



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 10

#### RETRIAL FOR SERIOUS OFFENCES

##### *Application for retrial*

#### **76 Application to Court of Appeal**

- (1) A prosecutor may apply to the Court of Appeal for an order—
  - (a) quashing a person's acquittal in proceedings within section 75(1), and
  - (b) ordering him to be retried for the qualifying offence.
- (2) A prosecutor may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in the United Kingdom, for—
  - (a) a determination whether the acquittal is a bar to the person being tried in England and Wales for the qualifying offence, and
  - (b) if it is, an order that the acquittal is not to be a bar.
- (3) A prosecutor may make an application under subsection (1) or (2) only with the written consent of the Director of Public Prosecutions.
- (4) The Director of Public Prosecutions may give his consent only if satisfied that—
  - (a) there is evidence as respects which the requirements of section 78 appear to be met,
  - (b) it is in the public interest for the application to proceed, and
  - (c) any trial pursuant to an order on the application would not be inconsistent with obligations of the United Kingdom under Article 31 or 34 of the Treaty on European Union relating to the principle of *ne bis in idem*.
- (5) Not more than one application may be made under subsection (1) or (2) in relation to an acquittal.

## **77 Determination by Court of Appeal**

- (1) On an application under section 76(1), the Court of Appeal—
  - (a) if satisfied that the requirements of sections 78 and 79 are met, must make the order applied for;
  - (b) otherwise, must dismiss the application.
- (2) Subsections (3) and (4) apply to an application under section 76(2).
- (3) Where the Court of Appeal determines that the acquittal is a bar to the person being tried for the qualifying offence, the court—
  - (a) if satisfied that the requirements of sections 78 and 79 are met, must make the order applied for;
  - (b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.
- (4) Where the Court of Appeal determines that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.

## **78 New and compelling evidence**

- (1) The requirements of this section are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.
- (2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).
- (3) Evidence is compelling if—
  - (a) it is reliable,
  - (b) it is substantial, and
  - (c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.
- (4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.
- (5) For the purposes of this section, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

## **79 Interests of justice**

- (1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order under section 77.
- (2) That question is to be determined having regard in particular to—
  - (a) whether existing circumstances make a fair trial unlikely;
  - (b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;
  - (c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by a prosecutor to act with due diligence or expedition;

- (d) whether, since those proceedings or, if later, since the commencement of this Part, any officer or prosecutor has failed to act with due diligence or expedition.
- (3) In subsection (2) references to an officer or prosecutor include references to a person charged with corresponding duties under the law in force elsewhere than in England and Wales.
- (4) Where the earlier prosecution was conducted by a person other than a prosecutor, subsection (2)(c) applies in relation to that person as well as in relation to a prosecutor.

## **80 Procedure and evidence**

- (1) A prosecutor who wishes to make an application under section 76(1) or (2) must give notice of the application to the Court of Appeal.
- (2) Within two days beginning with the day on which any such notice is given, notice of the application must be served by the prosecutor on the person to whom the application relates, charging him with the offence to which it relates or, if he has been charged with it in accordance with section 87(4), stating that he has been so charged.
- (3) Subsection (2) applies whether the person to whom the application relates is in the United Kingdom or elsewhere, but the Court of Appeal may, on application by the prosecutor, extend the time for service under that subsection if it considers it necessary to do so because of that person's absence from the United Kingdom.
- (4) The Court of Appeal must consider the application at a hearing.
- (5) The person to whom the application relates—
  - (a) is entitled to be present at the hearing, although he may be in custody, unless he is in custody elsewhere than in England and Wales or Northern Ireland, and
  - (b) is entitled to be represented at the hearing, whether he is present or not.
- (6) For the purposes of the application, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—
  - (a) order the production of any document, exhibit or other thing, the production of which appears to the court to be necessary for the determination of the application, and
  - (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.
- (7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

## **81 Appeals**

- (1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.
- (2) In section 33 (right of appeal to House of Lords), after subsection (1A) there is inserted—
  - “(1B) An appeal lies to the House of Lords, at the instance of the acquitted person or the prosecutor, from any decision of the Court of Appeal on an application

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under section 76(1) or (2) of the Criminal Justice Act 2003 (retrial for serious offences).”

(3) At the end of that section there is inserted—

“(4) In relation to an appeal under subsection (1B), references in this Part to a defendant are references to the acquitted person.”

(4) In section 34(2) (extension of time for leave to appeal), after “defendant” there is inserted “or, in the case of an appeal under section 33(1B), by the prosecutor”.

(5) In section 38 (presence of defendant at hearing), for “has been convicted of an offence and” substitute “has been convicted of an offence, or in whose case an order under section 77 of the Criminal Justice Act 2003 or a declaration under section 77(4) of that Act has been made, and who”.

## **82 Restrictions on publication in the interests of justice**

(1) Where it appears to the Court of Appeal that the inclusion of any matter in a publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the court may order that the matter is not to be included in any publication while the order has effect.

(2) In subsection (1) “retrial” means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under section 77.

(3) The court may make an order under this section only if it appears to it necessary in the interests of justice to do so.

(4) An order under this section may apply to a matter which has been included in a publication published before the order takes effect, but such an order—

- (a) applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication), and
- (b) does not otherwise affect the earlier publication.

(5) After notice of an application has been given under section 80(1) relating to the acquitted person and the qualifying offence, the court may make an order under this section only—

- (a) of its own motion, or
- (b) on the application of the Director of Public Prosecutions.

(6) Before such notice has been given, an order under this section—

- (a) may be made only on the application of the Director of Public Prosecutions, and
- (b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by officers.

(7) The court may at any time, of its own motion or on an application made by the Director of Public Prosecutions or the acquitted person, vary or revoke an order under this section.

(8) Any order made under this section before notice of an application has been given under section 80(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.

- (9) An order under this section which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time—
- (a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application, or
  - (b) if he is tried pursuant to such an order, at the conclusion of the trial.
- (10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication or any power, under an enactment or otherwise, to impose such a prohibition or restriction.
- (11) In this section—
- “programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42),
  - “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings,
  - “relevant programme” means a programme included in a programme service.

### **83 Offences in connection with publication restrictions**

- (1) This section applies if—
- (a) an order under section 82 is made, whether in England and Wales or Northern Ireland, and
  - (b) while the order has effect, any matter is included in a publication, in any part of the United Kingdom, in contravention of the order.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme—
- (a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and
  - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
- is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) If an offence under this section committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,
- an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (7) If the affairs of a body corporate are managed by its members, “director” in subsection (6) means a member of that body.

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- (8) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Proceedings for an offence under this section may not be instituted—
- (a) in England and Wales otherwise than by or with the consent of the Attorney General, or
  - (b) in Northern Ireland otherwise than by or with the consent of—
    - (i) before the relevant date, the Attorney General for Northern Ireland, or
    - (ii) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.
- (11) In subsection (10) “the relevant date” means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.