



HM Courts &
Tribunals Service

Guide to commencing proceedings in the Court of Appeal Criminal Division

August 2018

**GUIDE TO COMMENCING PROCEEDINGS
IN THE COURT OF APPEAL CRIMINAL DIVISION**

[August 2018]

Contents

A. Applications for Leave to Appeal Conviction, Sentence and Confiscation orders.....	1
A1. Advice and Assistance	1
A2. Lodging Form NG and grounds of appeal.....	1
A3. Form NG and grounds of appeal.....	2
A4. Applications by fresh legal representatives.....	4
A5. Specific grounds of appeal.....	5
A6. Time Limits	6
A7. Transcripts and notes of evidence	6
A8. Perfection of grounds of appeal.....	7
A9. Respondent's Notice	7
A10. Referral by the Registrar.....	9
A11. Oral applications for leave to appeal.....	9
A12. Powers of the single Judge	10
A13. Bail pending appeal (CrimPR 39.8).....	10
A14. Funding for grant of leave or reference to full Court	10
A15. Refusal by the single Judge.....	11
A16. Directions for loss of time.....	11
A17. Abandonment.....	12
A18. Case Management duties.....	13
B. Interlocutory Appeals against rulings in Preparatory Hearings.....	14
C. Appeals by a Prosecutor against a “terminating” ruling.....	15
D. Other Appeals	17
D1. Prosecution appeal against the making of a confiscation order or where the Court declines to make one (save on reconsideration of benefit)	17
D2. Prosecution and third party appeal against a determination, under s.10A Proceeds of Crime Act 2002, of the extent of the defendant's interest in property.....	17
D3. Appeal in relation to a restraint order	18
D4. Appeal in relation to a receivership order	18
D5. Appeal against an order of the Crown Court in the exercise of its jurisdiction to punish for contempt – usually a finding of contempt or sentence for contempt	19
D6. Appeal against a minimum term set or reviewed by a High Court Judge.....	20
D7. Attorney General's reference of an unduly lenient sentence.....	20
D8. Attorney General's reference of a point of law on an acquittal.....	21
D9. Appeal against a finding of unfitness to plead or a finding that the accused did the act or made the omission charged	21
D10. Appeal against a verdict of not guilty by reason of insanity	22
D11. Appeal against the order following a verdict of not guilty by reason of insanity or a finding of unfitness to plead	22
D12. Appeal against review of sentence	23
D13. Appeal against an order for trial by jury of sample counts.....	24
D14. Appeal against an order relating to a trial to be conducted without a jury where there is a <i>danger</i> of jury tampering	24
D15. Appeal against an order that a trial should continue without a jury or a new trial take place without a jury <i>after</i> jury tampering.....	25
D16. Appeal against orders restricting or preventing reports or restricting public access.....	25
D17. Appeal against a wasted costs order.....	26
D18. Appeal relating to Serious Crime Prevention Orders	26
D19. Appeal against the non-making of a football banning order	27
E. Application for a Retrial for a Serious Offence	28
E1. Application by a prosecutor to quash an acquittal and seek a retrial of a qualifying offence.....	28
E2. Application by a prosecutor for a determination whether a foreign acquittal is a bar to a trial and if so,	

an order that it not be a bar	29
E3. Application for restrictions on publication relating to an application under s.76	29
E4. Representation orders.....	29

A. Applications for Leave to Appeal Conviction, Sentence and Confiscation orders

A1. Advice and Assistance

A1-1. Provision for advice and assistance on appeal is included in the trial representation order issued by the Crown Court. Solicitors should not wait to be asked for advice by the defendant. Immediately following the conclusion of the case, the legal representatives should see the defendant and advocates should express orally a view as to the prospects of a successful appeal (whether against conviction or sentence or both). If there are reasonable grounds, grounds of appeal should be drafted, signed and sent to instructing solicitors as soon as possible, bearing in mind the time limits that apply to lodging an appeal (*see section A6. Time Limits*). Solicitors should immediately send a copy of the documents received from the advocate to the defendant.

A1-2. Prior to the lodging of the notice and grounds of appeal by service of Form NG, the Registrar has no power to grant a representation order. The Crown Court can only amend a representation order in favour of fresh legal representatives if advice on appeal has not been given by trial representatives and it is necessary and reasonable for another legal representative to be instructed. Where advice on appeal has been given by trial legal representatives, application for funding prior to the lodging of the notice and grounds of appeal may only be made to the Legal Aid Authority (LAA).

A1-3. Once the Form NG has been lodged, the Registrar is the relevant authority for decisions about whether an individual qualifies for representation for the purposes of criminal proceedings before the Court of Appeal Criminal Division (ss.16(1) & 19(1) Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Reg.8 Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013).

A1-4. Where, in order to settle grounds of appeal, work of an exceptional nature is contemplated or where the expense will be great, legal representatives should not contact the LAA for funding but should submit a Form NG with provisional grounds of appeal and with a note to the Registrar requesting a representation order to cover the specific work considered necessary to enable final grounds of appeal to be settled. The Registrar will then consider whether it is appropriate to grant funding for this purpose.

A2. Lodging Form NG and grounds of appeal

A2-1. In respect of applications lodged **before 1 October 2018**, where the advocate has advised an appeal and the defendant's instructions have been obtained, the solicitor should lodge Form NG and signed grounds of appeal at the **Crown Court** where the defendant appeared accompanied by such other forms as may be appropriate.

A2-2. Following a change in procedure, which comes into force **on the 1 October 2018**, Form NG, signed grounds of appeal and any such accompanying forms must be **lodged directly on the Registrar of Criminal Appeals** (CrimPR 39.2). A separate Form NG should be completed for each substantive application which is being made. Each application (conviction, sentence and confiscation order) has its own Form NG and must be drafted and lodged as a stand-alone application (CPD IX Appeal 39C).

A2-3. Electronic service at criminalappealoffice.applications@hmcts.x.gsi.gov.uk is encouraged, with large attachments being sent in clearly marked separate emails. Service will be accepted by post at the Criminal Appeal Office, Royal Courts of Justice, Strand, London, WC2A 2LL. Representatives must not lodge Form NG and grounds of appeal on to the Digital Case System (DCS), as this will not alert the Criminal Appeal Office ("CAO") and service will not be effected. However, should the grounds of appeal rely upon trial documents that are already uploaded to the DCS, advocates are encouraged to identify the location of the document on the DCS in their grounds of appeal, which can then be obtained by the CAO. If Form NG and grounds of appeal are lodged with the Crown Court on or after the 1 October 2018, service will not be effected and the Crown Court will send the documents back to the representatives.

A2-4. Direct Lodgment on the Registrar of Criminal Appeals applies to all applications to appeal conviction, sentence and confiscation falling within Part 39 of the CrimPR (*see Section D. Other Appeals for specific information on where to lodge applications in relation to other types of appeal*).

A2.5. It should be noted that Form NG and grounds of appeal are required to be served within the relevant time limit in all cases whether or not leave to appeal is required (e.g. where a trial Judge's certificate has been granted). However, on a reference by the Criminal Cases Review Commission (CCRC), if no Form NG and grounds are served within the required period, then the reference shall be treated as the appeal notice (CrimPR 39.5 (2)).

A3. Form NG and grounds of appeal

A3-1. Grounds must be settled with sufficient particularity to enable the Registrar, and subsequently the Court, to identify clearly the matters relied upon. A mere formula such as "the conviction is unsafe" or "the sentence is in all the circumstances too severe" will be deemed ineffective.

