*

### **Crown Court judge's certificate that case is fit for appeal**

**39.4.**—(1) An appellant who wants the Crown Court judge to certify that a case is fit for appeal must—

- (a) apply orally, with reasons, immediately after there occurs—
  - (i) the conviction, verdict, or finding,
  - (ii) the sentence, or
  - (iii) the order, or the failure to make an order

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- (a) 1968 c. 19; section 11(1A) was inserted by section 29 of the Criminal Justice Act 1982 (c. 48) and amended by section 47 of, and paragraphs 1 and 3 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).
  - (b) 1981 c. 54; section 81(1B) was inserted by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48). 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).
  - (c) 1989 c. 37; section 14A(5B) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).
  - (d) 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.

about which the appellant wants to appeal; or

- (b) apply in writing and serve the application on the Crown Court officer not more than 14 days after that occurred.

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

*[Note. The Crown Court judge may certify that a case is fit for appeal under sections 1(2)(b), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968, under section 81(1B) of the Senior Courts Act 1981, under section 14A(5B) of the Football Spectators Act 1989 or under section 24(4) of the Serious Crime Act 2007.*

*See also rule 39.2 (service of appeal notice required in all cases).]*

### **Reference by Criminal Cases Review Commission**

**39.5.**—(1) The Registrar must serve on the appellant a reference by the Criminal Cases Review Commission.

(2) The court must treat that reference as the appeal notice if the appellant does not serve such a notice under rule 39.2.

### **Respondent's notice**

**39.6.**—(1) The Registrar—

- (a) may serve an appeal notice on any party directly affected by the appeal; and
- (b) must do so if the Criminal Cases Review Commission refers a conviction, verdict, finding or sentence to the court.

(2) Such a party 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 or the Registrar so directs.

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

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

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

- (a) not more than 14 days after the Registrar serves—
  - (i) the appeal notice, or
  - (ii) a direction to do so; or
- (b) not more than 28 days after the Registrar serves notice that the Commission has referred a conviction.

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

(6) 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) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
- (d) summarise any relevant facts not already summarised in the appeal notice;
- (e) identify any relevant authorities;
- (f) 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 appeal,
- (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody,
- (iv) the introduction of evidence, including hearsay evidence and evidence of bad character,
- (v) an order requiring a witness to attend court,
- (vi) a direction for special measures for a witness; and
- (g) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

*[Note. The Practice Direction sets out the circumstances in which the Registrar usually will serve a defendant's appeal notice on the prosecutor.]*

*See also rule 39.7 (Introducing evidence).]*

### Introducing evidence

**39.7.**—(1) The following Parts apply with such adaptations as the court or the Registrar may direct—

- (a) Part 16 (Written witness statements);
- (b) Part 18 (Measures to assist a witness or defendant to give evidence);
- (c) Part 19 (Expert evidence);
- (d) Part 20 (Hearsay evidence);
- (e) Part 21 (Evidence of bad character); and
- (f) Part 22 (Evidence of a complainant's previous sexual behaviour).

(2) But the general rule is that—

- (a) a respondent who opposes an appellant's application or notice to which one of those Parts applies must do so in the respondent's notice, with reasons;
- (b) an appellant who opposes a respondent's application or notice to which one of those Parts applies must serve notice, with reasons, on—
  - (i) the Registrar, and
  - (ii) the respondent
 not more than 14 days after service of the respondent's notice; and
- (c) the court or the Registrar may give directions with or without a hearing.

(3) A party who wants the court to order the production of a document, exhibit or other thing connected with the proceedings must—

- (a) identify that item; and
- (b) explain—
  - (i) how it is connected with the proceedings,
  - (ii) why its production is necessary for the determination of the case, and
  - (iii) to whom it should be produced (the court, appellant or respondent, or any two or more of them).

(4) A party who wants the court to order a witness to attend to be questioned must—

- (a) identify the proposed witness; and
- (b) explain—
  - (i) what evidence the proposed witness can give,
  - (ii) why that evidence is capable of belief,

- (iii) if applicable, why that evidence may provide a ground for allowing the appeal,
- (iv) on what basis that evidence would have been admissible in the case which is the subject of the application for permission to appeal or appeal, and
- (v) why that evidence was not introduced in that case.

(5) Where the court orders a witness to attend to be questioned, the witness must attend the hearing of the application for permission to appeal or of the appeal, as applicable, unless the court otherwise directs.

