STATUTORY RULES OF NORTHERN IRELAND

2005 No. 159

SUPREME COURT, NORTHERN IRELAND

The Criminal Appeal (Prosecution Appeals) Rules (Northern Ireland) 2005

Made - - - -	*21st March 2005*
To be laid before Parliament	
Coming into operation	*18th April 2005*

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(**1**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby with the concurrence of the Lord Chancellor, exercise those powers, the powers under Article 32 of the Criminal Justice (Northern Ireland) Order 2004(**2**), and all other powers enabling us in that behalf as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Appeal (Prosecution Appeals) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules –

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

"the 2004 Order" means the Criminal Justice (Northern Ireland) Order 2004;

"appeal" means an appeal against a ruling under Article 17 of the 2004 Order and "application for leave to appeal" shall be construed accordingly;

"business day" means any day other than –

(a) a Saturday, Sunday, Christmas Day or Good Friday; or

(b) a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(**3**);

"chief clerk" means the chief clerk of the Crown Court before which the defendant is being tried;

(**1**) 1978 c. 23
(**2**) S.I.2004/1500 (N.I. 9)
(**3**) 1971 c. 80

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

"interested party" means a person other than the defendant who –

(i) is a party to the proceedings in the Crown Court;

(ii) may be affected by the decision of the judge of the Crown Court under Article 18(1) of the 2004 Order as to whether or not the appeal should be expedited; and

(iii) is permitted by the judge of the Crown Court or the Court of Appeal to make representations on that issue;

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

"public interest ruling" means a ruling under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(**4**) that it is not in the public interest to disclose material in the possession of the prosecution;

"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).

Forms

2. Any reference in these Rules to a Form 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) Subject to rule 7, 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;

(c) the defendant; and

(d) any interested party.

(2) The notice of appeal or application for leave to appeal shall be served –

(a) where the judge of the Crown Court has decided that the appeal should be expedited under Article 18(1) of the 2004 Order and that decision has not been subsequently reversed, before 5.00 p.m. on the day on which the prosecution informs the judge of the Crown Court that it intends to appeal or, if the prosecution demonstrates to that judge that it is not practical to do so, before 5.00 p.m. on the next business day; or

(b) in any other case, within 7 business days of the date on which the prosecution informs the judge of the Crown Court that it intends to appeal.

(3) 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.

(4) 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;

(**4**) 1996 c. 25; section 7A was inserted into the Criminal Procedure and Investigations Act 1996 by section 37 of the Criminal Justice Act 2003 (c. 44).

(b) any skeleton arguments provided to the judge of the Crown Court by the parties in respect of the issue which gave rise to the ruling; and

(c) if the appeal is to be expedited, a copy of the reasons provided by the judge of the Crown Court.

(5) Subject to rule 7, 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;

(c) the prosecution; and

(d) any interested party.

(2) Subject to paragraph (3), the defendant shall serve the response –

(a) on the next business day after the date on which the notice of appeal or application for leave to appeal was served on him, where the judge of the Crown Court has decided that the appeal should be expedited under Article 18(1) of the 2004 Order and that decision has not been subsequently reversed under Article 18(4) of that Order; or

(b) in any other case, 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.

Application to reverse decision that appeal be expedited

5.—(1) At any time after notice of appeal or application for leave to appeal has been served on the proper officer under rule 3(1), the prosecution or defendant may apply to the Court to reverse the decision of a judge of the Crown Court that the appeal should be expedited.

(2) An application under paragraph (1) shall be in writing and shall be served on –

(a) the proper officer;

(b) the chief clerk;

(c) the prosecution or, as the case may be, the defendant; and

(d) any interested party.

Defendants in custody

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

(2) Subject to rule 7(6), a defendant in custody will be entitled to participate in such a hearing, without a direction of the Court, by live television link.

(3) 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;

(b) the availability and reliability of live television link facilities;

(c) any practical difficulties with the physical attendance of the defendant; and

(d) whether or not the appeal is expedited under Article 18 of the 2004 Order.

(4) In this rule, "live television link" means an arrangement whereby the defendant, while absent from the courtroom, is able to see and hear the Court and to be seen and heard by it.

Public interest rulings

7.—(1) This rule applies where a public interest ruling is the subject of an appeal or application for leave to appeal.

(2) In any appeal or application for leave to appeal against a public interest ruling, the prosecution need not describe the material that is the subject of the ruling in the notice of appeal or application for leave to appeal under rule 3.

(3) Where the prosecution has reason to believe that to reveal to the defendant or any interested party the category of material that is the subject of the public interest ruling would have the effect of disclosing that which the prosecution considers should not be disclosed, the prosecution need not describe the category of the material in the notice of appeal or application for leave to appeal under rule 3.

(4) Where the prosecution has reason to believe that to reveal to the defendant or to any interested party the fact that a public interest ruling has been made would have the effect of disclosing that which the prosecution considers should not be disclosed, the prosecution need not serve notice of appeal or application for leave to appeal on the defendant or any interested party as required under rule 3, unless the Court otherwise directs.

(5) Where the prosecution has taken the measures set out in paragraph (2), (3) or (4), the notice of appeal or application for leave to appeal served on the proper officer under rule 3(1)(a) shall be accompanied by a confidential annexe indicating that the measures have been taken and giving the prosecution's reasons for taking them.

(6) Where the prosecution has taken the measures set out in paragraph (4), the defendant shall not be entitled to be present in person at the hearing of the appeal or application for leave to appeal, or to appear by way of live television link, unless the Court otherwise directs.

Supply of documentary and other exhibits

8.—(1) The proper officer shall, on request, supply to the prosecution, the defendant or any interested party, copies of documents or other exhibits required for the appeal or application for leave to appeal and in such case may make charges in accordance with scales and charges fixed for the time being by the Treasury.

(2) The proper officer shall, on request, make arrangements for the prosecution, the defendant or any interested party 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.

(4) This rule shall not require the proper officer to supply to the defendant or any interested party, or allow the defendant or any interested party to inspect –

(a) material that is the subject of a public interest ruling;

(b) a notice of appeal or application for leave to appeal served by the prosecution on the proper officer in accordance with rule 7(4); or

(c) a confidential annexe served by the prosecution on the proper officer in accordance with rule 7(5),

unless the Court otherwise directs.

Abandonment of proceedings

9. An appeal or an application for leave to appeal (including an application for leave to appeal to the House of Lords) 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

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

(a) an application to extend the 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;

(c) any interested party; and

(d) 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

11.—(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;

(c) any interested party; and

(d) 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 a party to whom notice is required to be given under this rule is in custody, notice shall instead be given to the person having custody of him.

Assistance from the Crown Court

12. 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 Part IV of the 2004 Order or these Rules.

Appeal to the House of Lords

13.—(1) An application to the Court for leave to appeal to the House of Lords under Part IV of the 2004 Order shall be made either –