A3-2. CrimPR 39.3 (1) sets out the information that must be contained in the appeal notice. The notice must:

(a) Specify:

- (i) the conviction, verdict or finding,
- (ii) the sentence, or
- (iii) the order, or the failure to make an order

about which the appellant wants to appeal;

- (b) identify each ground of appeal on which the appellant relies (and see paragraph (2));
- (c) identify the transcript that the appellant thinks the Court will need, if the appellant wants to appeal against a conviction (*see section A7. Transcripts and notes of evidence*);
- (d) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
- (e) include or attach any application for the following, with reasons-
 - (i) permission to appeal, if the appellant needs the court's permission,
 - (ii) an extension of time within which to serve the appeal notice,
 - (iii) bail pending appeal,
 - (iv) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
 - (v) the introduction of evidence, including hearsay evidence and evidence of bad character
 - (vi) an order requiring a witness to attend court,
 - (vii) a direction for special measures for a witness,
 - (viii) a direction for special measures for the giving of evidence by the appellant;
- (f) identify any other document or thing that the appellant thinks the Court will need to decide the appeal.

A3-3. The grounds of appeal should set out the relevant facts and nature of the proceedings concisely in one all-encompassing document, not separate grounds of appeal and advice (CPD IX Appeal 39C). Pursuant to CrimPR 39.3(2) the grounds must:

- (a) include in no more than the first two pages a summary of the grounds that makes what then follows easy to understand;
- (b) in each ground of appeal identify the event or decision to which that ground relates;
- (c) in each ground of appeal summarise the facts relevant to that ground, but only to the extent necessary to make clear what is in issue;
- (d) concisely outline each argument in relation to each ground;
- (e) number each ground consecutively if there is more than one;
- (f) identify any relevant authority and-
 - i) state the proposition of law that the authority demonstrates, and

- ii) identify the parts of the authority that support that proposition; and
- (g) where the Criminal Cases Review Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference.

A3-4. The intended readership of this document is the Court and not the lay or professional client. Its purpose is to enable the single Judge to grasp quickly the facts and issues in the case. In appropriate cases, draft grounds of appeal may be perfected before submission to the single Judge. A **separate** list of authorities must be provided which should contain the appellant's name and refer to the relevant paragraph numbers in each authority (CPD XII General Application D1) (see *section A8-5*).

A3-5. Failure to comply with the requirements in CrimPR 39 and the CPD referred to above, will result in a direction from the Registrar that the defects be remedied prior to the case being allocated to a single Judge. Failure to do so may be brought to the attention of the single Judge and/or full Court and legal representatives may be personally required to explain the reasons for non-compliance.

A3-6. Advocates should not settle or sign grounds unless they consider that they are properly arguable. An advocate should not settle grounds they cannot support because they are "instructed" to do so by a defendant.

A4. Applications by fresh legal representatives

A4-1. In all cases where fresh solicitors or fresh advocates are instructed, who did not act for the appellant at trial, it is necessary for the fresh solicitors or advocate to approach the solicitors and/or advocate who previously acted to ensure that the facts upon which the grounds of appeal are premised are correct, unless there are exceptional circumstances and good and compelling reasons not to do so. Such exceptional circumstances would likely be very rare (R v McCook [2014] EWCA Crim 734; [2016] 2 Cr App R 30). Where necessary, further steps should be taken to obtain objective and independent evidence to establish the factual basis for the appeal (R v Lee [2014] EWCA Crim 2928). The duty to make proper and diligent enquiries of previous representatives is not restricted to cases where criticism is being made of the trial representatives. It extends to all cases where there are fresh representatives acting (R v McGill & others [2017] EWCA Crim 1228).

A4-2. In cases where fresh representatives seek to adduce fresh evidence that was not adduced at trial, not only will the fresh representatives be required to comply with their duties pursuant to McCook; but the Registrar will usually also instigate the "waiver of privilege" procedure or require written reasons as to why the procedure should not be instigated (R v Singh [2017] EWCA Crim 466).

A4-3. Where a ground of appeal by fresh representatives criticises trial advocates and/or trial solicitors and in any other circumstance the Registrar considers necessary as set out above, the Registrar will instigate the waiver of privilege procedure. The appellant will be asked to waive privilege in respect of instructions to and advice at trial from legal representatives. If the appellant does waive privilege, the grounds of appeal are sent to the appropriate trial representative(s) and they are invited to respond. Any response will be sent to the appellant and his fresh legal representatives for comment. All of these

documents will be sent to the single Judge when considering the application for leave. If the criticism is implicit, the Registrar may still instigate the procedure or he will refer the decision whether to instigate the procedure to a single Judge (R v JH [2014] EWCA Crim 2618). The single Judge may draw inferences from any failure to participate in the process. Waiver of privilege is a procedure that should be instigated by the Registrar and not by fresh legal representatives. However, if it is clear that the procedure will need to be instigated, the fresh representatives should lodge a signed waiver of privilege with the grounds of appeal (and any fresh evidence) but go no further.

A5. Specific grounds of appeal

A5-1. Applications to call fresh evidence

A5-1.1 Where grounds of appeal rely upon fresh evidence that was not adduced at trial, an application pursuant to s. 23 Criminal Appeals Act 1968 must be made. If the fresh evidence is provided by a witness, representatives should obtain a statement from the witness in the form prescribed by s9 of the Criminal Justice Act 1967. If the fresh evidence is documentary or real evidence, the representatives should obtain statements from all those involved formally exhibiting the evidence. A Form W should be lodged in respect of each witness dealing with the fresh evidence. The Form W should indicate whether there is an application for a witness order. The Registrar or single Judge may direct the issue of a witness order but only the Court hearing the appeal may give leave for a witness to be called and then formally receive the evidence under s23 of the Criminal Appeal Act 1968.

A5-1.2 A supporting witness statement (in s9 form), or an affidavit from the appellant's solicitor must accompany the fresh evidence and Form W(s), setting out why the evidence was not available at trial and how it has come to light (Gogana The Times 12/07/1999). This will implicitly require fresh representatives to comply with McCook (see section A4. Applications by fresh legal representatives).

A5-2. Insufficient weight given to assistance to prosecution authorities

Where a ground of appeal against sentence is that the Judge has given insufficient weight to the assistance given to the prosecution authorities, the "text" which had been prepared for the sentencing Judge is obtained by the Registrar. Grounds of appeal should be drafted in an anodyne form with a note to the Registrar alerting him to the existence of a "text". The CAO will obtain the "text" and the single Judge will have seen it when considering leave as will the full Court before the appeal hearing and it need not be alluded to in open Court.

A5-3. Applications based on a change in law

A5-3.1 If an application to appeal which is based on a change in law is lodged within time, (see A6. Time Limits) the test to be applied by the Court of Appeal is whether the conviction is unsafe (R v Johnson & Ors [2016] EWCA Crim 1613).

A5-3.2 If an application which is based on a change in law is lodged outside the time limits, exceptional leave will be required. Exceptional leave will only be granted if the applicant would otherwise suffer "substantial injustice" due to the change in law. Grounds of appeal should therefore set out why the

substantial injustice test is met (R v Johnson & Ors [2016] EWCA Crim 1613). For examples of how the Court of Appeal has applied these principles see: R v Uthayakumar [2014] EWCA Crim 123 and R v Ordu [2017] EWCA Crim 4.

A6. Time Limits

A6-1. Notice and grounds should be lodged within 28 days from the date of conviction, sentence, verdict, finding or decision that is being appealed (s. 18 Criminal Appeal Act 1968 and CrimPR 39.2(1)). On a reference by the CCRC, Form NG and grounds should be served on the Registrar not more than 28 days after the Registrar has served notice that the CCRC has referred a conviction or sentence (CrimPR 39.2(2)).

A6-2. Where sentences were passed on different dates there may be two appeals against sentence. For example, there may be an appeal against a custodial term and an appeal against a confiscation order (R v Neal [1992] 2 Cr App R (S) 352).

A6-3. An application for an extension of the 28 day period in which to give notice of an application must always be supported by details of the delay and the reasons for it (R v Wilson [2016] EWCA Crim 65). Often a chronology will assist. It is not enough merely to tick the relevant box on the Form NG.

