

PART 40

APPEAL TO THE COURT OF APPEAL ABOUT REPORTING OR PUBLIC
ACCESS RESTRICTION**Contents of this Part**

When this Part applies	rule 40.1
Service of appeal notice	rule 40.2
Form of appeal notice	rule 40.3
Advance notice of appeal against order restricting public access	rule 40.4
Duty of applicant for order restricting public access	rule 40.5
Respondent's notice on appeal against reporting restriction	rule 40.6
Renewing applications	rule 40.7
Right to introduce evidence	rule 40.8
Right to attend hearing	rule 40.9

When this Part applies

40.1.—(1) This Part applies where a person directly affected by an order to which section 159(1) of the Criminal Justice Act 1988(a) applies wants to appeal against that order.

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

[Note. Section 159(1) of the Criminal Justice Act 1988 gives a 'person aggrieved' (in this Part described as a person directly affected) a right of appeal to the Court of Appeal against a Crown Court judge's order—

- (a) *under section 4 or 11 of the Contempt of Court Act 1981(b);*
- (b) *under section 58(7) of the Criminal Procedure and Investigations Act 1996(c);*
- (c) *restricting public access to any part of a trial for reasons of national security or for the protection of a witness or other person; or*
- (d) *restricting the reporting of any part of a trial.*

See also Part 6 (Reporting, etc. restrictions) and Part 18 (Measures to assist a witness or defendant to give evidence).

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

Service of appeal notice

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

- (a) the Crown Court officer;
- (b) the Registrar;
- (c) the parties; and

(a) 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(b) 1981 c. 49; section 4 was amended by section 57 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 16 of, and Schedule 2 to, the Defamation Act 1996 (c. 31), paragraph 53 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and the Statute Law (Repeals) Act 2004 (c. 14).

(c) 1996 c. 25.

- (d) any other person directly affected by the order against which the appellant wants to appeal.
- (2) The appellant must serve the appeal notice not later than—
 - (a) the next business day after an order restricting public access to the trial;
 - (b) 10 business days after an order restricting reporting of the trial.

Form of appeal notice

- 40.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify the order 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, with reasons—
 - (i) an application for permission to appeal,
 - (ii) any application for an extension of time within which to serve the appeal notice,
 - (iii) any application for a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
 - (iv) any application for permission to introduce evidence, and
 - (v) a list of those on whom the appellant has served the appeal notice; and
 - (f) attach any 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.]

A Court of Appeal judge may give permission to appeal under section 31(2B) of the Criminal Appeal Act 1968(a).]

Advance notice of appeal against order restricting public access

- 40.4.**—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.
- (2) The appellant may serve advance written notice of intention to appeal against any such order that may be made.
- (3) The appellant must serve any such advance notice—
- (a) on—
 - (i) the Crown Court officer,
 - (ii) the Registrar,
 - (iii) the parties, and
 - (iv) any other person who will be directly affected by the order against which the appellant intends to appeal, if it is made; and
 - (b) not more than 5 business days after the Crown Court officer displays notice of the application for the order.

(a) 1968 c. 19; section 31(2B) was inserted by section 170 of, and paragraphs 20 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

(4) The advance notice must include the same information (with the necessary adaptations) as an appeal notice.

(5) The court must treat that advance notice as the appeal notice if the order is made.

Duty of applicant for order restricting public access

40.5.—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The party who applied for the order must serve on the Registrar—

- (a) a transcript or note of the application for the order; and
- (b) any other document or thing that that party thinks the court will need to decide the appeal.

(3) That party must serve that transcript or note and any such other document or thing as soon as practicable after—

- (a) the appellant serves the appeal notice; or
- (b) the order, where the appellant served advance notice of intention to appeal.

Respondent's notice on appeal against reporting restriction

40.6.—(1) This rule applies where the appellant wants to appeal against an order restricting the reporting of a trial.

(2) A person on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

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

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

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

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

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

(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) 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,
 - (iii) permission to introduce evidence; and

- (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

Renewing applications

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

Right to introduce evidence

40.8. No person may introduce evidence without the court's permission.

[Note. Section 159(4) of the Criminal Justice Act 1988 entitles the parties to give evidence, subject to procedure rules.]

Right to attend hearing

40.9.—(1) A party who is in custody has a right to attend a hearing in public of an appeal against an order restricting the reporting of a trial.

(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). The court may decide an application and an appeal without a hearing where the appellant wants to appeal against an order restricting public access to a trial: rule 36.6(3).]