1989 No. 301

CRIMINAL PROCEDURE, NORTHERN IRELAND

The Criminal Appeal (Serious Fraud) Rules (Northern Ireland) 1989

Made . . . . . *25th July 1989*

Coming into operation . . *1st September 1989*

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(**a**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers and all other powers enabling us in that behalf as follows:

Citation and commencement

1.—(1) These Rules may be cited as the Criminal Appeal (Serious Fraud) Rules (Northern Ireland) 1989 and shall come into operation on 1st September 1989.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"the Act of 1980" means the Criminal Appeal (Northern Ireland) Act 1980(**b**);

"the 1988 Order" means the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988(**c**);

"appellant" means an appellant under Article 8(11) of the 1988 Order including a person who has given notice of application for leave to appeal;

"the Court" means the Court of Appeal;

"the principal Rules" means the Criminal Appeal (Northern Ireland) Rules 1968(**d**);

"Master" means the Master (Queen's Bench and Appeals);

"respondent" means a party in whose favour is made the order or ruling, or part thereof, appealed against by the appellant.

(2) In reckoning any period of time for the purposes of these Rules, where, apart from this paragraph, the period in question, being a period of 7

(**a**) 1978 c. 23
(**b**) 1980 c. 47
(**c**) S.I.1988/1846 (N.I. 16)
(**d**) S.R.1968 No. 218

days or less, would include a Saturday, Sunday or any public holiday, that day shall be excluded.

(3) In these Rules, any reference to a Form by number is a reference to the Form so numbered in the Schedule to these Rules.

(4) The Interpretation Act (Northern Ireland) 1954(**a**) shall apply to these Rules as it applies to a Measure of the Northern Ireland Assembly.

(5) Any reference in these Rules to a rule is a reference to a rule contained in these Rules.

Notice of appeal and of application for leave to appeal

3.—(1) An appellant shall within seven days from the order or ruling complained of serve notice of appeal therefrom or, as the case may be, of an application to the Court for leave to appeal on—

(*a*) the Master;

(*b*) the chief clerk of the Crown Court; and

(*c*) all parties to the preparatory hearing directly affected by the said order or ruling.

(2) The time for giving notice under paragraph (1) above may be extended, before or after it expires, by the Court.

(3) A notice of appeal or of an application for leave to appeal shall be in Form I.

(4) If notice in writing of an application for leave to appeal was served on the Crown Court, a copy thereof shall accompany the notice of appeal or, as the case may be, of an application for leave to appeal required under paragraph (1) above to be served on the Master.

(5) Notice of appeal or of an application for leave to appeal may be given either in respect of the whole or any part of the order to which it relates and shall—

(*a*) specify any question of law in respect of which the appeal is brought and, where appropriate, such facts of the case as are necessary for its proper consideration;

(*b*) summarise the arguments intented to be put to the Court; and

(*c*) specify any authorities intended to be cited.

(6) Where the judge of the Crown Court has given leave to appeal the notice of appeal shall state that fact and specify the grounds on which leave was given.

(7) Notice of appeal or an application for leave to appeal shall be accompanied by any documents or other things (or copies thereof) necessary for the proper determination of the appeal or application.

Respondent's notice

4.—(1) Upon receiving notice of appeal or of an application for leave to appeal, the respondent, if he desires to oppose the appeal, shall, within seven days of receipt of the notice, serve a notice in Form 2 on the Master,—

(**a**) 1954 c. 33 (N.I.)

(*a*) stating the date on which the appellant's notice was received by the respondent;

(*b*) summarising his response to the arguments of the appellant; and

(*c*) specifying the authorities which he intends to cite,

and shall at the same time serve a copy thereof on the appellant and any other party to the proceedings directly affected by the order or ruling and on the chief clerk of the Crown Court.

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

Persons in custody

5.—(1) A person in custody shall be entitled to be present on the hearing of an appeal, or an application for leave to appeal, under Article 8(11) of the 1988 Order, to which he is a party.

(2) Except as provided by paragraph (1) above, a person in custody shall not be entitled to be present on the hearing of an appeal, or an application for leave to appeal, under the said Article 8(11), except—

(*a*) on an application to the Crown Court for leave to appeal, with the leave of the judge; or

(*b*) on an appeal, or an application to the Court for leave to appeal, with the leave of the Court.

(3) An application for leave to be present under paragraph (2) above may be made—

(*a*) by serving notice in Form 3 on the Master; or

(*b*) orally to the judge or the Court.

Supply of documentary and other exhibits

6. Rule 13 of the principal Rules (supply of documentary and other exhibits) shall apply in relation to an appellant and a respondent under Article 8(11) of the 1988 Order as it applies in relation to an appellant and a respondent under Part I of the Act of 1980.

Abandonment of proceedings

7. Rule 16 of the principal Rules (abandonment of proceedings) shall apply for the purposes of an appeal or an application for leave to appeal by an appellant under Article 8(11) of the 1988 Order as it applies to an appeal or application for leave under Part II of the Act of 1980, except that—

(*a*) notice thereof shall be served on the Master in Form 4; and

(*b*) the requirement under paragraph (4) of the said rule 16 for the Master to send a copy of a notice of abandonment of proceedings to the Crown Solicitor shall be omitted.

