

PART 42

APPEAL TO THE COURT OF APPEAL IN CONFISCATION AND RELATED PROCEEDINGS

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GENERAL RULES

Extension of time

42.1.—(1) An application to extend the time limit for giving notice of application for permission to appeal under Part 2 of the Proceeds of Crime Act 2002(**a**) must—

- (a) be included in the notice of appeal; and
- (b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by this Part or by the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**b**).

Other applications

42.2. Rule 39.3(2)(h) (Form of appeal notice) applies in relation to an application—

(a) 2002 c. 29.
(b) S.I. 2003/82.

- (a) by a party to an appeal under Part 2 of the Proceeds of Crime Act 2002 that, under article 7 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal; or
- (b) by the defendant to be given permission by the court to be present at proceedings for which permission is required under article 6 of the 2003 Order,

as it applies in relation to applications under Part I of the Criminal Appeal Act 1968(a) and the form in which rule 39.3 requires notice to be given may be modified as necessary.

Examination of witness by court

42.3. Rule 36.7 (Notice of hearings and decisions) applies in relation to an order of the court under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the Criminal Appeal Act 1968.

Supply of documentary and other exhibits

42.4. Rule 36.11 (Registrar's duty to provide copy documents for appeal or reference) applies in relation to an appellant or respondent under Part 2 of the Proceeds of Crime Act 2002 as it applies in relation to an appellant and respondent under Part I of the Criminal Appeal Act 1968.

Registrar's power to require information from court of trial

42.5. The Registrar may require the Crown Court to provide the Court of Appeal with any assistance or information which it requires for the purposes of exercising its jurisdiction under Part 2 of the Proceeds of Crime Act 2002, the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or this Part.

Hearing by single judge

42.6. Rule 36.6(5) (Hearings) applies in relation to a judge exercising any of the powers referred to in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(b) or the powers in rules 42.12(3) and (4) (Respondent's notice), 42.15(2) (Notice of appeal) and 42.16(6) (Respondent's notice), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968(c).

Determination by full court

42.7. Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies where a single judge has refused an application by a party to exercise in that party's favour any of the powers listed in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, or the power in rule 42.12(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

Notice of determination

42.8.—(1) This rule applies where a single judge or the Court of Appeal has determined an application or appeal under the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or under Part 2 of the Proceeds of Crime Act 2002.

(a) 1968 c. 19.

(b) S.I. 2003/82.

(c) 1968 c. 19; section 31(2) was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 29 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 87 of the Courts Act 2003 (c. 39) and section 48 of the Police and Justice Act 2006 (c. 48).

(2) The Registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for permission to appeal or an appeal under section 31 of the 2002 Act^(a), the Registrar must also, as soon as practicable, serve the order on a court officer of the court of trial and any magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

Record of proceedings and transcripts

42.9. Rule 5.5 (Recording and transcription of proceedings in the Crown Court) and rule 36.9 (Duty of person transcribing proceedings in the Crown Court) apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Proceeds of Crime Act 2002 as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

Appeal to the Supreme Court

42.10.—(1) An application to the Court of Appeal for permission to appeal to the Supreme Court under Part 2 of the Proceeds of Crime Act 2002 must be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the Supreme Court; or
- (b) in the form set out in the Practice Direction, in accordance with article 12 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and served on the Registrar.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the Registrar.

(3) Rule 36.6(5) (Hearings) applies in relation to a single judge exercising any of the powers referred to in article 15 of the 2003 Order, as it applies in relation to a single judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(4) Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies where a single judge has refused an application by a party to exercise in that party's favour any of the powers listed in article 15 of the 2003 Order as they apply where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 36.5(2) requires an application to be made may be modified as necessary.

