

PART 43

APPEAL OR REFERENCE TO THE SUPREME COURT

Contents of this Part

When this Part applies	rule 43.1
Application for permission or reference	rule 43.2
Determination of detention pending appeal, etc.	rule 43.3
Bail pending appeal	rule 43.4

When this Part applies

43.1.—(1) This Part applies where—

- (a) a party wants to appeal to the Supreme Court after—
 - (i) an application to the Court of Appeal to which Part 27 applies (Retrial following acquittal), or
 - (ii) an appeal to the Court of Appeal to which applies Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution), or Part 39 (Appeal to the Court of Appeal about conviction or sentence); or
- (b) a party wants to refer a case to the Supreme Court after a reference to the Court of Appeal to which Part 41 applies (Reference to the Court of Appeal of point of law or unduly lenient sentencing).

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

[Note. Under section 33 of the Criminal Appeal Act 1968(a), a party may appeal to the Supreme Court from a decision of the Court of Appeal on—

- (a) *an application to the court under section 76 of the Criminal Justice Act 2003(b) (prosecutor’s application for retrial after acquittal for serious offence). See also Part 27.*
- (b) *an appeal to the court under—*
 - (i) *section 9 of the Criminal Justice Act 1987(c) or section 35 of the Criminal Procedure and Investigations Act 1996(d) (appeal against order at preparatory hearing). See also Part 37.*
 - (ii) *section 47 of the Criminal Justice Act 2003(a) (appeal against order for non-jury trial after jury tampering.) See also Part 37.*

(a) 1968 c. 19; section 33 was amended by section 152 of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54), section 15 of, and paragraph 3 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 36(1)(a) of the Criminal Procedure and Investigations Act 1996 (c. 25), section 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29), sections 47, 68 and 81 of the Criminal Justice Act 2003 (c. 44), by section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and sections 74 and 92 of, and paragraph 144 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

(b) 2003 c. 44.

(c) 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.

(d) 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).

- (iii) *Part 9 of the Criminal Justice Act 2003(b) (prosecutor’s appeal against adverse ruling). See also Part 38.*
- (iv) *Part 1 of the Criminal Appeal Act 1968(c) (defendant’s appeal against conviction, sentence, etc.). See also Part 39.*

Under section 13 of the Administration of Justice Act 1960(d), a person found to be in contempt of court may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under that section. See also Part 39.

Under article 12 of the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005(e), a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(f) (appeal against minimum term review decision). See also Part 39.

Under article 15 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(g), a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under section 74 of the Serious Organised Crime and Police Act 2005(h) (appeal against sentence review decision). See also Part 39.

Under section 24 of the Serious Crime Act 2007(i), a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to that court under that section (appeal about a serious crime prevention order). See also Part 39.

Under section 36(3) of the Criminal Justice Act 1972(j), the Court of Appeal may refer to the Supreme Court a point of law referred by the Attorney General to the court. See also Part 41.

Under section 36(5) of the Criminal Justice Act 1988(k), a party may refer to the Supreme Court a sentencing decision referred by the Attorney General to the court. See also Part 41.

Under section 33(3) of the Criminal Appeal Act 1968, there is no appeal to the Supreme Court—

- (a) *from a decision of the Court of Appeal on an appeal under section 14A(5A) of the Football Spectators Act 1989(l) (prosecutor’s appeal against failure to make football banning order). See Part 39.*
- (b) *from a decision of the Court of Appeal on an appeal under section 159(1) of the Criminal Justice Act 1988(m) (appeal about reporting or public access restriction). See Part 40.*

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

-
- (a) 2003 c. 44; section 47 was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
 - (b) 2003 c. 44.
 - (c) 1968 c. 19.
 - (d) 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 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).
 - (e) S.I. 2005/2798.
 - (f) 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).
 - (g) S.I. 2006/2135.
 - (h) 2005 c. 15.
 - (i) 2007 c. 27.
 - (j) 1972 c. 71; section 36(3) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
 - (k) 1988 c. 33; section 36(5) was amended by section 40(4) of, and paragraph 48(1) and (2) of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
 - (l) 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).
 - (m) 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

Application for permission or reference

43.2.—(1) An appellant must—

- (a) apply orally to the Court of Appeal—
 - (i) for permission to appeal or to refer a sentencing case, or
 - (ii) to refer a point of law
 immediately after the court gives the reasons for its decision; or
- (b) apply in writing and serve the application on the Registrar and every other party not more than—
 - (i) 14 days after the court gives the reasons for its decision if that decision was on a sentencing reference to which Part 41 applies (Attorney General’s reference of sentencing case), or
 - (ii) 28 days after the court gives those reasons in any other case.