Powers exercisable by single judge

8.—(1) The following powers may be exercised by a judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions, namely—

(*a*) to give leave to appeal under Article 8(11) of the 1988 Order;

(*b*) to extend, under rule 3, the time within which notice of appeal or of an application for leave to appeal must be given;

(*c*) to extend the time within which a notice under rule 4 of opposition to an appeal or application for leave to appeal must be given by the respondent; and

(*d*) to give leave, in pursuance of rule 5, for a person in custody to be present at any proceedings.

(2) A judge of the Court shall, for the purpose of exercising any of the powers specified above, sit in such place as he appoints, and may sit otherwise than in open court.

Determination by full Court

9.—(1) Where a judge of the Court has refused an application on the part of an applicant to exercise in his favour any of the powers referred to in rule 8, the applicant may have the application determined by the court by serving a notice in Form 5 on the Master within 7 days, or such longer period as a judge of the Court may fix, from the date on which the Judge's certificate in Form 6 indicating notice of the refusal was served on him by the Master.

(2) The notice shall be signed by, or on behalf of, the applicant.

(3) If the notice is not signed by the applicant and the applicant is in custody, the Master shall, as soon as practicable after receiving the notice, send a copy of it to the applicant.

(4) If such a notice is not served on the Master within the said 7 days or such longer period as a judge of the court may fix, the application shall be treated as having been refused by the Court.

Notice of determination of court

10.—(1) The Master shall, as soon as practicable, serve notice of any determination by the Court or by any judge of the Court under rule 8 on—

(*a*) the applicant; and

(*b*) any other party to the appeal;

(*c*) any person given leave under rule 5(2) to be present at the hearing of the appeal.

(2) The Master shall, as soon as practicable, serve notice on the chief clerk of the Crown Court at the place of trial of the order of the Court disposing of an appeal or application for leave to appeal.

Service of documents

11.—(1) Subject to paragraph (2) below, rule 30 of the principal Rules (service of documents) shall apply for the purposes of an appeal or an application for leave to appeal under Article 8(11) of the 1988 Order as it applies for the purposes of the principal Rules.

(2) Where any document is required under any of these Rules to be served on any party to the proceedings, service may be effected by serving it on his solicitor if he has one.

The Master

12.—(1) The Master may required the Crown Court at the place of trial to furnish the Court with any assistance or information which it may require for the purpose of exercising its jurisdiction.

(2) Subject to paragraphs (3) and (4) below the Master shall give as long notice in advance as reasonably possible of the date of hearing of any appeal or application—

(*a*) to the appellant; and

(*b*) to the respondent and any other party directly affected by the order or ruling to which the appeal or application under Article 8(11) of the 1988 Order relates.

(3) Paragraph (2) above shall not apply to proceedings before a judge of the Court under rule 8.

(4) Where a party to whom notice is required to be given by this rule is at the material time in custody, notice shall instead be given to the person having custody of him.

Dated 21st June 1989.

Brian Hutton
Donald Murray
J. P. Higgins
Brian Kerr

I concur, *Mackay of Clashfern*, C.

Dated 25th July 1989.

SCHEDULE Rule 2

FORM 1 Rule 3

CRIMINAL JUSTICE (SERIOUS FRAUD) (NORTHERN IRELAND) ORDER 1988

Notice and grounds of appeal or application for leave to appeal (preparatory hearing)

PART I

PARTICULARS OF APPELLANT

Full names .....

Full address (if detained in custody, give name and address where detained)

.....

.....

.....

Prison No. (if detained in prison) .....

PARTICULARS OF PREPARATORY HEARING

Held at ..... Crown Court

Name of judge .....

Date of hearing .....

RULING/ORDER in respect of which appeal or application for leave to appeal is made:

(*give details*)

APPLICATION TO THE CROWN COURT (*delete where appropriate*)

1. Was an application made to the judge of the Crown Court for leave to appeal

..... No/Yes

2. If yes to 1., was the application granted ..... No/Yes

PART II

PARTICULARS OF ANCILLARY APPLICATIONS

The appellant is applying for: (*delete where inapplicable*)

1. Extension of time within which to give notice of appeal or application for leave to appeal (*give reasons below*);

2. Legal aid;

3. Leave to be present at the application for leave to appeal/appeal.

If you require an extension of time in which to give notice of appeal state reasons:

PART III

GROUNDS OF APPEAL

1. Specify the question of law in respect of which the appeal is brought (and where appropriate, such facts of the case as are necessary for the proper consideration of the question of law).

2. Summarise the arguments that you intend to put to the Court of Appeal, (specifying any authorities to be cited).

Dated this day of 19 .

Signed

Appellant or Solicitor for the Appellant

Notes:

1. Appeal lies to the Court of Appeal from an order or ruling of a judge at a preparatory hearing under Article 8(3)(*a*) or (*b*) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 with the leave of that judge or of the Court of Appeal. This form should be served on the Master (Queen's Bench and Appeals) within 7 days from the making of the order or ruling. An application to the judge of the Crown Court for leave to appeal may be made orally within 2 days of the making of the order or ruling. Where such an application for leave has been made to the judge of the Crown court, that fact must be stated in the notice.