CONFISCATION: APPEAL BY PROSECUTOR OR BY PERSON WITH INTEREST IN PROPERTY

Notice of appeal

42.11.—(1) Where an appellant wishes to apply to the Court of Appeal for permission to appeal under section 31 of the Proceeds of Crime Act 2002^(b), the appellant must serve a notice of appeal in the form set out in the Practice Direction on—

- (a) the Crown Court officer; and
- (b) the defendant.

(2) When the notice of a prosecutor's appeal about a confiscation order is served on the defendant, it must be accompanied by a respondent's notice in the form set out in the Practice Direction for the defendant to complete and a notice which—

(a) 2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(b) 2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 3 of the Serious Crime Act 2015 (c. 9).

- (a) informs the defendant that the result of an appeal could be that the Court of Appeal would increase a confiscation order already imposed, make a confiscation order itself or direct the Crown Court to hold another confiscation hearing;
- (b) informs the defendant of any right under article 6 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(a) to be present at the hearing of the appeal, although in custody;
- (c) invites the defendant to serve any notice on the Registrar—
 - (i) to apply to the Court of Appeal for permission to be present at proceedings for which such permission is required under article 6 of the 2003 Order, or
 - (ii) to present any argument to the Court of Appeal on the hearing of the application or, if permission is given, the appeal, and whether the defendant wishes to present it in person or by means of a legal representative;
- (d) draws to the defendant's attention the effect of rule 42.4 (Supply of documentary and other exhibits); and
- (e) advises the defendant to consult a solicitor as soon as possible.

(3) The appellant must provide the Crown Court officer with a certificate of service stating that the appellant has served the notice of appeal on the defendant in accordance with paragraph (1) or explaining why it has not been possible to do so.

Respondent's notice

42.12.—(1) This rule applies where a defendant is served with a notice of appeal under rule 42.11.

(2) If the defendant wishes to oppose the application for permission to appeal, the defendant must, not more than 14 days after service of the notice of appeal, serve on the Registrar and on the appellant a notice in the form set out in the Practice Direction—

- (a) stating the date on which the notice of appeal was served;
- (b) summarising the defendant's response to the arguments of the appellant; and
- (c) specifying the authorities which the defendant intends to cite.

(3) The time for giving notice under this rule may be extended by the Registrar, a single judge or by the Court of Appeal.

(4) Where the Registrar refuses an application under paragraph (3) for the extension of time, the defendant is entitled to have the application determined by a single judge.

(5) Where a single judge refuses an application under paragraph (3) or (4) for the extension of time, the defendant is entitled to have the application determined by the Court of Appeal.

Amendment and abandonment of appeal

42.13.—(1) The appellant may amend a notice of appeal served under rule 42.11 or abandon an appeal under section 31 of the Proceeds of Crime Act 2002—

- (a) without the permission of the court at any time before the Court of Appeal has begun hearing the appeal; and
- (b) with the permission of the court after the Court of Appeal has begun hearing the appeal, by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice abandoning an appeal under paragraph (1), the appellant must send a copy of it to—

- (a) the defendant;
- (b) a court officer of the court of trial; and

(a) S.I. 2003/ 82.

- (c) the magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

(3) Where the appellant serves a notice amending a notice of appeal under paragraph (1), the appellant must send a copy of it to the defendant.

(4) Where an appeal is abandoned under paragraph (1), the application for permission to appeal or appeal must be treated, for the purposes of section 85 of the 2002 Act (Conclusion of proceedings), as having been refused or dismissed by the Court of Appeal.

APPEAL ABOUT COMPLIANCE, RESTRAINT OR RECEIVERSHIP ORDER

Permission to appeal

42.14.—(1) Permission to appeal to the Court of Appeal under section 13B, section 43 or section 65 of the Proceeds of Crime Act 2002(a) may only be given where—

- (a) the Court of Appeal considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(2) An order giving permission to appeal may limit the issues to be heard and be made subject to conditions.

Notice of appeal

42.15.—(1) Where an appellant wishes to apply to the Court of Appeal for permission to appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002 Act, the appellant must serve a notice of appeal in the form set out in the Practice Direction on the Crown Court officer.

