

The Supreme Court of the United Kingdom

Practice Direction 12

Criminal Proceedings

Section 1 General Note and the Jurisdiction of the Supreme Court in Criminal Proceedings

Introduction

12.1.1 The procedure of the Supreme Court is regulated by statute, by the Supreme Court Rules and by the practice directions which supplement the Rules. Copies of these and other documents may be downloaded from www.supremecourt.gov.uk.

12.1.2 Practice Directions 1-11 and 13 governing civil proceedings apply to criminal proceedings in the Supreme Court subject to any modifications or additional provisions made by this Practice Direction.

Right of appeal

12.1.3 The right of appeal to the Supreme Court is regulated by statute and subject to statutory restrictions. The principal statutes for criminal appeals (as amended in most cases by section 40 of, and Schedule 9 to, the Act) are:

the Administration of Justice Act 1960;
the Criminal Appeal Act 1968;
the Courts-Martial (Appeals) Act 1968;
the Administration of Justice Act 1969;
the Judicature (Northern Ireland) Act 1978;
the Criminal Appeal (Northern Ireland) Act 1980;
the Proceeds of Crime Act 2002;
the Extradition Act 2003;
the Criminal Justice Act 2003;
the Serious Organised Crime and Police Act 2005.

Every applicant for permission to appeal must comply with the statutory requirements before the application can be considered by the Court. The Human Rights Act 1998 applies to the Court in its judicial capacity. But that Act does not confer any general right of appeal to the Court, or any right of appeal in addition to or superseding any right of appeal provided for in Acts passed before the coming into force of the Human Rights Act 1998.

England and Wales and Northern Ireland

12.1.4 An appeal to the Supreme Court may only be brought with the permission of the court below or, if refused by that court, with the permission of the Supreme Court. Subject to paragraphs 12.2.2 – 12.2.4, in criminal matters such permission may not be granted unless the court below has issued the certificate referred to in paragraph 12.2.1.

12.1.5 Subject to paragraphs 12.1.4 and 12.2.1-12.2.6, an application for permission to appeal to the Supreme Court in a criminal matter may be made by either the defendant or the prosecutor, as follows:

- a. from any decision of the Court of Appeal Criminal Division in England and Wales on an appeal to that court¹;
- b. from any decision of the Courts-Martial Appeal Court on an appeal to that court²;
- c. from any decision of the Court of Appeal in Northern Ireland on an appeal to that court by a person convicted on indictment³;
- d. from any decision of the Court of Appeal in Northern Ireland in a criminal cause or matter on a case stated by a county court or magistrates' court⁴;
- e. from any decision of the High Court of Justice in England and Wales in a criminal cause or matter⁵;
- f. from any decision of the High Court of Justice in Northern Ireland in a criminal cause or matter⁶.

Scotland

12.1.6 No appeal lies to the Supreme Court from criminal proceedings in the High Court of Justiciary in Scotland.

Criminal contempt of court cases

12.1.7 In cases involving criminal contempt of court, an appeal lies to the Supreme Court at the instance of the defendant only and, in respect of an application for committal or attachment, at the instance of the applicant from any decision of the Court of Appeal Criminal Division, the Courts-Martial Appeal Court or the High Court⁷.

Section 2 Applications for Permission

2. Certificate of point of law

12.2.1 Subject to paragraphs 12.2.2 – 12.2.4, permission to appeal to the Supreme Court in a criminal matter may only be granted if it is certified by the court below that a point of law of general public importance is involved in the decision of that court, and it appears to that court or to the Supreme Court that the point is one that ought to be considered by the Supreme Court⁸. An application for permission to appeal without the required certificate may not be filed (paragraph 12.4.3), except as provided by paragraphs 12.2.2 – 12.2.4.

¹ Criminal Appeal Act 1968 s33(1) (as amended); Criminal Justice Act 2003, Part 9.

² Courts-Martial (Appeals) Act 1968 s39(1).

³ Judicature (Northern Ireland) Act 1978 s40(1)(b); Criminal Appeal (Northern Ireland) Act 1980 s31(1) (as amended).

⁴ Judicature (Northern Ireland) Act 1978 s41(1)(b).

⁵ Administration of Justice Act 1960 s1(1)(a) (as amended); Extradition Act 2003 ss 32, 114.

⁶ Judicature (Northern Ireland) Act 1978 s41(1)(a); Extradition Act 2003 ss 32, 114.

⁷ Administration of Justice Act 1960 s13; Judicature (Northern Ireland) Act 1978 s44. For appeals in cases involving civil contempt of court see Practice Direction 1 paragraph 2.1.8.

