STATUTORY RULES OF NORTHERN IRELAND

2011 No. 419

COURT OF JUDICATURE, NORTHERN IRELAND

The Criminal Appeal (Prosecution Appeals) (Banning Orders) Rules (Northern Ireland) 2011

Made - - - -	*9th December 2011*
Coming into operation	*1st January 2012*

The Northern Ireland Court of Judicature Rules Committee(**1**) makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978(**2**).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Appeal (Prosecution Appeals) (Banning Orders) Rules (Northern Ireland) 2011 and shall come into operation on 1st January 2012.

(2) In these Rules—

"the Court" means the Court of Appeal in Northern Ireland;

"the 2011 Act" means the Justice Act (Northern Ireland) 2011;

"appeal" means an appeal against a ruling under section 43 of the 2011 Act and "application for leave to appeal" shall be construed accordingly;

"banning order" means an order under section 41 of the 2011 Act;

"chief clerk" means the chief clerk at the place where the Crown Court made the decision which is the subject of the appeal;

"defendant" means a party in whose favour the ruling which is the subject of the appeal was made;

"judge of the Crown Court" means the judge of the Crown Court with conduct of the proceedings; and

"the proper officer" means the Master (Queen's Bench and Appeals) and includes any other officer of the Supreme Court directed by the Lord Chief Justice to exercise the powers and duties of the Master (Queen's Bench and Appeals).

(**1**) The Northern Ireland Supreme Court Rules Committee was renamed the Northern Ireland Court of Judicature Rules Committee in accordance with section 59(3) of the Constitutional Reform Act 2005 (c.4)

(**2**) 1978 c.23; to which the most recent relevant amendments were made by paragraph 6 of Schedule 17, and paragraphs 15 and 26 of Schedule 18, to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No. 976)

Forms

2. Any reference to a form in these Rules means a reference to a form set out in the Schedule or a form to the same effect.

Notice of appeal or application for leave to appeal

3.—(1) A notice of appeal (where the judge of the Crown Court has granted leave) or of application for leave to appeal to the Court shall be given by completing Form 1 and serving it on—

(a) the proper officer;

(b) the chief clerk; and

(c) the defendant

not more than 28 days after the failure of the Crown Court to make a banning order.

(2) The Court may, on application by the prosecution, extend the time within which notice of appeal or of an application for leave to appeal shall be given either before or after that period expires.

(3) The notice of appeal or application for leave to appeal shall be accompanied by any documents necessary for the proper determination of the appeal or application for leave to appeal including—

(a) a transcript of the ruling which is the subject of the appeal; and

(b) any skeleton arguments provided to the judge of the Crown Court by the parties in respect of the issue of a banning order.

(4) The notice of appeal or application for leave to appeal served on the defendant shall be accompanied by Form 2 for the defendant to complete if he wishes to oppose the appeal or application for leave to appeal.

Response of the defendant

4.—(1) A defendant may oppose the appeal or application for leave to appeal by serving a response in Form 2 on —

(a) the proper officer;

(b) the chief clerk; and

(c) the prosecution.

(2) Subject to paragraph (3), the defendant shall serve the response within 7 business days of the date on which the notice of appeal or application for leave to appeal was served on him.

(3) The Court may, on application by the defendant, extend the time within which the response shall be served either before or after that period expires.

Defendants in custody

5.—(1) A defendant in custody is not entitled to be present at the hearing of an appeal or application for leave to appeal, unless the Court so directs.

(2) In directing whether a defendant in custody shall be present in person under paragraph (1) the Court shall take into account—

(a) any representations made to it by the prosecution and the defendant; and

(b) any practical difficulties with the physical attendance of the defendant.

Supply of documentary and other exhibits

6.—(1) The proper officer shall, on request, supply to the prosecution and the defendant, copies of documents or other exhibits required for the appeal or application for leave to appeal.

(2) The proper officer shall, on request, make arrangements for the prosecution or the defendant to inspect any document or other exhibit required for the appeal.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part thereof.

