

COMPLETING FORMS NG, B AND W - IMPORTANT NOTES and GUIDANCE

A separate Form NG should be completed for each substantive application which is being made. So, Form NG Conviction should be completed if appealing against conviction; Form NG Sentence should be completed if appealing against sentence; Form NG Confiscation Order should be completed if appealing against a Confiscation Order; Form NG(MT) should be completed if appealing against the minimum term set or reviewed by the High Court; Form NG(RD) should be completed if appealing against a sentence review decision; Form NG(SCPO) should be used if appealing against a serious crime prevention order.

Section A	If not in custody give details of the address at which residing and to which correspondence should be sent.
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Section C	C1 Sentencing grid required within grounds – Where there is an application for leave to appeal against sentence and the grounds are drafted by legal representatives, the Registrar requires that a table of the sentences passed is contained within the Form NG or the grounds in the format set out at Section C of Form NG.
	C2 Time ordered to count towards sentence - Applications relating to credit for time spent on a qualifying curfew (s.240A Criminal Justice Act 2003) should be compliant with <u>R v Thorsby [2015] EWCA Crim 1</u> in that documentary or other evidence needs to be provided that clearly identifies the number of days which are agreed or disputed by the prosecution, and the nature and extent of any such dispute. An application for a long extension of time is to be supported by a s.9 witness statement. This must explain in what circumstances the applicant became aware of the entitlement for the first time and confirm that upon this discovery no further delay occurred. In cases where delay has been caused by the applicant, the single judge or full court is likely to refuse the application for an extension of time.

Section D	<p>D1 Timing – The time for applying for permission to appeal runs from the date of verdict, finding or order. For permission to appeal against conviction, time runs from the date of conviction even where sentence is passed on a later date. For permission to appeal against sentence, time runs from the date sentence was passed. For permission to appeal against a confiscation order, time runs from the date the order was imposed. For permission to appeal against the minimum term set or reviewed by the High Court, time runs from the date of the High Court decision. For permission to appeal against a sentence review decision, time runs from the date of the review decision. For permission to appeal against a serious crime prevention order, time runs from the date of the making of the order.</p> <p>The relevant Form NG should be lodged with the Criminal Appeal Office not more than 28 days after the conviction, sentence, verdict, finding or decision that is being appealed.</p> <p>Instructions for lodging Form NG and Grounds of Appeal are given below in the section entitled other information.</p>
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D2 Extension of time – The period of 28 days cannot be extended except with permission of the Court of Appeal Criminal Division and detailed reasons for the delay must be attached to Form NG. An application for an extension of time will not be considered before an application to appeal conviction, sentence, confiscation order, minimum term, review decision or serious crime prevention order has been lodged on form NG, whether or not the 28 day period has already expired. In R v Wilson [2016] EWCA Crim 65, the Court reiterated that applications for extensions of time must be supported by an explanation for the delay in making the application and it is not enough to rely simply on the merits of the Grounds of Appeal.

D3 Bail - Where bail is applied for, Form B must also be completed and sent when lodging form NG. If submitted later, Form B should be sent to the Criminal Appeal Office by email or post. Please see section below entitled “other information” for details of the email or postal addresses.

An application for bail will be considered in the light of the grounds of appeal or application for permission to appeal. Accordingly it is usual for the application for bail to be submitted to the Court or Judge together with other applications and the transcript of the proceedings at the trial. This imposes some delay. Generally strong grounds of appeal or application for permission to appeal have to be shown before bail is granted. An application for bail cannot stand alone; it must be supported by Notice of Application for permission to appeal or Notice of Appeal (Form NG).

Do not repeat the grounds of appeal or application for permission to appeal as the grounds for bail. Mention any other special grounds which the Judge or Court might consider, e.g. medical grounds.

Time spent on bail does not count towards sentence.

Notice in writing of intention to make an application relating to bail must be served on the prosecutor before the application is made, unless the Court or a Judge otherwise directs.