A6-4. For out of time applications based on a change in law see A5-3. above.

A6-5. Applications for an extension of time should be submitted when the application for leave to appeal against either conviction or sentence is made and not in advance. Notwithstanding the terms of s18 (3) Criminal Appeal Act 1968, it has long been the practice of the Registrar to require the extension of time application to be made at the time of service of the notice and grounds of appeal. This practice is now reflected in CrimPR 36.4 and 39.3(2)(h)(ii).

A7. Transcripts and notes of evidence

A7-1. In publicly funded conviction cases, transcripts of the summing up and proceedings up to and including verdict are obtained as a matter of course. There is an obligation under CrimPR 39.3(2)(c) for advocates to identify any further transcript which they consider the Court will need and to provide a note of dates and times to enable an order to be placed with the transcription company. This is particularly important where there have been early directions and/or a split summing-up. Whether or not any further transcript is required is a matter for the judgment of the Registrar or his staff. Transcripts of evidence are not usually ordered; it may be appropriate for the advocate to provide an agreed note of evidence.

A7-2. In sentence cases, transcripts of the prosecution opening of facts on a guilty plea and the Judge's observations on passing sentence are usually obtained. The Registrar will also obtain the relevant transcript in an application for leave to appeal against a confiscation order, an interlocutory appeal from a preparatory hearing or any other appeal providing the application has not been made by the prosecution.

A7-3. A transcript should only be requested if it is essential for the proper conduct of the appeal in light

of the grounds. If the Registrar and the advocate are unable to agree the extent of the transcript to be obtained, the Registrar may refer that matter to a Judge.

A7-4. In certain circumstances the costs of unnecessary transcripts may be ordered to be paid by the appellant. Where a transcript is obtained otherwise than through the Registrar, the cost may be disallowed on taxation of public funding.

A7-5. If an appellant is paying privately for his legal representation, an order for transcripts should be placed directly with the transcription company and a copy provided to the Registrar upon receipt. If the Registrar has already obtained transcripts in a private case, the appellant's legal representatives will be required to pay the cost of the transcripts before they are released to them.

A8. Perfection of grounds of appeal

A8-1. The purpose of perfection is (a) to save valuable judicial time by enabling the Court to identify at once the relevant parts of the transcript and (b) to give the advocate the opportunity to reconsider the original grounds in the light of the transcript. Perfected grounds should consist of a fresh document which supersedes the original grounds of appeal and contains *inter alia* references by page number and letter (or paragraph number) to all relevant passages in the transcript.

A8-2. In conviction or confiscation appeals, the Registrar will almost certainly invite the advocate to perfect grounds to assist the single Judge or full Court. As a general rule, the advocate will not be invited to perfect the grounds of appeal in a sentence case. Where an advocate indicates a wish to perfect grounds of appeal against sentence, the Registrar will consider the request and will only invite perfection where he considers it necessary for the assistance of the single Judge or full Court.

A8-3. If perfection is appropriate, the advocate will be sent a copy of the transcript and asked to perfect the grounds, usually within 14 days. In the absence of any response from the advocate, the existing notice and grounds of appeal will be placed before the single Judge or the Court without further notice. If an advocate does not wish to perfect the grounds, a note to that effect will ensure that the case is not unnecessarily delayed.

A8-4. If, having considered the transcript, the advocate is of the opinion that there are no valid grounds, the reasons should be set out in a further advice and sent to his instructing solicitors. The Registrar should be informed that this has been done, but the advocate should not send the Registrar a copy of that advice. Solicitors should send a copy to the appellant and obtain instructions, at the same time explaining that if the appellant persists with his application the Court may consider whether to make a loss of time order.

A8-5. Advocates should identify any relevant authorities (CrimPR 39.3(2)(g)) and submit a separate list of authorities with the perfected grounds of appeal and include copies of any unreported authorities.

A9. Respondent's Notice

A9-1. The Criminal Procedure Rules provide for the service of a Respondent's Notice. Pursuant to CrimPR 39.6(1) the Registrar may serve the appeal notice on any party directly affected by the appeal (usually

the prosecution) and must do so in a CCRC case. That party may then serve a Respondent's Notice if it wishes to make representations and must do so if the Registrar so directs (CrimPR 39.6(2)(b)). If directed, the Respondent's Notice should be served within 14 days (CrimPR 39.6(4)(a)). However, unless the case is urgent (in which case the Registrar may impose a deadline shorter than 14 days), 21 days is normally allowed for service. The Respondent's Notice should be served on the Registrar and any other party on whom the Registrar served the appeal notice.

A9-2. The Respondent's Notice must be in the specified Form RN and should set out the grounds of opposition (CrimPR 39.6(5)) including the information set out in CrimPR 39.6(6).

A9-3. In practice, this procedure primarily applies prior to consideration of leave by the single Judge. However, a Respondent's Notice may be sought at any time in the proceedings including at the direction of the single Judge. The Attorney General and the Registrar, following consultation with representatives from the Crown Prosecution Service (CPS) and the Revenue and Customs Prosecution Office (RCPO), have agreed guidance on types of cases and/or issues where the Registrar should consider whether to serve an appeal notice and direct or invite a party to serve a Respondent's Notice before the consideration of leave by the single Judge.

Examples of when the Registrar might direct a Respondent's Notice include:

- (i) where the grounds concern matters which were the subject of public interest immunity (PII);
- (ii) allegations of jury irregularity;
- (iii) criticisms of the prosecution or the conduct of the Judge;
- (iv) complex frauds;
- (v) inconsistent verdicts;
- (vi) fresh evidence;
- (vii) where the grounds claim that the wrong statute, rule or regulation was applied.

The CPS will always be invited to lodge a Respondent's Notice in the following cases:

- (i) all *conviction and sentence* applications involving a fatality;
- (ii) all *conviction applications* involving rape, attempted rape or a serious sexual offence;
- (iii) all *conviction applications* where a CPS Complex Casework Unit dealt with the case;
- (iv) all *conviction applications* where the offence was perverting the course of justice, misconduct in public office and any conspiracy.

A9-4. In conviction cases where leave to appeal has been granted or where the application for leave has been referred to the full Court, the Crown is briefed to attend the hearing and required to submit a Respondent's Notice/skeleton argument. In relation to sentence cases where leave has been granted, referred or an appellant is represented on a renewed application, the sentence protocol set out in CPD IX Appeal 39A Appeals against conviction and sentence - the provision of notice to the prosecution, will apply. In those cases, a Respondent's Notice/skeleton argument will have to be served when the Crown indicates a wish to attend a hearing or when the Registrar directs the Crown to attend. There is no need to serve a skeleton argument in addition to a Respondent's Notice.

A10. Referral by the Registrar

A10-1. Where leave to appeal is required, the Registrar, having obtained the necessary documents, will usually refer the application(s) to a single Judge for a decision (on the papers) under s. 31 Criminal Appeal Act 1968. The Registrar does have the power to refer an application for leave directly to the full Court, in which case he will usually grant the advocate a representation order for the hearing. Where an application is referred because an unlawful sentence has been passed or other procedural error identified, a representation order will ordinarily be granted unless the error is such that the Court could correct it on the papers, but advocates should be aware that the Court may make observations for the attention of the determining officer that a full fee should not be allowed on taxation. A representation order will not be granted where the presence of an advocate is not required, such as where there has been a technical error that the Court can correct without the need for oral argument. An applicant would not have the right to attend the hearing because the appeal is on a point of law only (s.22 Criminal Appeal Act 1968; R v Hyde and others [2016] EWCA Crim 1031; [2016] 1 WLR 4020).