⁸ Criminal Appeal Act 1968 s 33(2); Administration of Justice Act 1960 s 1(2); Courts-Martial (Appeals) Act 1968 s39(2); Judicature (Northern Ireland) Act 1978 s41(2); Criminal Appeal (Northern Ireland) Act 1980 s31(2); Extradition Act 2003 ss 32, 114; Proceeds of Crime Act (Appeals under Part 4) Order 2003, SI 2003/458.

12.2.2 A certificate is not required for an appeal from a decision of the High Court in England and Wales or of the High Court in Northern Ireland on a criminal application for habeas corpus¹.

12.2.3 A certificate is not required for an appeal by a minister of the Crown or a person nominated by him, a member of the Scottish Executive, a Northern Ireland minister or a Northern Ireland department when they have been joined as a party to any criminal proceedings, other than in Scotland, by a notice given under the Human Rights Act 1998 ss. 5(1) and 5(2) and they wish to appeal under section 5(4) of that Act against any declaration of incompatibility made in those proceedings.

12.2.4 A certificate is not required in contempt of court cases where the decision of the court below was not a decision on appeal².

12.2.5 In cases where the court below has not certified a point of law of general public importance, the Supreme Court has no jurisdiction (see *Gelberg v Miller* [1961] 1 WLR 459, *Jones v DPP* [1962] AC 635).

Judicial Review: Criminal Matters

12.2.6 There is no appeal to the Court of Appeal from a refusal by a Divisional Court to grant permission to apply for judicial review in a criminal case³; and the Supreme Court has no jurisdiction to hear an appeal against a refusal by a Divisional Court of permission to apply for judicial review in a criminal case⁴. So, if a Divisional Court refuses permission to apply to it for judicial review in a criminal matter, there is no further remedy in the domestic courts. The only circumstances in which an application may be made to the Supreme Court for permission to appeal from a Divisional Court in a criminal judicial matter are when the Divisional Court certifies that a point of law of general public importance arises from its decision.

3. Time Limits

Time within which to apply for permission to appeal

12.3.1 An application for permission to appeal to the Supreme Court in a criminal matter must first be made to the court below. If the court below refuses permission to appeal, application may then be made to the Supreme Court.

12.3.2 An application to the Supreme Court for permission to appeal is made in accordance with rule 10 and Practice Direction 3. An application for permission to appeal to the Supreme Court

- a. from a decision of the Court of Appeal under s 33(1) of the Criminal Appeal Act 1968
or
- b. from a decision of a Divisional Court of the Queen's Bench Division in a criminal cause or matter under s 1(1)(a) of the Administration of Justice Act 1960

¹ Administration of Justice Act 1960 s15(3) (as amended); Judicature (Northern Ireland) Act 1978 s45(3).

² Administration of Justice Act 1960 s13(4); Judicature (Northern Ireland) Act 1978 s44(4).

³ Supreme Court Act 1981 s18(1)(a).

⁴ Administration of Justice Act 1960 s1(1) & (2) and the decisions of the House of Lords in *Re Pob Eastaway and Burkett*.

must be made within 28 days beginning with the date on which the application for permission was refused by the court below (and not the following day)¹. This date is not necessarily that on which the point of law was certified. Where the time prescribed expires on a Saturday, Sunday, bank holiday or other day on which the Registry is closed, the application is accepted as being in time if it is received on the next day on which the Registry is open.

12.3.3 An application for permission to appeal must be made within 14 days if made under one of the following provisions: ss 32(5), 114(5) of the Extradition Act 2003; ss 33, 44 and 66 of the Proceeds of Crime Act 2002²; and, ss 183, 193 and 214 of the Proceeds of Crime Act 2002³. A 14 day time limit also applies to an application to refer a case pursuant to the Attorney General's Reference procedure under s 36(5) of the Criminal Justice Act 1988⁴.

Application for extension of time to file application for permission

12.3.4 Subject to paragraph 12.3.5, the Supreme Court or the court below may, on application made at any time by the defendant and in certain limited circumstances the prosecutor⁵, extend the time within which application for permission to appeal to the Supreme Court may be made to the Supreme Court or to that court⁶. Such an application to the Supreme Court is incorporated in the application for permission itself, and should set out briefly the reason(s) why the application is being presented outside the statutory period.

12.3.5 No extension may be granted in respect of applications made under ss 32 and 114 of the Extradition Act 2003.

Public funding and legal aid

12.3.6 Paragraph 8.12 of Practice Direction 8 applies to appeals in criminal proceedings. In criminal proceedings, depending on the route of appeal, application should be made to the court appealed from or, in Northern Ireland, to the Legal Aid Committee.

12.3.7 A copy of the order appealed from must be submitted by the appellant with the notification of the application for funding. The period within which the application for permission to appeal or notice of appeal (as the case may be) must be filed is then extended to 28 days after the final determination of the application for funding, including any appeals. An extension may not be granted to an appellant under the Extradition Act 2003⁷.

