

2012 No. 138

PROCEEDS OF CRIME, ENGLAND AND WALES

**The Proceeds of Crime Act 2002 (External Requests
and Orders) Order 2005 (England and Wales)
(Appeals under Part 2) Order 2012**

<i>Made</i> - - - -	<i>19th January 2012</i>
<i>Laid before Parliament</i>	<i>24th January 2012</i>
<i>Coming into force</i> - -	<i>29th February 2012</i>

The Secretary of State, in exercise of the powers conferred by articles 5, 47(3) and 48(2) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(a), hereby makes the following Order.

PART 1

INTRODUCTION

Citation, commencement and extent

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (England and Wales) (Appeals under Part 2) Order 2012 and shall come into force on 29th February 2012.

(2) This Order extends to England and Wales.

Interpretation

2. In this Order—

“appeal”, where used in Part 2 or 3 of this Order, means an appeal under that Part, and “appellant” has a corresponding meaning and in Part 2 of this Order includes a person who has given notice of application for leave to appeal;

“the external requests order” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005;

(a) S.I. 2005/3181. This was made under sections 444 and 459(2) of the Proceeds of Crime Act 2002 (c.29). S.I. 2005/3181 was amended by the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 (S.I. 2008/302) and by article 8 of the Constitutional Reform Act 2005 (Consequential Amendments) Order 2011 (S.I. 2011/1242). Section 444 was amended by section 108(2) and (3) of the Serious Organised Crime and Police Act 2005 (c.15) and by section 74(2)(f) of and paragraph 138 of Part 6 of Schedule 8 to the Serious Crime Act 2007 (c.27) and by paragraph 70 of Schedule 14 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976).

“procedural directions” means directions for the efficient and effective preparation of an application for leave to appeal or an appeal under this Order;

“the registrar” means the registrar of criminal appeals of the Court of Appeal;

“the Court of Appeal” means the criminal division of the Court of Appeal;

“single judge” means any judge of the Court of Appeal or of the High Court.

PART 2

APPEAL TO THE 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 article 10, 23 or 44 of the external requests order 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 28 days from the date of the decision appealed against in the case of such an appeal.

(3) The time for giving notice under this article may be extended, either before or after it expires, by the Court of Appeal.

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 article 10, 23 or 44 of the external requests order does not show any substantial ground of appeal, the registrar 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 it considers 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 article 10, 23 or 44 of the external requests order of which notice is given to the registrar 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 article 10, 23 or 44 of the external requests order 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 article 10, 23 or 44 of the external requests order or the appeal under article 10, 23 or 44 of the external requests order.

(2) A party to an appeal under article 10, 23 or 44 of the external requests order may obtain from the registrar any documents or things, including copies or reproduction 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.

Presence at hearing

6.—(1) A person shall be entitled to be present, if he so wishes, on the hearing of his appeal to the Court of Appeal under article 10, 23 or 44 of the external requests order, although he may be in custody.

(2) But a person in custody 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.

(3) The Court of Appeal may give leave to any other person who wishes to be present on the hearing of an appeal under article 10, 23 or 44 of the external requests order.

(4) The power of the Court of Appeal to hear any appeal under article 10, 23 or 44 of the external requests order, or any proceedings preliminary or incidental thereto, may be exercised although any person is for any reason not present.

(5) The Court of Appeal may give a live link direction in relation to a hearing at which:

- (a) a person is expected to be in custody but is entitled to be present (by virtue of paragraph (1) or leave given under paragraph (2)); or
- (b) a person has been given leave to be present by virtue of paragraph (3),

at any time before the beginning of that hearing.

(6) For this purpose—

- (a) a “live link direction” is a direction that the person (if he is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which he is held; and
- (b) “live link” means an arrangement by which the person is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(7) The Court of Appeal—

- (a) must not give a live link direction unless the parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
- (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a party).

Evidence

7.—(1) For the purposes of an appeal or application for leave to appeal under article 10, 23 or 44 of the external requests order, 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 connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court of Appeal (whether or not the witness was called in the proceedings from which the appeal lies); and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(2) The power conferred by paragraph (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that paragraph to—

- (a) the Court;
- (b) the appellant;
- (c) the respondent;

(d) a party to the appeal.

(3) 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 those proceedings.

(4) Paragraph (1)(c) applies to any evidence of a witness (including the appellant) who is competent but not compellable.

(5) For the purposes of an appeal or application for leave to appeal under article 10, 23 or 44 of the external requests order, the Court of Appeal may, if it thinks 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, in manner provided by rules of court, 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.

(6) In paragraph (2)(c) “respondent” includes a person who will be a respondent if leave to appeal is granted.

Powers of Court of Appeal which are exercisable by a 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 article 10, 23 or 44 of the external requests order;
- (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, a person to be present at any proceedings which he would not otherwise be entitled to attend;
- (d) to give a live link direction under article 6(5);
- (e) to order the production of any document, exhibit or other thing connected with the proceedings under article 7; and
- (f) 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 the 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);
- (b) the power to give a live link direction under article 6(5);
- (c) the power to order the production of any document, exhibit or other thing connected with the proceedings under article 7; and
- (d) 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.