A10-2. Leave to appeal is required in all cases except:

- Where the trial or sentencing Judge has certified that the case is fit for appeal;
- Where the appeal has been referred by the Criminal Cases Review Commission (CCRC);
- Where the appeal is under s13 Administration of Justice Act 1960 (contempt proceedings);
- Where there is no provision for the grant of leave by a Single Judge; for example an appeal against an order for trial without jury (*see Section D Other Appeals*).

A10-3. Where leave to appeal is not required, the Registrar will usually grant a representation order for the hearing of the appeal.

A11. Oral applications for leave to appeal

All applications for leave (together with any ancillary applications such as for bail, extension of time, or a representation order) are normally considered by a single Judge on the papers, unless it can be demonstrated that there are exceptional reasons why an oral hearing is required. An advocate or

solicitors may request an oral hearing, but that request must be supported by written reasons stating why the case is exceptional and any reasons why that hearing should be expedited (expedition will be a matter for the Registrar). That application should be copied to the prosecution. The single Judge determining the substantive application will then decide whether an oral hearing should be arranged. An advocate may make an application for a representation order at the hearing itself. Oral applications for leave and bail are usually heard in Court but in chambers at 9.30am before the normal Court sittings. Advocates appear unrobed. If the advocate considers that an application may take longer than 20 minutes, the Registrar must be notified. If the single Judge declines to hear the application at an oral hearing, the application will then be considered on the papers by that Judge.

A12. Powers of the single Judge

The single Judge may grant the application for leave, refuse it or refer it to the full Court. In conviction cases and in sentence cases where appropriate, the single Judge may grant limited leave i.e. leave to argue some grounds but not others. Advocates must notify the Registrar within 14 days whether the grounds upon which leave has been refused are to be renewed before the full Court. If a representation order is granted, in a limited leave case, public funding will only cover grounds of appeal which the single Judge or the full Court say are arguable (*R v Cox & Thomas* [1999] 2 Cr App Rep 6 and *R v Hyde and others* [2016] EWCA Crim 1031; [2016] 1 WLR 4020). The single Judge may also grant, refuse or refer any ancillary application.

A13. Bail pending appeal (CrimPR 39.8)

A13-1. Bail may be granted (a) by a single Judge or the full Court or (b) by a trial or sentencing Judge who has certified the case fit for appeal. In the latter case, bail can only be granted within 28 days of the conviction or sentence which is the subject of the appeal and may not be granted if an application for bail has already been made to the Court of Appeal (CPD III Custody and bail 14H.5).

A13-2. An application to the Court of Appeal for bail pending appeal must be supported by a completed Form B which must be served on the Registrar and the prosecution. The Court must not decide such an application without giving the prosecution the opportunity to make representations.

A13-3. An application for bail will not be considered by a single Judge or the Court until notice of application for leave to appeal conviction or sentence or notice of appeal has first been given. In practice, Judges will also require the relevant transcripts to be available so they may consider the merits of the substantive application at the same time as the bail application.

A13-4. Where bail is granted pending appeal, the Court may attach any condition that must be met before the party is released, and may direct how such a condition must be met. The Registrar must serve a certificate recording any such condition on the party, the party's custodian and any other person directly affected by the condition (CrimPR 39.9). A condition of residence is always attached.

A14. Funding for grant of leave or reference to full Court

A14-1. Where the single Judge grants leave or refers an application to the Court, it is usual to grant a

representation order for the preparation and presentation of the appeal. This is usually limited to the services of an advocate only. The advocate who settled grounds of appeal will usually be the assigned advocate. If the applicant is a litigant in person, an advocate may be assigned by the Registrar. In such cases the Registrar will provide a brief but does not act as an appellant's solicitor. The Registrar may assign one advocate to represent more than one appellant if appropriate. If it is considered that a representation order for two advocates and/or solicitors is required, the advocate should notify the Registrar and provide written justification in accordance with Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 (S.I. 2013/614).

A14-2. If solicitors are assigned, it should be noted that by virtue of Regulation 12 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013, SI 2013/614, a representation order can only be issued to a solicitor if they hold a Standard Crime Contract with the LAA. A solicitor not holding such a franchise may apply to the LAA for an individual case contract (ICC) by virtue of which the solicitor is employed on behalf of the LAA to represent an appellant in a given case.

A14-3. In some circumstances, the Registrar may refer an application to the full Court. This may be because there is a novel point of law, there is fresh evidence to be considered pursuant to s.23 of the Criminal Appeal Act 1968 or because in a sentence case, the sentence passed is very short. A representation order for an advocate is usually granted. The advocate for the prosecution usually attends a Registrar's referral.

A15. Refusal by the Single Judge

A15-1. Where the single Judge refuses leave to appeal, the Registrar sends a notification of the refusal, including any observations which the Judge may have made, to the appellant, who is informed that he may require the application to be considered by the Court by serving a renewal notice (Form SJ-Renewal) upon the Registrar within 14 days from the date on which the notice of refusal was served on him.

A15-2. A refused application which is not renewed within 14 days lapses. An appellant may apply for an extension of time in which to renew his application for leave (CrimPR 36.3 – 36.5 and s.31 Criminal Appeal Act 1968). The Registrar will normally refer such an application to the Court to be considered at the same time as the renewed application for leave to appeal. An application for an extension of time in which to renew must be supported by cogent reasons.

A15-3. If it is intended that an advocate should represent the appellant at the hearing of the renewed application for leave to appeal, whether privately instructed or on a pro bono basis, such intention must be communicated to the CAO in writing as soon as that decision has been made. Whilst a representation order is not granted by the Registrar in respect of a renewed application for leave, the advocate may apply at the hearing to the Court for a representation order to cover that appearance and any further work done in preparation of the renewal retrospectively. In practice, this is only granted where the application for leave is successful.

A16. Directions for loss of time

A16-1. S.29 Criminal Appeal Act 1968 empowers the Court to direct that time spent in custody as an

appellant shall not count as part of the term of any sentence to which the appellant is for the time being subject. The Court will do so where it considers that an application is wholly without merit. Such an order may not be made where leave to appeal or a trial Judge's certificate has been granted, on a reference by the CCRC or where an appeal has been abandoned. An appeal is not built into the trial process but must be justified on properly arguable grounds (R v Fortean [2009] EWCA Crim 437; [2009] Crim LR 798).

A16-2. The only means the Court has of discouraging unmeritorious applications which waste precious time and resources is by using the powers in the Criminal Appeal Act 1968 and the Prosecution of Offences Act 1985. In every case where the Court is presented with an unmeritorious application, consideration should be given to exercising these powers.

A16-3. The mere fact that an advocate has advised that there are grounds of appeal will not be a sufficient answer to the question as to whether or not an application has indeed been brought which was wholly without merit (R v Gray and Others [2014] EWCA Crim 2372; [2015] 1 Cr App Rep (S) 197).

A16-4. The Form SJ, on which the single Judge records his decisions, and the reverse of which is used by appellants to indicate their wish to renew, includes:

- a box for the single Judge to initial in order to indicate that that the full Court should consider loss of time or a costs order if the application is renewed; and
- a box for the applicant to give reasons why such an order should not be made, whether or not an indication has been given by a single Judge.

A16-5. Where the single Judge has not indicated that the full Court should consider making a loss of time order because the applicant is not in custody, the single Judge also has the option of considering whether to make any directions in respect of costs, which could include the prosecution costs (usually in providing a Respondent's Notice). The Practice Direction in relation to costs should be followed.

A17. Abandonment

A17-1. An appeal or application may be abandoned at any time before the hearing without leave by completing and lodging Form A. An oral instruction or letter indicating a wish to abandon is insufficient.

A17-2. At the hearing, an application or appeal can only be abandoned with the permission of the Court (CrimPR 36.13(2)(b)). An appeal or application which is abandoned is treated as being a final determination of the full Court (CrimPR 36.13(4)(c)).