Abandonment of proceedings

7. An appeal or an application for leave to appeal (including an application for leave to appeal to the Supreme Court) may be abandoned before the hearing of the appeal or application by serving on the proper officer notice thereof in Form 3.

Applications which may be heard by the proper officer

8.—(1) The following applications may be heard by the proper officer, namely —

(a) an application to extend time for service of the notice of appeal or of an application for leave to appeal under rule 3(3); and

(b) an application to extend the time for service of the response of the defendant under rule 4(3).

(2) As soon as practicable after the proper officer determines an application set out in paragraph (1), he shall serve notice of his decision in Form 4 on —

(a) the prosecution;

(b) the defendant; and

(c) the chief clerk.

(3) Where the proper officer has refused an application referred to in paragraph (1), the party making the application may have the application determined by a single judge of the Court by serving notice of renewal in Form 4 on the proper officer within 7 business days, or such longer period as the single judge of the Court may fix, from the date on which notice of the refusal was served on him.

Notice of hearing and determination of the Court

9.—(1) The proper officer shall, as far in advance as reasonably practicable, give notice of the date fixed for the hearing by the Court of an appeal or application to —

(a) the prosecution;

(b) the defendant; and

(c) the chief clerk.

(2) As soon as reasonably practicable after the determination of an appeal or application for leave to appeal, the proper officer shall serve notice of the decision of the Court on those parties listed in paragraph (1).

(3) Where the defendant is in custody, notice shall instead be given to the person having custody of him.

Assistance from the Crown Court

10. The proper officer may require the chief clerk to furnish the Court with any assistance or information which it may require for the purposes of exercising its jurisdiction under section 43 of the 2011 Act.

Service

11.—(1) For the purposes of these Rules, service of a document on the proper officer may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected—

(a) in the case of a defendant who is in custody, by delivering it to the person having custody of him;

(b) by delivering it personally to the proper officer; or

(c) by addressing it to the proper officer and leaving it at, or sending it by recorded delivery or by fax to, his office in the Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

(2) For the purposes of these Rules, service of a document on the chief clerk may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected—

(a) in the case of a defendant who is in custody, by delivering it to the person having custody of him;

(b) by delivering it personally to the chief clerk; or

(c) by addressing it to the chief clerk and leaving it at, or sending it by recorded delivery or by fax to, the Crown Court at which the ruling appealed against was made.

(3) A person having custody of a defendant to whom a document is sent in pursuance of paragraph (1)(a) or (2)(a), shall endorse on it the date of delivery and send it forthwith to the proper officer or, as the case may be, the chief clerk.

(4) For the purpose of these Rules —

(a) service of a document on the prosecution may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected—

(i) by sending it by recorded delivery to the prosecution; or

(ii) by sending it by fax to the prosecution at a specified fax number where it has indicated in writing that it is willing to accept service by fax.

(5) For the purposes of these Rules —

(a) service of a notice of appeal on the defendant may, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected by delivering it personally to him; and

(b) service of any other document on the defendant, unless otherwise directed by the proper officer, a single judge of the Court or the Court, be effected —

(i) by delivering the document personally to him or his solicitor;

(ii) by leaving it for him with some person apparently over the age of sixteen at his last known or usual place of abode or at his place of business;

(iii) by sending it by recorded delivery to that person's last known or usual place of abode or his solicitor's business address; or

(iv) where he is represented by a solicitor, by sending it to that solicitor at a specified fax number where he has indicated in writing that he is willing to accept service by fax.

(6) A document sent by recorded delivery shall be deemed to be served at the time when it is delivered.

(7) Where a document is sent by fax before 5.00 p.m. it shall, unless the contrary is shown, be deemed to have been served on that day, and, in any other case, on the business day next following.

Declan Morgan
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John Gillen
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Dated 9th December 2011

In exercise of the powers conferred by section 55A (3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.
Sealed with the Official Seal of the Department of Justice on 9th December 2011

L.S.

David Ford
Minister of Justice