

2003 No. 82

PROCEEDS OF CRIME

**The Proceeds of Crime Act 2002 (Appeals under Part 2)
Order 2003**

Made - - - - - *21st January 2003*

Laid before Parliament *28th January 2003*

Coming into force - - *24th March 2003*

The Secretary of State, in exercise of the powers conferred on him by sections 89(3), 90(2) and 459(2) of the Proceeds of Crime Act 2002(a), hereby makes the following Order:

PART 1—INTRODUCTION

Citation and commencement

1. This Order may be cited as the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and shall come into force on 24th March 2003.

Interpretation

2. In this Order—
- “the Act” means the Proceeds of Crime Act 2002;
 - “the registrar” means the registrar of criminal appeals of the Court of Appeal;
 - references to the Court of Appeal are to the criminal division of the Court of Appeal;
 - references to a single judge are to any judge of the Court of Appeal or of the High Court.

PART 2—APPEALS TO COURT OF APPEAL

Initiating procedure

3.—(1) A person who wishes to obtain the leave of the Court of Appeal to appeal to the Court of Appeal under Part 2 of the Act shall give notice of application for leave to appeal, in such manner as may be directed by rules of court.

- (2) Notice of application for leave to appeal shall be given within—
- (a) 28 days from the date of the decision appealed against, in the case of an appeal under section 31 of the Act; or
 - (b) 14 days from the date of the decision appealed against, in the case of an appeal under section 43 or 65 of the Act.
- (3) The time for giving notice under this article may be extended by the Court of Appeal.

(a) 2002 c. 29.

Disposal of groundless appeal or application for leave to appeal

4. If it appears to the registrar that a notice of application for leave to appeal to the Court of Appeal under Part 2 of the Act does not show any substantial ground of appeal, he may refer the application for leave to the Court of Appeal for summary determination; and where the case is so referred the Court of Appeal may, if they consider that the application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the application for leave summarily, without calling on anyone to attend the hearing.

Preparation of case for hearing

5.—(1) The registrar shall—

- (a) take all necessary steps for obtaining a hearing of any application for leave to appeal to the Court of Appeal under Part 2 of the Act of which notice is given to him and which is not referred and dismissed summarily under article 4;
- (b) where an application for leave to appeal to the Court of Appeal under Part 2 of the Act is granted, take all necessary steps for obtaining a hearing of an appeal; and
- (c) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the application for leave to appeal under Part 2 of the Act or the appeal under Part 2 of the Act.

(2) A party to an appeal under Part 2 of the Act may obtain from the registrar any documents or things, including copies or reproductions of documents, required for his appeal, in accordance with rules of court.

(3) The registrar may make charges in accordance with such rules of court and with scales and rates fixed from time to time by the Treasury.

Right of defendant to be present

6.—(1) The defendant shall be entitled to be present, if he wishes it, on the hearing of any appeal to the Court of Appeal under Part 2 of the Act to which he is a party, although he may be in custody.

(2) But if the defendant is in custody, he shall not be entitled to be present—

- (a) where the appeal is on some ground involving a question of law alone; or
- (b) on an application for leave to appeal; or
- (c) on any proceedings preliminary or incidental to an appeal,

unless the Court of Appeal gives him leave to be present.

Evidence

7.—(1) For the purposes of an appeal under Part 2 of the Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the appeal;
- (b) order any witness to attend for examination and be examined before the Court of Appeal; and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—

- (a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence in the proceedings giving rise to the appeal.

(3) The Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under paragraph (1)(b) to be conducted before any judge or officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.

Powers of Court of Appeal which are exercisable by single judge

8.—(1) There may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions the powers—

- (a) to give leave to appeal to the Court of Appeal under Part 2 of the Act;
- (b) to extend the time within which notice of application for leave to appeal may be given under article 3(3);
- (c) to allow, under article 6, the defendant to be present at any proceedings which he would not otherwise be entitled to attend; and
- (d) to order a witness to attend for examination under article 7.

(2) If the single judge refuses an application on the part of any party to exercise in his favour any of the powers specified in paragraph (1), the party shall be entitled to have his application determined by the Court of Appeal.

Powers of Court of Appeal which are exercisable by registrar

9.—(1) The following powers of the Court of Appeal under this Order may be exercised by the registrar—

- (a) the power to extend the time within which notice of application for leave to appeal may be given under article 3(3); and
- (b) the power to order a witness to attend for examination under article 7.

(2) If the registrar refuses an application on the part of any party to exercise in his favour any of the powers specified in paragraph (1), the party shall be entitled to have his application determined by a single judge.

Transcripts

10.—(1) Arrangements may be made in accordance with rules of court—

- (a) for the making of a record (whether by means of shorthand notes, by mechanical means or otherwise) of any proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Act; and
- (b) for the making and verification of a transcript of any such record and for supplying the transcript (on payment of such charge, if any, as may be fixed for the time being by the Treasury) to the registrar for the use of the Court of Appeal or any judge exercising the powers of a judge of the Court, and to such other persons and in such circumstances as may be prescribed by the rules.

(2) Without prejudice to paragraph (1), the Secretary of State may, if he thinks fit, in any case direct that a transcript shall be made of any such record made in pursuance of the arrangements and be supplied to him.