A17-3. A notice of abandonment cannot be withdrawn nor can it be conditional. A person who wants to reinstate an application or appeal after abandonment must apply in writing to the Registrar with reasons (CrimPR 36.13(5)). The Court has power to allow reinstatement only where the purported abandonment can be treated as a nullity and the applicant must provide the Court with the relevant information to determine the application (R v Medway (1976) 62 Cr App R 85 and R v Zobotka [2016] EWCA Crim 1771).

A17-4. An application to treat the abandonment as a nullity is heard by the full Court. If the Court does agree to treat the abandonment as a nullity, the status of the application is restored as if there had been no interruption.

A18. Case Management Duties

A18-1. CrimPR 36.2 gives the Court and parties the same powers and duties of case management as in Part 3 of the Rules. In accordance with those duties, for each application received, the Registrar nominates a case progression officer, (the 'responsible officer'). There is also a duty on the parties to actively assist the Court to progress cases. Close contact between the advocate and solicitors and the responsible officer is encouraged in order to facilitate the efficient preparation and listing of appeals, especially in complex cases and those involving witnesses.

A18-2. Powers under the Criminal Appeal Act 1968 exercisable by the single Judge and the Registrar are contained in s.31 Criminal Appeal Act 1968 (as amended by s.87 Courts Act 2003, s.331 & Sched.32 Criminal Justice Act 2003 and Sched.8 Criminal Justice and Immigration Act 2008). These powers include the power to make procedural directions for the efficient and effective preparation of an application or appeal and the power to make an order under s.23(1)(a) Criminal Appeal Act 1968 for the production of evidence etc. necessary for the determination of the case.

A18-3. Where the Registrar refuses an application by an appellant to exercise any of the Registrar's case management powers under s.31 Criminal Appeal Act 1968 in the appellant's favour, the appellant is entitled to have the application determined by a single Judge (s. 31A (4) of the Act). There is no provision for any appeal against a procedural direction given by a single Judge and thus such decisions are final.

B. Interlocutory Appeals against rulings in Preparatory Hearings

Appeal against a ruling pursuant to s.9 of the Criminal Justice Act 1987 or a decision pursuant to s.35 of the Criminal Procedure and Investigations Act 1996 (Part 37 CrimPR)

B1. Where a Judge has ordered a preparatory hearing, they may make a ruling as to the admissibility of evidence and any other question of law relating to the case (s.9(3)(b) & (c) CJA 1987 and s.31(3)(a) & (b) CPIA 1996). Given the co-extensive powers of case management outside the preparatory hearing regime, Courts should now be very cautious about directing a preparatory hearing (barring terrorist cases) (R v L & L [2018] EWCA Crim 69; R v BM [2018] EWCA Crim 560).

B2. Pursuant to s.9(11) CJA 1987 and s.35(1) CPIA 1996 the defence or the prosecution may appeal to the CACD (and ultimately to the Supreme Court) against such a ruling, but only with the leave of the trial Judge, single Judge or the full Court. As to the scope of a Judge's powers in relation to a preparatory hearing and thus the extent of appeal rights, see the decision of the House of Lords in H [2007] UKHL 7 on appeal from [2006] EWCA Crim 1975; R v VGA [2010] EWCA Crim 2742.

B3. If the trial date is imminent and the application is urgent, the Registrar should be notified so that he may consider referring the application directly to the full Court.

B4. If an application for leave to appeal is made to the trial Judge, it should be made orally immediately after the ruling, or within two business days by serving a notice of an application on the appropriate officer of the Crown Court and all parties directly affected (CrimPR 37.4). Whether leave is granted by the trial Judge or not or no such application is made to the trial Judge, notice of an appeal or application for leave to appeal (**Form NG (Prep)**) is to be served on the Registrar, the Crown Court and the parties within five business days of the ruling or the trial Judge's decision whether to grant leave (CrimPR 37.2).

B5. The notice and grounds of appeal having been served on the other parties, grounds of opposition should be served in a Respondent's Notice (**Form RN (Prep)**) within five business days of service of the appeal notice (CrimPR 37.5).

B6. Defence representatives are usually covered by the Crown Court representation order if one is in force (Paragraph 2(2), Schedule 3, Access to Justice Act 1999).

B7. If the relevant time limits are not complied with, the Court has power to grant an extension of time. Where a single Judge refuses leave to appeal or an extension of time within which to serve a notice, the application may be renewed for determination by the full Court by serving the notice of renewal, appropriately completed, upon the Registrar within five business days of the refusal being served (CrimPR 37.7).

C. Appeals by a prosecutor against a “terminating” ruling

S.58 Criminal Justice Act 2003 (Part 38 CrimPR)

C1. S.58 Criminal Justice Act 2003 provides the prosecution with a right of appeal in relation to a “terminating” ruling: a ruling where the prosecution agree to the defendant’s acquittal if the appeal is not successful (Y [2008] EWCA Crim 10). This is wide enough to encompass a case-management decision (C [2007] EWCA Crim 2532).

C2. There is no right of appeal in respect of a ruling that the jury be discharged or a ruling in respect of which there is a right of appeal to the Court of Appeal by virtue of another enactment (s.57(2) CJA 2003). The prosecution should therefore consider whether there is a right of appeal under s.9 CJA 1987 or s.35 CPIA 1996.

C3. The prosecution must inform the Court that it intends to appeal or request an adjournment to consider whether to appeal (s.58(4) CJA 2003), which will be until the next business day (CrimPR 38.2(2)). The Judge has discretion to adjourn for longer if there is a real reason for doing so (H [2008] EWCA Crim 483). The prosecution can ask the trial Judge to grant leave to appeal immediately after the ruling or after the granted adjournment to consider the same (CrimPR 38.5). Leave should be granted only where the Judge considers there is a real prospect of success and not to speed up the hearing of the appeal (JG [2006] EWCA Crim 3276). If the prosecution do not ask the trial judge for leave to appeal, the notice and application to appeal (**Form NG (Pros)**) must be served on the Crown Court, Registrar and every defendant affected by the ruling the next business day if the trial Judge expedites the appeal or five business days after telling the Judge of the intent to appeal if the Judge does not expedite the same (CrimPR 38.3). The prosecution must give the undertaking (as to the defendant’s acquittal if the appeal is abandoned or leave to appeal is not obtained) at the time when it informs the Court of its intention to appeal. The failure to give it then is fatal to an application to the Court of Appeal for leave (ss.58(8) CJA 2003) (LSA [2008] EWCA Crim 1034; NT [2010] EWCA Crim 711; B [2014] EWCA Crim 2078).

C4. Whether or not leave is granted, the trial Judge must decide if the appeal is to be expedited and if so, adjourn the case. If he decides that the appeal should not be expedited then he can adjourn the case or discharge the jury (s.59 CJA 2003).

C5. The notice and grounds of appeal having been served on the other parties, grounds of opposition should be served in a Respondent’s Notice (**Form RN (Prep)**). The Respondent’s Notice must be served the next business day if the trial judge expedites the appeal or within five business days of service of the appeal notice if the appeal is not expedited (CrimPR 37.5).

C.6. Defence representatives are usually covered by the Crown Court representation order if one is in force (such proceedings being considered incidental within Paragraph 5(3) of Schedule 3 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012).

C7. Expedition does not impose time limits on the Registrar or Court of Appeal. However, if leave has not been granted by the trial Judge, the application may be referred to the full Court by the Registrar to ensure that the matter is dealt with quickly.

C8. The Registrar endeavours to list prosecution appeals where a jury has not been discharged as quickly as possible. He is unlikely to be able to list an appeal in less than a week from the ruling because it is necessary for the prosecution to obtain transcripts, papers to be copied and the Judges to read their papers. It is of great assistance if it is anticipated that there is to be an appeal against a ruling where the jury has not been discharged that a phone call is made to the Registrar or CAO General Office (020 7947 6011) notifying the office even before the appeal notice is sent, so that preliminary views can be taken as to the constitution which may be able to hear the appeal. The listing of an urgent appeal invariably means that other cases have to be removed from the list.