	<p>D4 Permission to call a witness or to adduce fresh evidence - A separate Form W should be lodged in respect of each witness, whether for the appellant or the respondent, and should be accompanied by a statement from the witness in the form prescribed by s.9 of the Criminal Justice Act 1967. A Form W is also required if the fresh evidence is in documentary form, naming the person exhibiting the document.</p> <p>A witness cannot be called without the permission of the Court of Appeal. Before giving permission to call a witness, the Court will consider, with other matters, whether the evidence, if received, would afford any ground for allowing the appeal, whether the evidence is likely to be credible, and whether there is a reasonable explanation for failure to adduce the evidence at the trial. Do not set out Form W the evidence which the witness gave at the trial.</p> <p>A supporting witness statement (compliant with s.9) or an affidavit from the appellant's solicitor should be lodged to explain how the fresh evidence came to light. The circumstances surrounding the new evidence may be highly relevant to its credibility (<u>R. v Gogana</u> <i>The Times</i>, July 12, 1999); <u>R. v James</u> [2000] Crim. L.R. 571). In cases where fresh representatives are acting, a waiver of privilege will also usually always be required to enable the Registrar to seek the comments of the trial representatives as to why the evidence was not available at trial (<u>R v Singh</u> [2017] EWCA Crim 466).</p> <p>Any application for Special Measures or any other direction about how the evidence should be received must be attached, with reasons. (r.39.7(1),(2))</p> <p>Do not apply in respect of a witness in mitigation of sentence only.</p> <p>Each Form W should indicate whether there is an application for a witness order (Crim PR 39.3(2)(h)(vi)).</p> <p>Form W should be sent to the Registrar at the address given in section I.</p>
	<p>D5 - Where the Criminal Cases Review Commission refers a case to the Court, the Court must treat that reference as the appeal notice if the appellant does not serve such a notice of appeal under Crim PR 39.2.</p>
	<p>D6 – An interpreter will be provided only if the appellant will otherwise be unable to follow the proceedings.</p>

Section E	<p>E1 Entitlement to advice and assistance - Everyone who has had the benefit of a Representation Order for trial or sentence in the Crown Court is entitled to advice and assistance from their trial representatives on appeal as part of the trial Representation Order.</p>
	<p>E2 Representation Order (i.e. legal assistance) - A Representation Order made in the Crown Court does not provide for argument before the Court of Appeal. The lower court Representation Order expires at the point the Single Judge considers the substantive applications for leave and funding.</p>

Section F	<p>F1 Privately funded applications - Legal representatives should order (and pay for) transcript from the company which holds the contract for the relevant Crown Court. They should then provide a copy (preferably electronically) to the Registrar. See F2 below regarding the transcript that is usually required. Legal representatives should refer to the</p>
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	Registrar if any delay is experienced obtaining a transcript.
	F2 Non privately funded applications - For an appeal against conviction, the Registrar will usually obtain a transcript of the trial judge’s summing up, up to and including verdict. For an appeal against sentence, the Registrar will obtain a transcript of the judge’s sentencing remarks in relation to all defendants. Additionally, where there was a guilty plea, the Registrar will usually order a transcript of the prosecution’s opening of the facts. For an appeal against a Confiscation Order a transcript of the trial judge’s ruling on Confiscation is obtained by the Registrar as a matter of course. Further transcript may be requested and will be obtained if it is essential for the proper conduct of the appeal, which is a matter for the judgement of the Registrar or their staff. Where additional transcript is requested, specific details, including dates and times must be provided.
	F3 - Please note that in cases subject to a Representation Order, where transcript is obtained by means other than through the Registrar this may result in the cost of the transcript not being allowed upon assessment.