(6) Where the court orders a witness to attend to be questioned before an examiner on the court's behalf, the court must identify the examiner and may give directions about—

- (a) the time and place, or times and places, at which that questioning must be carried out;
- (b) the manner in which that questioning must be carried out, in particular as to—
  - (i) the service of any report, statement or questionnaire in preparation for the questioning,
  - (ii) the sequence in which the parties may ask questions, and
  - (iii) if more than one witness is to be questioned, the sequence in which those witnesses may be questioned; and
- (c) the manner in which, and when, a record of the questioning must be submitted to the court.

(7) Where the court orders the questioning of a witness before an examiner, the court may delegate to that examiner the giving of directions under paragraph (6)(a), (b) and (c).

*[Note. An application to introduce evidence or for directions about evidence must be included in, or attached to, an appeal notice or a respondent's notice: see rules 39.3(1)(e)(v), (vi) and 39.6(6)(f)(iv), (v).]*

*Under section 23 of the Criminal Appeal Act 1968(a), the Court of Appeal may order the production of a document, exhibit or other thing, may order a witness to attend to be examined before the court and may allow the introduction of evidence that was not introduced at trial. Under section 23(4), if it thinks it necessary or expedient in the interests of justice the court may order the examination of a witness to be conducted before any judge, court officer or other person, and allow the admission of a record of that examination as evidence before the court.]*

### Application for bail pending appeal or retrial

**39.8.**—(1) This rule applies where a party wants to make an application to the court about bail pending appeal or retrial.

- (2) That party must serve an application in the form set out in the Practice Direction on—
  - (a) the Registrar, unless the application is with the appeal notice; and
  - (b) the other party.
- (3) The court must not decide such an application without giving the other party an opportunity to make representations, including representations about any condition or surety proposed by the applicant.
- (4) This rule and rule 14.16 (Bail condition to be enforced in another European Union member State) apply where the court can impose as a condition of bail pending retrial a requirement—
  - (a) with which a defendant must comply while in another European Union member State; and
  - (b) which that other member State can monitor and enforce.

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(a) 1968 c. 19; section 23 was amended by sections 4 and 29 of, and paragraph 4 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 48 of the Police and Justice Act 2006 (c. 48) and section 47 of, and paragraphs 1 and 10 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).



*[Note. See section 19 of the Criminal Appeal Act 1968(a), section 3(8) of the Bail Act 1976(b) and regulations 77 to 84 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(c). An application about bail or about the conditions of bail may be made either by an appellant or respondent.*

*Under section 81(1) of the Senior Courts Act 1981(d), a Crown Court judge may grant bail pending appeal only (a) if that judge gives a certificate that the case is fit for appeal (see rule 39.4) and (b) not more than 28 days after the conviction or sentence against which the appellant wants to appeal.*

*See also rule 14.16. Under the 2014 Regulations, where an appellant or respondent is to live or stay in another European Union member State pending his or her trial in England and Wales, the court may grant bail subject to a requirement to be monitored and enforced by the competent authority in that other state. The types of requirement that can be monitored and enforced are set out in Article 8 of EU Council Framework Decision 2009/829/JHA. A list of those requirements is at the end of Part 14.]*

### Conditions of bail pending appeal or retrial

**39.9.**—(1) This rule applies where the court grants a party bail pending appeal or retrial subject to any condition that must be met before that party is released.

(2) The court may direct how such a condition must be met.

(3) The Registrar must serve a certificate in the form set out in the Practice Direction recording any such condition and direction on—

- (a) that party;
- (b) that party's custodian; and
- (c) any other person directly affected by any such direction.

(4) A person directly affected by any such direction need not comply with it until the Registrar serves that person with that certificate.

(5) Unless the court otherwise directs, if any such condition or direction requires someone to enter into a recognizance it must be—

- (a) in the form set out in the Practice Direction and signed before—
  - (i) the Registrar,
  - (ii) the custodian, or
  - (iii) someone acting with the authority of the Registrar or custodian;
- (b) copied immediately to the person who enters into it; and
- (c) served immediately by the Registrar on the appellant's custodian or vice versa, as appropriate.

(6) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, surrender a document or take some other step—

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- (a) 1968 c. 19; section 19 was substituted by section 29 of the Criminal Justice Act 1982 (c. 48) and was amended by section 170 of, and paragraphs 20 and 26 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 22 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
  - (b) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
  - (c) S.I. 2014/3141.
  - (d) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

- (a) that payment, document or step must be made, surrendered or taken to or before—
  - (i) the Registrar,
  - (ii) the custodian, or
  - (iii) someone acting with the authority of the Registrar or custodian;
- (b) the Registrar or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or step has been made, surrendered or taken, as appropriate.