D. Other Appeals

D1. Prosecution appeal against the making of a confiscation order or where the Court declines to make one (save on reconsideration of benefit)

- S.31(1) & (2) Proceeds of Crime Act 2002
- Part 42 CrimPR
- Proceedings are commenced by serving a **Form PoCA 1** on the defendant and the Crown Court within 28 days of the decision appealed against (Article 3(2)(a) Proceeds of Crime Act (Appeals under Part 2) Order 2003)
- A Respondent's Notice **Form PoCA 2** is to be served on the Registrar of Criminal Appeals and the appellant not later than 14 days after receiving **Form PoCA 1**
- An undischarged Crown Court representation order will cover advice and assistance on the merits of opposing the appeal and drafting the Respondent's Notice, otherwise an application for a representation order can be made to the Registrar. In any event where an application for a representation order is made on **Form PoCA 2**, the Registrar will consider a representation order for the hearing
- Leave to appeal can be granted by a single Judge or the full Court

D2. Prosecution and third party appeal against a determination, under S.10A Proceeds of Crime Act 2002, of the extent of the defendant's interest in property

- S.31(4) & (5) Proceeds of Crime Act 2002
- Part 42 CrimPR
- Proceedings are commenced by serving a **Form PoCa 1** on the defendant and the Crown Court within 28 days of the decision appealed against
- A Respondent's Notice **Form PoCA 2** is to be served on the Registrar of Criminal Appeals and the appellant not later than 14 days after receiving **Form PoCA 1**
- An undischarged Crown Court representation order will cover advice and assistance on the merits of opposing the appeal and drafting the Respondent's Notice, otherwise an application for a representation order can be made to the Registrar. In any event where an application for a representation order is made on **Form PoCA 2**, the Registrar will consider a representation order for the hearing
- Leave to appeal can be granted by a single Judge or the full Court

D3. Appeal in relation to a restraint order

- S.43 Proceeds of Crime Act 2002
- Part 42 CrimPR
- The prosecution or an accredited financial investigator can appeal a refusal to make a restraint order. A person who applied for an order or who is affected by the order can apply to the Crown Court to vary or discharge the order and then appeal that decision to the Court of Appeal
- Proceedings are commenced by serving a **Form PoCA 3** on the Crown Court within 28 days of the decision being appealed. **Form PoCA 3** must then be served on any respondent, any person who holds realisable property to which the appeal relates, or is affected by the appeal, not later than seven days after the form is lodged at the Crown Court. The documents which are to be served with **Form PoCA3** are set out in CrimPR 42.15
- A Respondent's Notice **Form PoCA 4** is to be served on the Registrar of Criminal Appeals not later than 14 days after the respondent is notified that the appellant has leave to appeal or notified that the application for leave and the appeal are to be heard together. **Form PoCA 4** is then to be served on the appellant and any other respondent as soon as is practicable and not later than seven days after it was served on the Registrar
- Criminal Defence Service Regulations do not apply to these proceedings and thus no representation orders will be granted by the Registrar or the Court
- Leave to appeal can be granted by a single Judge or full Court
- An application for a restraint order can be made as soon as a criminal investigation has begun. The proposed defendant may not have been charged (s.40 Proceeds of Crime Act 2002)

D4. Appeal in relation to a receivership order

- S.65 Proceeds of Crime Act 2002
- Part 42 CrimPR
- The appointment, non-appointment or powers of a receiver can be appealed, as can an order giving a direction to a receiver and the variation or discharge of a receivership order. An appeal can be brought by the person who applied for the order, a person who is affected by the order or the receiver
- Proceedings are commenced by serving a **Form PoCA 3** on the Crown Court within 28 days of

the decision being appealed

- **Form PoCA 3** must then be served on any respondent and any person who holds realisable property to which the appeal relates, or is affected by the appeal, not later than seven days after the form is lodged at the Crown Court
- A Respondent's Notice **Form PoCA 4** to be served on the Registrar of Criminal Appeals not later than 14 days after the respondent is notified that the appellant has leave to appeal or is notified that the application for leave and the appeal are to be heard together. **Form PoCA 4** is then to be served on the appellant and any other respondent as soon as is practicable and not later than seven days after it was served on the Registrar
- Criminal Defence Service Regulations do not apply to these proceedings and thus no representation orders will be granted by the Registrar or the Court
- Leave to appeal can be granted by a single Judge or full Court

D5. Appeal against an order of the Crown Court in the exercise of its jurisdiction to punish for contempt – usually a finding of contempt or sentence for contempt

- S.13 Administration of Justice Act 1960
- Part 39 CrimPR
- Anyone dealt with by the Crown Court for contempt may appeal
- Proceedings are commenced by lodging a **Form NG** at the Crown Court (if the notice and grounds are lodged before 1 October 2018) or directly on the Registrar of Criminal Appeals (if the notice and grounds are lodged on or after 1 October 2018) not more than 28 days after the order to be appealed (*see section A2. Lodging Form NG and grounds of appeal*)
- The Registrar may direct a Respondent's Notice **Form RN** or the prosecution may serve one if they wish to make representations to the Court
- An undischarged Crown Court representation order will cover advice and assistance on appeal. The Registrar will consider a representation order for the hearing (s.19 Legal Aid, Sentencing and Punishment of Offenders Act 2012; Reg.8 Criminal Legal Aid (Determinations by Court and Choice of Representative) Regulations 2013 [SI 2013/614])
- No leave to appeal is required. The appeal is as of right (s. 13 Administration of Justice Act 1960)
- Appeals occur most frequently when an appellant wishes to appeal a sentence for failing to appear at the Crown Court as the failing to appear is dealt with as if it were contempt

D6. Appeal against a minimum term set or reviewed by a High Court Judge

- Para. 14 of Schedule 22 Criminal Justice Act 2003
- Part 39 CrimPR
- A defendant with a mandatory life sentence imposed before 18 December 2003 who has had his minimum term set or reviewed by a High Court Judge can appeal
- Proceedings are commenced by service of **Form NG (MT)** on the Registrar not more than 28 days after the decision
- The Registrar may direct a Respondent's Notice **Form RN** or the prosecution may serve one if they wish to make representations to the Court
- An application for a representation order can be made to the Registrar (s.19 Legal Aid, Sentencing and Punishment of Offenders Act 2012; Reg.8 Criminal Legal Aid (Determinations by Court and Choice of Representative) Regulations 2013 [SI 2013/614])
- Leave to appeal is required and can be granted by the full Court or a single Judge (Part 2 Para.8 Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases Order 2003) [S.I. 2005/2798])

D7. Attorney General's reference of an unduly lenient sentence

- S.36 Criminal Justice Act 1988
- Part 41 CrimPR
- The Attorney General can refer sentences only in relation to specific offences or sentences (ss.35 & 36 Criminal Justice Act 1988 and Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006)
- Although CrimPR 41.3(1) implies there is a specific form to commence proceedings, in practice a standard letter with supporting documents is sent to the Registrar of Criminal Appeals by the Attorney General's Office no more than 28 days after sentence
- If the defendant wishes to make representations to the Court he must serve a Respondent's Notice within 14 days of the Registrar serving the application upon him. Again, there is no specific form available

- Representation orders are granted by the Registrar to respond to an Attorney General's reference
- The leave of the Court of Appeal is required