Section G	G1 - Solicitors and Counsel are expected to be familiar with “A Guide to Commencing Proceedings in the Court of Appeal Criminal Division” copies of which are available from any Crown Court Centre. The Guide is also available on the GOV.UK website (Court of Appeal Criminal Division – Guidance for advocates.)
	G2 R v McCook - The Court stated in <u>R v Achogbuo</u> [2014] EWCA Crim 567 that it is the fundamental duty of advocates and solicitors to exercise due diligence when making applications to the Court. The guidance by the Lord Chief Justice in the case of <u>R v McCook</u> [2014] EWCA Crim 734 makes clear that in any case where fresh representatives are instructed, it is necessary for them to approach the solicitors and/or counsel who acted at trial to ensure that the factual basis upon which the grounds are premised is correct. In addition, <u>R v Lee</u> [2014] EWCA Crim 2928 (see para. 8-9) clarified that in addition to approaching the trial representatives, steps to obtain objective and independent evidence in support of the grounds will also be required to establish the facts. Any application lodged by fresh representatives should be accompanied by a declaration that due diligence in accordance with <u>McCook</u> has been completed.

Section H

H1 Grounds of appeal - If positive advice on appeal was given it should always be incorporated into the same document as the grounds of appeal, as a single document. **Grounds must comply with the requirements of Crim PR 39.3 – see H2 below.** Wording such as “the conviction is unsafe” or “the sentence is in all the circumstances too severe” will be ineffective as grounds unless accompanied by detailed reasons. Ineffective applications will be rejected, causing delay and possibly making it necessary for an extension of time to be sought (see notes for section D.)

An appeal against **conviction** is not another trial which looks again at the facts of the case in the way the jury did to decide if the appellant is guilty or innocent. The Court of Appeal will only be concerned with whether the conviction is unsafe and will consider issues such as: whether the trial as a whole was fair; whether the trial Judge made the correct legal rulings during the course of the trial (for example, in relation to disclosure of evidence, the admissibility of evidence or a submission of no case to answer); whether the trial Judge fairly summed up the case to the jury with the appropriate legal directions; “fresh evidence” that was not presented at trial.

An appeal against **sentence** will only succeed if the Court of Appeal considers that the sentence is “**manifestly excessive**” (i.e. the sentence is too high given the facts of the offence or in light of any available personal mitigation) and/or “**wrong in principle**” (i.e. the sentencing Judge made some mistake when imposing the sentence. For example, there was no power to pass the particular sentence imposed or the sentence was passed on some incorrect factual or legal basis). Grounds should therefore explain why the sentence was “manifestly excessive” and/or “wrong in principle”.

An appeal against a **Confiscation order** will not succeed if it is just asserted that the order should not have been made. The Court of Appeal will only be concerned with whether the order was lawfully made (e.g. the proper procedure was followed) and that no errors have been made in the assessment of the benefit and/or the available amount. Grounds should explain why the order was not lawfully made and/or why the assessment of the benefit and/or the available amount was wrong.

H2 Compliance with Criminal Procedure Rules (Crim PR 39.3) - The Grounds of Appeal must be attached to the relevant notice of application. They should be attached separately for conviction, sentence, or other order, under appropriate headings.

An appeal notice **must**:

- 1) Identify each ground of appeal on which the appellant relies;
- 2) Identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against conviction (see notes on transcripts at F above);
- 3) Identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
- 4) 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;

- 5) Identify any other document or thing that the appellant thinks the court will need to decide the appeal (Please Note: any report relied upon and which was not retained by the Crown Court must be copied and attached to this application form).

The grounds of appeal **must**:

- 1) Include in no more than the first two pages a summary of the grounds that makes what then follows easy to understand;
- 2) In each ground of appeal identify the event or decision to which that ground relates;
- 3) 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;
- 4) Concisely outline each argument in support of each ground;
- 5) Number each ground consecutively, if there is more than one;
- 6) Identify any relevant authorities and;
 - i. state the proposition of law that the authority demonstrates, and
 - ii. identify the parts of the authority that support that proposition; and
- 7) Where the Criminal Cases Review Commission has referred a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference.

NB:

The grounds must be signed and it should be clear from the signature who has drafted the grounds. Where grounds have been settled by counsel they must be signed by counsel with the name of counsel printed underneath. However, if sending electronically, counsel or an appellant in person may type their signature and need not physically sign the grounds.