12.3.8 A representation order will usually provide for junior counsel and solicitors at the permission stage with the addition of leading counsel if permission is granted.

¹ Criminal Appeal Act 1968 s34(1) (as amended); Administration of Justice Act 1960 s2(1) (as amended).

² Proceeds of Crime Act 2002 (appeals under Part 2) Order 2003 (SI 2003 No 82), Part 3, Article 12.

³ Proceeds of Crime Act 2002 (appeals under Part 4) Order 2003 (SI 2003 No 483), Part 3, Article 12.

⁴ Criminal Justice Act 1988 Sch 3, para 4.

⁵ Criminal Appeal Act 1968, ss 33(1B), 34(2).

⁶ Criminal Appeal Act 1968 s 34(2); Administration of Justice Act 1960 s 2(3); Courts-Martial (Appeals) Act 1968 s 40(2); Criminal Appeal (Northern Ireland) Act 1980 s 32(2); Judicature (Northern Ireland) Act 1978 Schedule 1, paragraph 1(2). Section 1A of the Geneva Convention Act 1957 makes, in relation to protected prisoners, certain extensions to the time limits in the Administration of Justice Act 1960, the Criminal Appeal Act 1968, the Courts-Martial (Appeals) Act 1968 and the Criminal Appeal (Northern Ireland) Act 1980.

⁷ Extradition Act 2003 ss 32, 114.

4. Application for Permission to Appeal

Form of Application

12.4.1 The provisions of Practice Direction 3 govern the form of applications for permission to appeal.

Case title

12.4.2 In applications where a prosecuting authority is the appellant, the prosecuting authority should be described as follows: “Director of Public Prosecutions (*or other prosecuting authority*) (on behalf of Her Majesty)”.

12.4.3 Subject to paragraphs 12.2.2 – 12.2.4, the Registry cannot issue any application for permission to appeal that is not accompanied by the certificate from the court below required by statute, certifying a point of law of general public importance (see paragraph 12.2.1 above).

Service

12.4.4 In habeas corpus appeals and/or in appeals concerning extradition, the application must be served on the government that is seeking extradition or on the Director of Public Prosecutions if he is acting for that government.

Interpretation and translations in proceedings in the Supreme Court¹

12.4.5 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings applies to proceedings in the Supreme Court. The solicitors to any applicant or respondent who is a suspected, accused or convicted person in the context of the proceedings shall notify the Registry upon, or as soon as they have notice of, the filing of an application for permission to appeal, if it will be necessary to provide translations or interpretation at any stage during the proceedings in compliance with the Directive.²

5. Costs

12.5.1 Where an application for permission to appeal is determined without an oral hearing, costs may be awarded as follows:

- a. to a publicly funded or legally aided appellant, reasonable costs incurred in preparing papers for the Appeal Panel;
- b. to a publicly funded or legally aided respondent, only those costs necessarily incurred in attending the client, attending the appellant’s solicitors, considering the application, filing notice of objection and, where applicable, preparing respondent’s objections to the application;
- c. to an unassisted respondent where the appellant is publicly funded or legally aided, payment in accordance with the relevant statutory provisions^{3 4} of costs as specified at (b) above;

¹ Amended Aug 2013

² Amended Aug 2013

³ September 2015.

⁴ Or s 18 Legal Aid Act 1988; or, in Scotland, pursuant to s 19 Legal Aid (Scotland) Act 1986, or in Northern Ireland, pursuant to Article 16 Legal Aid Advice and Assistance (N.I.) Order 1981.

- d. to an appellant or respondent, payment out of central funds, pursuant to s 16 or s 17 of the Prosecution of Offences Act 1985, of costs incurred at (a) or (b) above, as the case may be;
- e. to a respondent where neither party is publicly funded or legally aided, costs as specified at (b) above to be paid by the appellant.

Where costs are sought under (c), (d) or (e) above, application may be made by letter addressed to the Registrar or may be included in a bill of costs filed in the Registry conditional upon the application being granted.

12.5.2 Where an application for permission to appeal is referred for an oral hearing and is dismissed, application for costs must be made by the respondent at the end of the hearing. No order for costs will be made unless requested at that time.

12.5.3 Where permission to appeal is granted, the costs of the permission application become costs in the appeal.

12.5.4 Bills of costs for assessment must be filed within three months from the date of the decision of the Appeal Panel or the date on which an application for permission is withdrawn. If an extension of the three months period is desired, application must be made in writing to the Registrar and copies of all such correspondence sent to all interested parties. In deciding whether to grant an application for an extension of time made after the expiry of the three month period the Registrar takes into account the circumstances set out in paragraph 6.2 of Practice Direction 13.