(2) An application for permission to appeal or to refer a sentencing case must—

- (a) identify the point of law of general public importance that the appellant wants the court to certify is involved in the decision; and
- (b) give reasons why—
 - (i) that point of law ought to be considered by the Supreme Court, and
 - (ii) the court ought to give permission to appeal.

(3) An application to refer a point of law must give reasons why that point ought to be considered by the Supreme Court.

(4) An application must include or attach any application for the following, with reasons—

- (a) an extension of time within which to make the application for permission or for a reference;
- (b) bail pending appeal;
- (c) permission to attend any hearing in the Supreme Court, if the appellant is in custody.

(5) A written application must be in the form set out in the Practice Direction.

[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as ‘leave to appeal’.

Under the provisions listed in the note to rule 43.1, except section 36(3) of the Criminal Justice Act 1972 (Attorney General’s reference of point of law), an appellant needs permission to appeal or to refer a sentencing case. Under those provisions, the Court of Appeal must not give permission unless it first certifies that—

- (a) a point of law of general public importance is involved in the decision, and*
- (b) it appears to the court that the point is one which the Supreme Court ought to consider.*

If the Court of Appeal gives such a certificate but refuses permission, an appellant may apply for such permission to the Supreme Court.

Under section 36(3) of the Criminal Justice Act 1972 an appellant needs no such permission. The Court of Appeal may refer the point of law to the Supreme Court, or may refuse to do so.

For the power of the court or the Registrar to shorten or extend a time limit, see rule 36.3. The time limit in this rule—

- (a) for applying for permission to appeal under section 33 of the Criminal Appeal Act 1968 (28 days) is prescribed by section 34 of that Act(a). That time limit may be extended but*

(a) 1968 c. 19; section 34 was amended by section 88 of the Courts Act 2003 (c. 39), section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

not shortened by the court. But it may be extended on an application by a prosecutor only after an application to which Part 27 applies (Retrial after acquittal).

- (b) *for applying for permission to refer a case under section 36(5) of the Criminal Justice Act 1988 (Attorney General’s reference of sentencing decision: 14 days) is prescribed by paragraph 4 of Schedule 3 to that Act. That time limit may be neither extended nor shortened.*
- (c) *for applying for permission to appeal under article 12 of the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005 (28 days) is prescribed by article 13 of that Order. That time limit may be extended but not shortened.*
- (d) *for applying for permission to appeal under article 15 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (28 days) is prescribed by article 16 of that Order. That time limit may be extended but not shortened.*

For the power of the Court of Appeal to grant bail pending appeal to the Supreme Court, see—

- (a) *section 36 of the Criminal Appeal Act 1968(a);*
- (b) *article 18 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(b).*

For the right of an appellant in custody to attend a hearing in the Supreme Court, see—

- (a) *section 38 of the Criminal Appeal Act 1968(c);*
- (b) *paragraph 9 of Schedule 3 to the Criminal Justice Act 1988(d);*
- (c) *article 15 of the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(e);*
- (d) *article 20 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(f).]*

Determination of detention pending appeal, etc.

43.3. *On an application for permission to appeal, the Court of Appeal must—*

- (a) *decide whether to order the detention of a defendant who would have been liable to be detained but for the decision of the court; and*
- (b) *determine any application for—*
 - (i) *bail pending appeal,*
 - (ii) *permission to attend any hearing in the Supreme Court, or*
 - (iii) *a representation order.*

[Note. For the liability of a defendant to be detained pending a prosecutor’s appeal to the Supreme Court and afterwards, see—

- (a) *section 37 of the Criminal Appeal Act 1968(g);*

(a) 1968 c. 19; section 36 was amended by section 12 of, and paragraph 43 of Schedule 2 to, the Bail Act 1976 (c. 63), section 15 of, and paragraph 4 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 23 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 36 of the Criminal Procedure and Investigations Act 1996 (c. 25), sections 47 and 68 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(b) S.I. 2006/2135.

(c) 1968 c. 19; section 38 was amended by section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(d) 1988 c. 33; paragraph 9 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(e) S.I. 2005/2798.

(f) S.I. 2006/2135.

(g) 1968 c. 19; section 37 was amended by section 65(1) of, and paragraph 39 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 58(1) of, and paragraph 5 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section

(b) article 19 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(a).

For the grant of legal aid for proceedings in the Supreme Court, see sections 14, 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b).]

Bail pending appeal

43.4. Rules 39.8 (Application for bail pending appeal or retrial), 39.9 (Conditions of bail pending appeal or re-trial) and 39.10 (Forfeiture of a recognizance given as a condition of bail) apply.

40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 47 of, and paragraphs 1 and 13 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).
(a) S.I. 2006/2135.
(b) 2012 c. 10.