(2) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the appellant must serve the notice of appeal, accompanied by a respondent's notice in the form set out in the Practice Direction for the respondent to complete, on—

- (a) each respondent;
- (b) any person who holds realisable property to which the appeal relates; and
- (c) any other person affected by the appeal,

as soon as practicable and in any event not later than 5 business days after the notice of appeal is served on the Crown Court officer.

(3) The appellant must serve the following documents with the notice of appeal—

- (a) four additional copies of the notice of appeal for the Court of Appeal;
- (b) four copies of any skeleton argument;
- (c) one sealed copy and four unsealed copies of any order being appealed;
- (d) four copies of any witness statement or affidavit in support of the application for permission to appeal;
- (e) four copies of a suitable record of the reasons for judgment of the Crown Court; and
- (f) four copies of the bundle of documents used in the Crown Court proceedings from which the appeal lies.

(4) Where it is not possible to serve all of the documents referred to in paragraph (3), the appellant must indicate which documents have not yet been served and the reasons why they are not currently available.

(5) The appellant must provide the Crown Court officer with a certificate of service stating that the notice of appeal has been served on each respondent in accordance with paragraph (2) and

(a) 2002 c. 29; section 65 was amended by section 74 of, and paragraphs 1 and 32 of Schedule 8 to, the Serious Crime Act 2007 (c. 27). Section 13B was inserted by section 7 of the Serious Crime Act 2015 (c. 9).

including full details of each respondent or explaining why it has not been possible to effect service.

Respondent's notice

42.16.—(1) This rule applies to an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002.

(2) A respondent may serve a respondent's notice on the Registrar.

(3) A respondent who—

- (a) is seeking permission to appeal from the Court of Appeal; or
- (b) wishes to ask the Court of Appeal to uphold the decision of the Crown Court for reasons different from or additional to those given by the Crown Court,

must serve a respondent's notice on the Registrar.

(4) A respondent's notice must be in the form set out in the Practice Direction and where the respondent seeks permission to appeal to the Court of Appeal it must be requested in the respondent's notice.

(5) A respondent's notice must be served on the Registrar not later than 14 days after—

- (a) the date the respondent is served with notification that the Court of Appeal has given the appellant permission to appeal; or
- (b) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

(6) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the respondent serving a respondent's notice must serve the notice on the appellant and any other respondent—

- (a) as soon as practicable; and
- (b) in any event not later than 5 business days,

after it is served on the Registrar.

Amendment and abandonment of appeal

42.17.—(1) The appellant may amend a notice of appeal served under rule 42.15 or abandon an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002—

- (a) without the permission of the court at any time before the Court of Appeal has begun hearing the appeal; and
- (b) with the permission of the court after the Court of Appeal has begun hearing the appeal,

by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice under paragraph (1), the appellant must send a copy of it to each respondent.

Stay

42.18. Unless the Court of Appeal or the Crown Court orders otherwise, an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002 does not operate as a stay of any order or decision of the Crown Court.

Striking out appeal notices and setting aside or imposing conditions on permission to appeal

42.19.—(1) The Court of Appeal may—

- (a) strike out the whole or part of a notice of appeal served under rule 42.15; or
- (b) impose or vary conditions upon which an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002 may be brought.

(2) The Court of Appeal may only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party is present at the hearing at which permission to appeal was given, that party may not subsequently apply for an order that the Court of Appeal exercise its powers under paragraph (1)(b).

Hearing of appeals

42.20.—(1) This rule applies to appeals under section 13B, 43 or 65 of the Proceeds of Crime Act 2002.

(2) Every appeal must be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(3) The Court of Appeal may allow an appeal where the decision of the Crown Court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

(4) The Court of Appeal may draw any inference of fact which it considers justified on the evidence.

(5) At the hearing of the appeal a party may not rely on a matter not contained in that party's notice of appeal unless the Court of Appeal gives permission.