(3) The cost—

- (a) of making any such record in pursuance of the arrangements; and
- (b) of making and supplying in pursuance of this article any transcript ordered to be supplied to the registrar or the Secretary of State,

shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament; and the cost of providing and installing at a court any equipment required for the purpose of making such a record or transcript shall also be defrayed out of moneys so provided.

PART 3—APPEAL TO HOUSE OF LORDS

Leave to appeal to House of Lords

11. An appeal to the House of Lords under section 33, 44 or 66 of the Act lies only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.

Application for leave to appeal

12.—(1) An application to the Court of Appeal for leave to appeal to the House of Lords under section 33, 44 or 66 of the Act shall be made within the period of 14 days beginning with the date on which Court of Appeal gives reasons for the decision which is the subject of the appeal; and an application to the House of Lords for leave shall be made within the period of 14 days beginning with the date on which the application for leave is refused by the Court of Appeal.

(2) The House of Lords or the Court of Appeal may, upon application made at any time by the appellant, extend the time within which an application may be made by him to that House or the Court under paragraph (1).

(3) An appeal to the House of Lords shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this Order an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

Hearing and disposal of appeal

13.—(1) An appeal under section 33, 44 or 66 of the Act shall not be heard and determined by the House of Lords unless there are present at least three of the persons designated Lords of Appeal by section 5 of the Appellate Jurisdiction Act 1876(a).

(2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of the said Act of 1876 may direct that the decision of that committee shall be taken on behalf of the House.

Presence of defendant at hearing

14. A defendant who is in custody shall not be entitled to be present on the hearing of an appeal to the House of Lords under section 33, 44 or 66 of the Act or of any proceedings preliminary or incidental thereto, except where an order of the House of Lords authorises him to be present, or where the House or the Court of Appeal, as the case may be, give him leave to be present.

Powers of Court of Appeal under Part 3 which are exercisable by single judge

15. There may be exercised by a single judge the powers of the Court of Appeal—

- (a) to extend the time for making an application for leave to appeal under article 12(2); and
- (b) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal under article 14,

but where the judge refuses an application to exercise any of the said powers the applicant shall be entitled to have the application determined by the Court of Appeal.

Home Office
21st January 2003

Bob Ainsworth
Parliamentary Under-Secretary of State

(a) 1876 c. 59 (39 & 40 Vict).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision corresponding to provision in the Criminal Appeal Act 1968 (“the 1968 Act”) with modifications for the purposes of three new appeals introduced by the Proceeds of Crime Act 2002 (“the 2002 Act”). The first is an appeal under section 31 of the 2002 Act to the Court of Appeal (and from there to the House of Lords under section 33 of the 2002 Act) by the prosecutor or Director of the Assets Recovery Agency against a confiscation order or a failure of the Crown Court to make a confiscation order. The second is an appeal under section 43 of the 2002 Act to the Court of Appeal (and from there to the House of Lords under section 44 of the 2002 Act) in respect of decisions of the Crown Court about restraint orders. The third is an appeal under section 65 of the 2002 Act to the Court of Appeal (and from there to the House of Lords under section 66 of the 2002 Act) in respect of decisions of the Crown Court about receivers.

Article 3 makes provision corresponding to section 18 of the 1968 Act and gives the time limit for giving notice of application for leave to appeal to the Court of Appeal.

Article 4 makes provision corresponding to section 20 of the 1968 Act and allows the registrar of criminal appeals of the Court of Appeal to refer groundless applications for leave to appeal to the Court of Appeal for summary determination.

Article 5 makes provision corresponding to section 21 of the 1968 Act and provides that the registrar must organise hearings for applications for leave to appeal and appeals. In the case of appeals in respect of confiscation orders, the registrar must also organise documents and exhibits for the appeal and provide them, in accordance with rules of court to the parties.

Article 6 makes provision corresponding to section 22 of the 1968 Act and states when a defendant who is in custody is permitted to attend the hearing of an appeal by the Court of Appeal.

Article 7 makes provision corresponding to section 23 of the 1968 Act and sets out the Court of Appeal’s powers, on an appeal under Part 2 of the Act, to order the production of documents and other evidence and require witnesses to attend.

Article 8 makes provision corresponding to section 31 of the 1968 Act and sets out which of the Court of Appeal’s powers may be exercised by a single judge.

Article 9 makes provision corresponding to section 31A of the 1968 Act and sets out which of the Court of Appeal’s powers may be exercised by the registrar.

Article 10 makes provision corresponding to section 32 of the 1968 Act and deals with transcripts of proceedings which might give rise to an appeal in the Court of Appeal.

Article 11 makes provision corresponding to section 33 of the 1968 Act and provides that an appeal to the House of Lords only lies with the leave of the Court of Appeal or the House of Lords.

Article 12 makes provision corresponding to section 34 of the 1968 Act and gives the time limit for giving notice of application for leave to appeal to the House of Lords. It makes one substantive change from the 1968 Act in that the time runs from the date on which the Court of Appeal gives reasons for a decision, rather than from the date of the decision itself.

Article 13 makes provision corresponding to section 35 of the 1968 Act and deals with the hearing and disposal of an appeal to the House of Lords.

Article 14 makes provision corresponding to section 38 of the 1968 Act and states when a defendant who is in custody is permitted to attend the hearing of an appeal by the House of Lords.

Article 15 makes provision corresponding to section 44 of the 1968 Act and sets out which powers of the Court of Appeal in relation to appeals in the House of Lords may be exercised by a single judge.

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Order 2003

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