(7) The custodian must release the appellant where it appears that any condition ordered by the court has been met.

(8) For the purposes of section 5 of the Bail Act 1976(a) (record of decision about bail), the Registrar must keep a copy of—

- (a) any certificate served under paragraph (3);
- (b) a notice of hearing given under rule 36.7(1); and
- (c) a notice of the court’s decision served under rule 36.7(2).

(9) Where the court grants bail pending retrial the Registrar must serve on the Crown Court officer copies of the documents kept under paragraph (8).

### Forfeiture of a recognizance given as a condition of bail

**39.10.**—(1) This rule applies where—

- (a) the court grants a party bail pending appeal or retrial; and
- (b) the bail is subject to a condition that that party provides a surety to guarantee that he will surrender to custody as required; but
- (c) that party does not surrender to custody as required.

(2) The Registrar must serve notice on—

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

of the hearing at which the court may order the forfeiture of the recognizance given by that surety.

(3) The court must not forfeit a surety’s recognizance—

- (a) less than 7 days after the Registrar serves notice under paragraph (2); and
- (b) without giving the surety an opportunity to make representations at a hearing.

*[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety’s recognizance, the sum promised by that person is then payable to the Crown.]*

### Right to attend hearing

**39.11.** A party who is in custody has a right to attend a hearing in public unless—

- (a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal;
- (b) it is the hearing of an appeal and the court directs that—
  - (i) the appeal involves a question of law alone, and

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(a) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

- (ii) for that reason the appellant has no permission to attend; or
- (c) that party is in custody in consequence of—
  - (i) a verdict of not guilty by reason of insanity, or
  - (ii) a finding of disability.

*[Note. See rule 36.6 (Hearings) and section 22 of the Criminal Appeal Act 1968(a). There are corresponding provisions in 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) and the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(d). Under section 22 of the 1968 Act and corresponding provisions in those Orders, the court may direct that an appellant who is in custody is to attend a hearing by live link.]*

### Power to vary determination of appeal against sentence

**39.12.**—(1) This rule applies where the court decides an appeal affecting sentence in a party's absence.

(2) The court may vary such a decision if it did not take account of something relevant because that party was absent.

- (3) A party who wants the court to vary such a decision must—
  - (a) apply in writing, with reasons;
  - (b) serve the application on the Registrar not more than 7 days after—
    - (i) the decision, if that party was represented at the appeal hearing, or
    - (ii) the Registrar serves the decision, if that party was not represented at that hearing.

*[Note. Section 22(3) of the Criminal Appeal Act 1968 allows the court to sentence in an appellant's absence. There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 and in the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006.]*

### Directions about re-admission to hospital on dismissal of appeal

**39.13.**—(1) This rule applies where—

- (a) an appellant subject to—
  - (i) an order under section 37(1) of the Mental Health Act 1983(e) (detention in hospital on conviction), or
  - (ii) an order under section 5(2) of the Criminal Procedure (Insanity) Act 1964(f) (detention in hospital on finding of insanity or disability)
 has been released on bail pending appeal; and
- (b) the court—
  - (i) refuses permission to appeal,
  - (ii) dismisses the appeal, or
  - (iii) affirms the order under appeal.

(2) The court must give appropriate directions for the appellant's—

- (a) re-admission to hospital; and

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

(b) S.I. 2005/2798.

(c) S.I. 2006/2135.

(d) S.I. 2008/1863.

(e) 1983 c. 20; section 37(1) was amended by section 55 of, and paragraph 12 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43) and section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44).

(f) 1964 c. 84.

- (b) if necessary, temporary detention pending re-admission.

**Renewal or setting aside of order for retrial**

**39.14.**—(1) This rule applies where—

- (a) a prosecutor wants a defendant to be arraigned more than 2 months after the court ordered a retrial under section 7 of the Criminal Appeal Act 1968(a); or
- (b) a defendant wants such an order set aside after 2 months have passed since it was made.

(2) That party must apply in writing, with reasons, and serve the application on—

- (a) the Registrar;
- (b) the other party.

*[Note. Section 8(1) and (1A) of the Criminal Appeal Act 1968(b) set out the criteria for making an order on an application to which this rule applies.]*

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(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 section 331 of, and paragraph 44 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(b) 1968 c.19; section 8(1) was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and section 43 of the Criminal Justice Act 1988 (c. 33). Section 8(1A) was inserted by section 43(4) of the Criminal Justice Act 1988 (c. 33).