D8. Attorney General's reference of a point of law on an acquittal

- S.36 Criminal Justice Act 1972
- Part 41 Crim PR
- The Attorney General can refer a point of law to the Court of Appeal for their opinion on the acquittal on indictment of the defendant
- Although CrimPR 41.3(1) implies there is a specific form to commence proceedings, there is no such form and CrimPR 70.3 sets out what should be included in the reference. All references which identify the defendant should be excluded
- There is no time limit
- If the defendant wishes to make representations to the Court he must serve a Respondent's Notice within 28 days of the Registrar serving the application upon him. Again there is no specific form available
- Representation orders are granted by the Registrar to respond to an Attorney General's reference
- Leave is not required

D9. Appeal against a finding of unfitness to plead or a finding that the accused did the act or made the omission charged

- S.15 Criminal Appeal Act 1968
- Part 39 CrimPR
- The accused can appeal (by the person appointed to represent the accused) against a finding of unfitness to plead (but not fitness to plead) and that he did the act or made the omission charged. The appeal does not lie until both findings have been made
- Proceedings are commenced by the service of **Form NG** on the Crown Court (if the application is lodged prior to the 1 October 2018) or directly on the Registrar of Criminal Appeals (if the application is lodged on or after the 1 October 2018) not more than 28 days after the finding made which the accused wishes to appeal (*see section A2. Lodging of Form NG and grounds*)

of appeal)

- The prosecution should serve a Respondent's Notice **Form RN** if directed by the Registrar or if they wish to make representations to the court
- The costs of the person appointed to put the case on appeal are paid from central funds, but the mechanism will depend on the outcome of the appeal proceedings, thus the issue should be considered only at the conclusion of proceedings. Where an appeal is allowed, the Court may make a defendant's costs order under s16(4)(a)(iii) of the Prosecution of Offences Act 1985, which will include legal costs (s16A(3)(c)). Where leave to appeal is not granted or the appeal is not successful, the costs of the person appointed to put the case on appeal are covered by Part IIIA of the regulations made under s19(3)(d) of the 1985 Act (Antoine [1999] 2 Cr. App.R.225)
- Leave to appeal may be granted by the Crown Court Judge, a single Judge or the full Court

D10. Appeal against a verdict of not guilty by reason of insanity

- S.12 Criminal Appeal Act 1968
- Part 39 CrimPR
- The defendant can appeal a verdict of not guilty by reason of insanity
- Proceedings are commenced by the service of **Form NG** on the Crown Court (if the application is lodged prior to the 1 October 2018) or directly on the Registrar of Criminal Appeals (if the application is lodged on or after 1 October 2018) not more than 28 days after the verdict (see *section A2. Lodging of Form NG and grounds of appeal*)
- The prosecution should serve a Respondent's Notice **Form RN** if directed by the Registrar or if they wish to make representations to the court
- S.16(4) Prosecution of Offences Act 1985 provides that where the Court of Appeal **allows an appeal** then the court may make a defendant's costs order. If the appeal is not allowed costs from central funds should be available on the same basis as was allowed in Antoine (above) in the absence of any statutory provision
- Leave to appeal may be granted by the Crown Court Judge, a single Judge or the full Court

D11. Appeal against the order following a verdict of not guilty by reason of insanity or a finding of unfitness to plead

- S.16A Criminal Appeal Act 1968

- Part 39 CrimPR
- An accused who, as a result of a verdict of not guilty by reason of insanity or a finding of fitness to plead has a hospital order, interim hospital order or supervision order made against him may appeal against the order
- Proceedings are commenced by the service of **Form NG** on the Crown Court (if the application is lodged prior to the 1 October 2018) or directly on the Registrar of Criminal Appeals (if the application is lodged on or after 1 October 2018) not more than 28 days after the verdict (see *section A*". *Lodging Form NG and grounds of appeal*)
- The prosecution should serve a Respondent's Notice **Form RN** if directed by the Registrar or if they wish to make representations to the court
- S.16(4) Prosecution of Offences Act 1985 provides that where the Court of Appeal **allows an appeal** then the court may make a defendant's costs order. If the appeal is not allowed costs from central funds should be available on the same basis as was allowed in Antoine (above) in the absence of any statutory provision
- Leave to appeal may be granted by the Crown Court Judge, a single Judge or the full Court

D12. Appeal against review of sentence

- S.74(8) Serious Organised Crime and Police Act 2005
- Part 39 Crim PR
- A defendant or specified prosecutor may appeal
- Proceedings are commenced by serving a **Form NG (RD)** on the Crown Court (if the application is lodged prior to 1 October 2018) or directly on the Registrar of Criminal Appeals (if the application is lodged on or after 1 October 2018) not more than 28 days after the review (see *section A2. Lodging Form NG and grounds of appeal*)
- A Respondent's Notice **Form RN** should be served if directed by the Registrar or if the respondent wishes to make representations to the Court
- An application for a representation order can be made to the Registrar (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.19; Reg .9 Criminal Legal Aid (General) Regulations 2013)
- Leave to appeal can be granted by the single Judge or full Court (Serious Organised Crime and Police Act 2005 (Appeals under s.74) Order 2006/21)

D13. Appeal against an order for trial by jury of sample counts

- S.18 Domestic Violence, Crime and Victims Act 2004
- Part 37 Crim PR
- The defendant and the prosecution can appeal the determination of an application to make the order
- An application for the jury to try some counts as sample counts and the Judge to try the remainder if the jury convict, must be determined at a preparatory hearing and s.18 confers rights of interlocutory appeal. A **Form NG (Prep)** must be served on the Crown Court, the Registrar and any party directly affected not more than five business days after the order or the Crown Court Judge granting or refusing leave (*For applications to the Crown Court Judge see Part B above*)
- A Respondent's Notice **Form RN (Prep)** should be served if the Court directs or the prosecution (or any party affected) wants to make representations to the Court
- Defence representatives are usually covered by the Crown Court representation order if one is in force, the proceedings being considered incidental within Paragraph 5(3) of Schedule 3 to Legal Aid, Sentencing and Punishment of Offenders Act 2012
- The Crown Court Judge, single Judge or full Court can grant leave

D14. Appeal against an order relating to a trial to be conducted without a jury where there is a danger of jury tampering

- S.45(5) and (9) Criminal Justice Act 2003 amending s.9(11) Criminal Justice Act 1987 and s.35(1) Criminal Procedure and Investigations Act 1994
- Part 37 CrimPR
- The prosecution can appeal the refusal to make an order; the defence can appeal the making of an order
- A **Form NG (Prep)** must be served on the Crown Court, the Registrar and any party directly affected not more than five business days after the order or the Crown Court Judge granting or refusing leave (*For applications to the Crown Court Judge see Part B above*)
- A Respondent's Notice **Form RN (Prep)** should be served if the Court directs or the Crown (or any party affected) wants to make representations to the Court

- Defence representatives are usually covered by the Crown Court representation order if one is in force, the proceedings being considered incidental within Paragraph 5(3) of Schedule 3 to Legal Aid, Sentencing and Punishment of Offenders Act 2012
- The Crown Court Judge, single Judge or full Court can grant leave

D15. Appeal against an order that a trial should continue without a jury or a new trial take place without a jury *after* jury tampering

- S.47 Criminal Justice Act 2003
- Part 37 CrimPR (relating to appeals against an order made in a preparatory hearing notwithstanding there will have been no preparatory hearing)
- Both the prosecution and defence can appeal a decision that the trial should continue without a jury or a new trial should take place without a jury
- A **Form NG (Prep)** must be served on the Crown Court, the Registrar and any party directly affected not more than five business days after the order or the Crown Court Judge granting or refusing leave (*For applications to the Crown Court Judge see Part B above*)
- A Respondent's Notice **Form RN (Prep)** should be served if the Court directs or the Crown (or any party affected) wants to make representations to the Court
- Defence representatives are usually covered by the Crown Court representation order if one is in force, the proceedings being considered incidental within Paragraph 5(3) of Schedule 3 to Legal Aid, Sentencing and Punishment of Offenders Act 2012
- The Crown Court Judge, single Judge or full Court can grant leave