Procedural directions: powers of a single judge and the registrar

10.—(1) The power of the Court of Appeal to determine an application for procedural directions under this Order may be exercised by-

- (a) a single judge, or
- (b) the registrar.

(2) A single judge may give such procedural directions as he thinks fit-

- (a) when acting under paragraph (1);
- (b) on a reference from the registrar;
- (c) of his own motion, when he is exercising, or considering whether to exercise, any power of his in relation to the application for leave to appeal or the appeal.

(3) The registrar may give such procedural directions as he thinks fit-

- (a) when acting under paragraph (1);
- (b) of his own motion.

Appeals against procedural directions

11.—(1) If the registrar gives, or refuses to give, procedural directions, a single judge may, on an application to him-

- (a) confirm, set aside or vary any procedural direction given by the registrar, and
- (b) give such procedural directions as he thinks fit.

(2) An application under paragraph (1) may be made by-

- (a) any person who gave notice of application for leave to appeal under this Order;
- (b) any other person if the procedural directions-
 - (i) relate to an application for leave to appeal and appear to need their assistance to give effect to them;
 - (ii) relate to an application for leave to appeal which is to be determined by the Court of Appeal, or
 - (iii) relate to an appeal.

Transcripts

12.—(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 article 10, 23 or 44 of the external requests order; and
- (b) for the making and verification of a transcript of any such record and for supplying the transcript (on payment of such a 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 of Appeal, and to such other persons and in such circumstances as may be prescribed by the rules.

Appeals in cases of death

13.—(1) Where a person has died—

- (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal; and

- (b) where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (1)(a), any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.
- (2) In this article “relevant appeal” means—
 - (a) an appeal under article 10, 23 or 44 of the external requests order; or
 - (b) an appeal under article 11, 24 or 45 of the external requests order.
- (3) Approval for the purposes of this article may only be given to—
 - (a) the widow or widower of the dead person;
 - (b) a person who is the personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925(a)) of the dead person; or
 - (c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.
- (4) An application for approval may not be made after the end of the period of one year beginning with the date of death.
- (5) Where this article applies, any reference in this Order to appellant shall, where appropriate, be construed as being or including a reference to the person approved under this article.
- (6) The power of the Court of Appeal to approve a person under this article may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions; but if the single judge refuses the application, the applicant shall be entitled to have the application determined by the Court of Appeal.

PART 3

APPEAL TO THE SUPREME COURT

Leave to appeal to the Supreme Court

14. An appeal to the Supreme Court under article 11, 24 or 45 of the external requests order lies only with the leave of the Court of Appeal or the Supreme Court; 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 Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

Application for leave to appeal

15.—(1) An application to the Court of Appeal for leave to appeal to the Supreme Court under article 11, 24 or 45 of the external requests order shall be made within the period of 28 days beginning with the date on which the Court of Appeal gives reasons for the decision which is the subject of the appeal; and an application to the Supreme Court for leave shall be made within the period of 28 days beginning with the date on which the application for leave is refused by the Court of Appeal.

(2) The Supreme Court 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 to the Supreme Court or the Court of Appeal under paragraph (1).

(3) An appeal to the Supreme Court 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.

(a) 1925 (c.23), to which there are amendments not relevant to this Order.

Presence at hearing

16. A person shall not be entitled to be present on the hearing of an application for leave to appeal to the Supreme Court under article 11, 24 or 45 of the external requests order or the hearing of the appeal to the Supreme Court under article 11, 24 or 45 of the external requests order or any proceedings preliminary or incidental thereto, except where an order of the Supreme Court authorises him to be present, or where the Supreme Court 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 a single judge

17. There may be exercised by a single judge the powers of the Court of Appeal under this Part—

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

but where the single 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
19th January 2012

Lord Henley
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision corresponding to provisions in the Criminal Appeal Act 1968 (“the 1968 Act”) with modifications for the purposes of an appeal to the Court of Appeal (and from there to the Supreme Court) introduced by articles 47(3) and 48(2) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the external requests order”) that was made under sections 444 and 459(2) of the Proceeds of Crime Act 2002.

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. 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 provides when and how a person is permitted to be at 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 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 31B of the 1968 Act and sets out which of the Court of Appeal’s procedural directions powers may be exercised by a single judge and the registrar.

Article 11 makes provision corresponding to section 31C of the 1968 Act and sets out appeals to a single judge in respect of decisions by the registrar concerning procedural directions.

Article 12 makes provision corresponding to section 32 of the 1968 Act and deals with transcripts of proceedings which might give rise to an appeal to the Court of Appeal.

Article 13 makes provision corresponding to section 44A of the 1968 Act and sets out how appeals are dealt with in cases of death.

Article 14 makes provision corresponding to section 33 of the 1968 Act and provides that an appeal to the Supreme Court only lies with the leave of the Court of Appeal or the Supreme Court.

Article 15 makes provision corresponding to section 34 of the 1968 Act and gives the time limit for an application for leave to appeal to the Supreme Court. 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 16 makes provision corresponding to section 38 of the 1968 Act and provides when a person is permitted to be present at the hearing of an appeal by the Supreme Court.

Article 17 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 Supreme Court may be exercised by a single judge.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

2012 No. 138

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