

2013 No. 24

PROCEEDS OF CRIME, ENGLAND AND WALES

**The Proceeds of Crime Act 2002 (Appeals Under Part 2)
(Amendment) Order 2013**

<i>Made</i>	- - - -	<i>12th January 2013</i>
<i>Laid before Parliament</i>		<i>16th January 2013</i>
<i>Coming into force</i>	- -	<i>8th February 2013</i>

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

Citation, commencement and extent

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Appeals under Part 2) (Amendment) Order 2013.

(2) It shall come into force on 8 February 2013.

(3) It extends to England and Wales.

Amendment to the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003

2. The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(b) is amended as follows.

3. In article 2 (Interpretation) after the definition of “the Act” insert—

““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;

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

4. For article 3(2) (Initiating procedure) substitute—

“(2) Notice of application for leave to appeal shall be given within 28 days from the date of the decision appealed against.”.

5. In article 3(3) after “extended” insert “, whether before or after it expires.”.

6. For the heading of article 6 substitute “Presence at hearing”.

7. After article 6(2) insert—

(a) 2002 c. 29.

(b) S.I. 2003/82 as amended by S.I. 2011/1241.

“(3) The Court of Appeal may give leave to any other person who wishes to be present on the hearing of an appeal under Part 2 of the Act.

(4) The power of the Court of Appeal to hear any appeal under part 2 of the Act, 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) a “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).”.

8. For article 7 (Evidence) substitute—

“Evidence

7.—(1) For the purpose of an appeal or an application for leave to 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 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 of 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 Part 2 of the Act, 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, 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.”.

9. In article 8(1) (Powers of Court of Appeal which are exercisable by single judge)—

- (a) at the end of sub-paragraph (c) omit “and”; and
- (b) after sub-paragraph (c) insert—
 - “(ca) to give a live link direction under article 6(5);
 - (cb) to order the production of any document, exhibit or other thing connected with the proceedings under article 7; and”.

10. In article 9(1) (Powers of Court of Appeal which are exercisable by registrar)—

- (a) at the end of sub-paragraph (a) omit “and”; and
- (b) after sub-paragraph (a) insert—
 - “(aa) the power to give a live link direction under article 6(5);
 - (ab) the power to order the production of any document, exhibit or other thing connected with the proceedings under article 7; and”.

11. In article 10 (Transcripts) omit paragraphs (2) and (3).

12. After article 10 insert—

“10A Procedural Directions: powers of a single judge and the registrar

(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.

10B Appeals against procedural directions

(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 that person’s assistance to give effect to the procedural directions;
 - (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.

10C Appeals in the case of death

- (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 a person so approved.
- (2) In this article “relevant appeal” means an appeal under part 2 of the Act and includes an application for leave to appeal.
- (3) Approval for the purposes of this article may only be given to—
- (a) the widow or widower or surviving civil partner 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) 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.”.

13. For the heading of article 14 substitute “Presence at hearing”.

14. In article 14 for “defendant who is in custody” substitute “person”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003. It contains provisions which correspond to those under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (England and Wales) (Appeals under Part 2) Order 2012 (SI 2012 No 138). SI 2012 No 138 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. The purpose of the amendments in this Order is to ensure consistency between appeals (to the Court of Appeal and then on to the Supreme Court) under part 2 of the Proceeds of Crime Act 2002 and those which relate to external requests and orders. It applies to appeals that are both ongoing at the time this Order comes into force and those commenced after.

Articles 4 and 5 make provision corresponding to section 18 of the 1968 Act and give the time limit for giving notice of application for leave to appeal to the Court of Appeal.

Articles 6 and 7 make 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 8 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 9 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 10 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 11 makes provision about transcripts.

Article 12 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. Further, it 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. It also makes provision corresponding to section 44A of the 1968 Act about appeals in the case of death.

Articles 13 and 14 make provision corresponding to section 38 of the 1968 Act and deals with when and how a person is permitted to be at the hearing of an appeal by the Supreme Court.

An 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

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