D16. Appeal against orders restricting or preventing reports or restricting public access

- S.159 Criminal Justice Act 1988
- Part 40 CrimPR
- A person aggrieved may appeal
- Applications against orders restricting reporting shall be made within 10 business days after the date on which the order was made by lodging **Form NG (159)** on the Registrar, the Crown Court, the prosecutor and defendant and any other affected person. Applications against orders to restrict public access must be made the next business day after the order was made. If advance notice of an order restricting public access is given, then advance notice of an

intention to appeal may be made not more than five business days after the advance notice is displayed

- A person on whom an appeal notice is served should serve a Respondent's Notice **Form RN (159)** if he wishes to make representations to the Court or the Court so directs within three business days
- The Court may make such order as to costs as it thinks fit (s.159(5)(c) Criminal Justice Act 1988), but not out of central funds (Holden and others v. CPS No.2 [1994] 1 AC 22)
- A single Judge or the full Court can grant leave (s.31(2B) Criminal Appeal Act 1968)
- Applications for leave to appeal and appeals in relation to reporting restrictions may be heard in private (CrimPR 36.6(1)). Applications for leave to appeal and appeals relating to restricting public access may be decided without a hearing but the decision must be announced at a hearing in public (Crim PR 36.6(3)). In either case, if the hearing relates to public interest immunity, it must be in private unless the Court otherwise directs (Crim PR 36.6(2))

D17. Appeal against a wasted costs order

- Regulation 3C Costs in Criminal Cases (General) Regulations 1986
- A legal or other representative against whom a wasted costs order has been made in the Crown Court
- There is no specific form. Notice of appeal should be served on any interested party within 21 days of the order being made.
- Any interested party can make representations orally or in writing
- Leave to appeal is not required (s. 19 A Prosecution of Offences Act 1985)

D18. Appeal relating to Serious Crime Prevention Orders

- S.24 Serious Crime Act 2007
- Part 39 CrimPR
- A person subject to the order, an applicant authority or anyone given the opportunity to make representations at the Crown Court about the making, variation or non-variation of an order
- Proceedings are commenced by the service of **Form NG (SCPO)** on the Crown Court (if the application is lodged prior to 1 October 2018) or directly on the Registrar of Criminal Appeals (if the application is lodged on or after 1 October 2018) not more than 28 days after the order

(see section A2. Lodging Form NG and grounds of appeal)

- A Respondent's Notice **Form RN** should be served if directed by the Registrar or if the respondent wishes to make representations to the Court. Proceedings before the Crown Court or the Court of Appeal relating to serious crime prevention orders and arising by virtue of ss.19, 20, 21 or 24 of the Serious Crime Act 2007 are criminal proceedings for the purposes of Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.19; Reg.9(s) Criminal Legal Aid (General) Regulations 2013. Accordingly, the Registrar may grant a representation order to a person subject to the order. A person who made representations at the Crown Court can apply to the LAA for a representation order. The Court has discretion to order costs as it thinks fit (Part 3 Orders as to costs Serious Crime Act 2007 (Appeals under s.24) Order 2008/1863)
- Leave can be granted by the Crown Court Judge, full Court or single Judge (Art.9 Serious Crime Act 2007 (Appeals under s.24) Order 2008/1863)

D19. Appeal against the failure to make a football banning order

- S.14A(5A) Football Spectators Act 1989
- Part 39 CrimPR
- The CACD has no power to deal with these. An appeal lies to the Civil Division (R v Boggild [2011] EWCA Crim 1928)

E. Application for a Retrial for a Serious Offence

E1. Application by a prosecutor to quash an acquittal and seek a retrial of a qualifying offence (S.76(1) Criminal Justice Act 2003 and Part 27 CrimPR)

E1-1. There must be new and compelling evidence and it must be in the interests of justice for the acquitted person to be re-tried (ss.78 and 79 Criminal Justice Act 2003 and Dunlop [2006] EWCA Crim 1354; Sanjuliano [2007] EWCA Crim 3130). Evidence was “new” if it had not been adduced at trial and for the purposes of s.78(2) evidence was “adduced” if it had been put forward in evidence (R v Henry [2014] EWCA Crim. 1816; [2015] 2 Cr.App.R. 1).

E1-2. Proceedings can begin in one of two ways:

(1) By serving notice of the application under s.76 on the Registrar of Criminal Appeals and the acquitted person within two days of the decision having been made (s.80 Criminal Justice Act 2003). This notice charges the acquitted person with the offence. It requires the personal written consent of the Director of Public Prosecutions (DPP) (s.76(3)).

If the acquitted person is not in custody the prosecution can ask the Crown Court to issue:

- i) A summons for the acquitted person to appear before the Court of Appeal for the hearing of the application
- ii) A warrant for his arrest (s.89(3))

Once arrested on the warrant the acquitted person must be brought before the Crown Court within 48 hours (s.89(6)).

(2) An acquitted person may be charged with the offence before an application under s76 has been made. This may be after an arrest in an investigation authorised by the DPP (s 85(2)) or where no authorisation has been given, after arrest under a warrant issued by a justice of the peace (s87(1) Criminal Justice Act 2003). Having been charged, the acquitted person must be brought before the Crown Court to consider bail within 24 hours (s.88(2) Criminal Justice Act 2003). He can then be remanded in custody or on bail for 42 days whilst an application under s.76 is prepared (s.88(6)) unless extended by s.88(8) Criminal Justice Act 2003). Once a notice of application under s.76 has been made, stating that the acquitted person has previously been charged with the offence, the acquitted person must be brought before the Crown Court to consider bail within 48 hours of the notice being given to the Registrar, if the acquitted person is already in custody under s.88 (above) (s.89(2)).

E1-3. Thus in either case, bail is dealt with largely by the Crown Court. The Court of Appeal only considers bail on the adjournment of the hearing of the application under s.76 (s.90 (1) Criminal Justice Act 2003).

E1-4. The notice (**Form NG (ACQ)**) should where practicable be accompanied by the witness statements which are relied on as the new and compelling evidence, the original witness statements,

unused statements, indictment, paper exhibits from the original trial, any relevant transcripts from the original trial and any other documents relied on (CrimPR 27.2(2)).

E1-5. An acquitted person who wants to oppose a s.76 application must serve a response (**Form RN (ACQ)**) not more than 28 days after receiving the notice (CrimPR 27.3(2)).

E2. Application by a prosecutor for a determination whether a foreign acquittal is a bar to a trial and if so, an order that it not be a bar
(S.76(2) Criminal Justice Act 2003 and Part 27 CrimPR)

E2-1. The prosecution can apply, with the personal written consent of the DPP (s.76(3) Criminal Justice Act 2003) for a determination whether an acquittal outside the UK is a bar to the acquitted person being tried in England and Wales and if it is found to be so, an order that the acquittal not be a bar. Proceedings can begin in the same way as for an application under s.76(1).

E3. Application for restrictions on publication relating to an application under s.76
(S.82 Criminal Justice Act 2003 and Part 27 CrimPR)

E3-1. An application can be made by the DPP for reporting restrictions. This can be made after a notice of an application for a re-trial has been made and may also be made by the Court of its own motion (s.82(5) Criminal Justice Act 2003). An application can also be made by the DPP for reporting restrictions **before** a notice of an application for a retrial if an investigation has been commenced (s.82(6) Criminal Justice Act 2003). The application for reporting restrictions must be served on the Registrar (**Form REP (ACQ)**) and (usually) the acquitted person (CrimPR 27.8(1)).

E3-2. A party who wants to vary or revoke an order for restrictions on publication under s.82(7) may apply to the Court of Appeal in writing at any time after the order was made (CrimPR 27.9(1)).

E4. Representation orders

E4-1. The Registrar will grant a representation order to the acquitted person for solicitors and counsel to respond to any of the above applications.