6. Fees

12.6.1 No fee is payable at any stage of an application for permission to appeal in a criminal matter. Fees are payable on the assessment of a bill of costs.

Section 3 Appeals

7. Time Limits

12.7.1 Apart from appeals under the Extradition Act 2003, a notice of appeal must be filed in accordance with rule 19.

12.7.2 Appeals under the Extradition Act 2003 must be filed within 28 days of the grant of permission, starting with the day on which permission is granted. The time for doing so may not be extended¹.

8. Security for Costs

12.8.1 No security for costs is required in criminal appeals.

9. Statement of Facts and Issues

12.9.1 The provisions of Practice Direction 5 apply to appeals in criminal proceedings.

¹ Extradition Act 2003 ss 32, 114.

12.9.2 In any appeal under the Criminal Appeal Act 1968, the statement of facts and issues must state clearly whether any grounds of appeal have been left undetermined by the Court of Appeal (see also paragraph 12.11.2).

10. Filing of Statement and Appendix

Respondents' consent

12.10.1 The provisions of Practice Direction 5 apply to appeals in criminal proceedings but it is not the practice in criminal appeals to require the consent of the respondents to applications for extension of time.

11. Appellants' and Respondents' Cases

12.11.1 The provisions of Practice Direction 6 apply to appeals in criminal proceedings.

12.11.2 In any appeal under the Criminal Appeal Act 1968 in which grounds of appeal have been left undetermined by the Court of Appeal (see paragraph 12.9.2), each party should include in their case submissions on the merits of those grounds and on how they would seek to have them disposed of by the Court.

12. Core Volumes

Form of Core Volumes

12.12.1 The provisions of Practice Direction 6 apply to appeals in criminal proceedings.

12.12.2 It is not necessary for the appellants' solicitors to produce additional volumes for the use of victims attending the hearing. The Registry provides the necessary documents from among the number produced for the use of the Court.

13. Bail

12.13.1 The Supreme Court does not grant bail. Applications for bail should be made to the court below. Where bail is granted to a party to an appeal to the Court, the Registrar should be notified.

12.13.2 The attendance of a party to an appeal who is in custody is not normally required or permitted. Where the attendance of a party in custody is required, his solicitors will be informed by the Registrar in writing.

12.13.3 It should be noted that where a party was on bail pending the hearing of the appeal, surrender is usually required on the first day of the hearing.

14. Exhibits

12.14.1 Parties who require exhibits to be available for inspection at the hearing must apply to the Registrar for permission for the exhibits to be brought to the Court before the hearing.

15. The Code of Practice for Victims of Crime

12.15.1 The Victims' Code of Practice governs the services to be provided in England and Wales to victims of criminal conduct that has occurred in England and Wales. The Code is issued by the Secretary of State for Justice under s32 of the Domestic Violence, Crime and Victims Act 2004. The Court applies the Code.

12.15.2 Accordingly, all applications for permission to appeal and all appeals are examined to establish whether a victim can be identified and, if so, to determine what services are required to be provided to the victim.

12.15.3 In giving effect to paragraph 12.15.2 the Registrar may consult the Treasury Solicitor, the Court of Appeal Criminal Division and other relevant persons to obtain any necessary information.

12.15.4 The Registry may either directly or through the joint police/CPS Witness Care Units contact victims to inform them that an application for permission to appeal or an appeal has been filed, to explain the appeals procedure, and to report progress on the application and/or appeal, including the date set for the hearing.

12.15.5 Victims may attend the hearing of an appeal or application for permission to appeal or the handing down of judgment. The Registry arranges such attendance and provides the case papers.

12.15.6 If permission to appeal is granted by an Appeal Panel, the Registrar notifies the joint police/CPS Witness Care Units no later than one working day after the day on which permission to appeal has been granted.

12.15.7 The Registry notifies the joint police/CPS Witness Care Units of the result of the appeal no later than one working day after the day of the result.

12.15.8 The Scottish Strategy for Victims and the Code of Practice for Victims of Crime in Northern Ireland do not cover proceedings in the Supreme Court. In practice the Registry will, with the assistance of the relevant authorities in Scotland and Northern Ireland, seek to provide appropriate services for victims in Scotland and Northern Ireland.¹

Interpretation and translations in proceedings in the Supreme Court²

12.16.1 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings applies to proceedings in the Supreme Court. The solicitors to any applicant or respondent who is a suspected, accused or convicted person in the context of the proceedings shall notify the Registry upon, or as soon as they have notice of, the filing of a notice of appeal, if it will be necessary to provide translations or interpretation at any stage during the proceedings in compliance with the Directive.³

¹ Amended Nov 2013

² Updated Aug 2013

³ Updated Aug 2013