If an extension of time is needed, the detailed reasons for the delay must be attached to the grounds of appeal, preferably under a separate heading – grounds for extension of time.

**Section I -
Other
information**

How to lodge Forms NG and Grounds of Appeal

With effect from 1 October 2018, Forms NG and Grounds of Appeal are to be **lodged directly with the Criminal Appeal Office** and not with the Crown Court where the appellant was convicted or sentenced. From this date, the Crown Court will no longer accept Forms NG and will return these to the sender.

Forms NG and Grounds of Appeal should be lodged once by email or post, **not by both** methods. Where possible, they should be lodged **by email**.

Legal representatives please note:

At the present time, legal representatives should **not** upload Forms NG and the Grounds of Appeal to the Crown Court Digital Case System (DCS).

Electronically by email:

Forms NG, Grounds of Appeal and other supporting documents should be lodged as separate PDF documents and attached to a **single** email not exceeding 10MB. If, exceptionally, it is not possible to send a single email, then large documents should be broken down into parts that fall within that size limit and emails should be clearly marked as part 1 of 2, part 2 of 2 etc.

Applications must be lodged at the following address:

applications@criminalappealoffice.justice.gov.uk

The Criminal Appeal Office will not accept service of new applications at other email addresses.

The subject of the email should be in the following format: Form NG - surname of the applicant - name of the Crown Court where convicted and / or sentenced.

Attachments should be clearly identified using the following naming conventions: "Form NG", "Grounds", "Appendix 1", "List of Authorities", "Form B", "Form W" and "Unreported Cases".

DCS

Please note that duplicates of documents uploaded to the DCS system should not be sent as appendices. Instead, a hyperlink to the documents should be provided in the Grounds of Appeal. Alternatively, the Grounds should provide the details of the section in which the document has been uploaded and provide the name of the document, as used on the DCS system, so that it may easily be identified.

Where possible, documents should be converted to PDF from their original electronic version, rather than scanned as images (scanned documents increase the size of the email which may affect sending).

Documents should not be encrypted or password protected.

Legal representatives should make sure they provide their secure email address for the purposes of correspondence and service of documents.

The date of service for new applications lodged by email will be the day on which it is sent, if that day is a business day and if sent no later than 2:30pm on that day, otherwise the date of service will be on the next business day after it was sent.

	<p><i>By post:</i></p> <p>If you do not have access to an email account, you should post Form NG and the Grounds of Appeal to The Registrar, Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL.</p> <p>IMPORTANT: Checking for an acknowledgement of receipt:</p> <p>The Criminal Appeal Office will send a letter to the applicant and their legal representatives (if represented) to acknowledge receipt of Form NG and the Grounds of Appeal. The letter will provide a case reference number that is to be quoted in correspondence and when making enquiries. If you have not received an acknowledgment letter within 7 days of lodging the appeal, then please contact the Registry by telephone on 020 7947 7344 or by emailing: registry@criminalappealoffice.justice.gov.uk</p>
	<p>The Criminal Procedure Rules and related forms are available on line at: http://www.justice.gov.uk/courts/procedure-rules/criminal/forms</p>
	<p>Where an appellant has been granted permission to appeal, s/he is entitled to be present on the hearing of the appeal and for appellants in custody this will generally be via live link. If an appellant is in custody and wishes to be present at any hearing for which permission to be present is required, s/he must apply for permission in writing to the Registrar (see above for address).</p>
	<p>If you have any comments or feedback about this form please provide them to the Criminal Appeal Office General Office on 020 7947 6011 or e-mail: generaloffice@criminalappealoffice.justice.gov.uk</p>
<p>Section J</p>	<p>Appellants in custody – If an appellant is in custody, the completed Form NG and any attachments must be handed to the Prison Officer for dispatch to the Criminal Appeal Office. It is important that Prison Officers sign and date this section to show the day when the form was handed to them by the appellant. (See section D about timing.)</p>