2. This notice will be treated as a notice of appeal where leave to appeal is not required.

3. A copy of this notice including these notes for guidance, must be served on the chief clerk of the Crown Court and on all parties to the preparatory hearing who are directly affected by the order or ruling within 7 days of making the order.

4. In reckoning the period of time for notice of appeal etc., if the period includes Saturday, Sunday, or any public holiday, that day is excluded.

5. This notice must be accompanied by any documents or other items (or copies thereof) necessary for the proper determination of the appeal or application. If reasons were given for the order or ruling, Counsel's note thereof should be included in the documents and where the note has been approved by the judge in the Crown Court, that fact should be endorsed upon the copy provided to the Master (Queen's Bench and Appeals).

6. Legal aid may be granted for the purposes of an application for leave to appeal or an appeal by the Crown Court or the Court of Appeal—s.19(1A) of the Criminal Appeal (Northern Ireland) Act 1980. If legal aid has been granted by the Crown Court, the appellant should so inform the Master (Queen's Bench and Appeals).

7. Grounds of appeal settled by counsel must be signed by counsel.

8. A party in whose favour the order or ruling was made—the respondent—wishing to oppose the appeal must within 7 days of receipt of his copy of this notice serve on the Master, with copies to the appellant and all parties directly affected by the order or ruling, a notice stating the date on which the appellant's notice was received, summarising his response to the arguments of the appellant and specifying the authorities he intends to cite.

9. An accused person in custody who is not a party to the appeal may apply for leave to be present at the proceedings in the Court of Appeal using Form 3.

CRIMINAL JUSTICE (SERIOUS FRAUD) (NORTHERN IRELAND) ORDER 1988

Notice and grounds of appeal or application for leave to appeal (preparatory hearing).

PART I

PARTICULARS OF RESPONDENT

Full names .....

Full address (if detained in custody, give name and address where detained)

.....

.....

.....

Prison No. (if detained in prison) .....

PARTICULARS OF PREPARATORY HEARING

Held at ..... Crown Court

Name of judge .....

Date of hearing .....

Date on which appellant's notice of appeal was received .....

PART II

PARTICULARS OF RESPONDENT'S APPLICATION

The respondent is applying for: (*delete where inapplicable*)

1. Extension of time within which to give notice of opposition to appeal (*give reasons below*);

2. Legal aid;

3. Leave to be present at the application for leave to appeal/appeal.

If you require an extension of time in which to give notice of appeal state reasons:

PART III

GROUNDS OF OPPOSITION TO APPEAL

Summarise the arguments that you intend to put to the Court of Appeal, (specifying any authorities to be cited).

Dated this day of 19 .

Signed

Respondent or Solicitor for the Appellant

CRIMINAL JUSTICE (SERIOUS FRAUD)
(NORTHERN IRELAND) ORDER 1988

Notice of application for leave to be present at hearing of appeal or application for leave to appeal

PARTICULARS OF APPLICANT

Full names .....

Full address (if detained in custody, give name and address where detained)

.....

.....

.....

Prison No. (if detained in prison) .....

PARTICULARS OF PREPARATORY HEARING

Held at ..... Crown Court

Name of judge .....

Date of hearing .....

Date on which appellant's notice of appeal was received .....

APPLICATION

The applicant applies for leave to present: (*state grounds of application*)

Dated this day of 19 .

Signed
Applicant or Solicitor for the Applicant

To: The Master (Queen's Bench and Appeals)

FORM 4 Rule 7

CRIMINAL JUSTICE (SERIOUS FRAUD) (NORTHERN IRELAND) ORDER 1988

Notice of abandonment of proceedings

PARTICULARS OF APPELLANT

Full names .....

Full address (if detained in custody, give name and address where detained)

.....

.....

.....

Prison No. (if detained in prison) .....

PARTICULARS OF PREPARATORY HEARING

Held at ..... Crown Court

Name of judge .....

Date of hearing .....

ABANDONMENT OF APPEAL

I (*full names of appellant*) abandon proceedings in the Court of Appeal.

Dated this day of 19 .

Signed

Appellant or Solicitor for the Appellant

CRIMINAL JUSTICE (SERIOUS FRAUD)
(NORTHERN IRELAND) ORDER 1988

Notice of application for determination by Court of Appeal

PARTICULARS OF APPELLANT

Full names .....

Full address (if detained in custody, give name and address where detained)

.....

.....

.....

Prison No. (if detained in prison) .....

APPLICATION TO THE COURT OF APPEAL

Whereas 's (*name of appellant*)

application for: (*delete where inapplicable*)

1. Extension of time;

2. Leave to appeal against order/ruling;

3. Legal Aid;

4. Leave to be present.

has been refused by a single Judge, the Hon. Mr. Justice ..... , the appellant applies to have such of the foregoing applications as are specified below renewed and determined by the Court of Appeal:— (*delete where inapplicable*)

1. Extension of time;

2. leave to appeal against order/ruling;

3. Legal Aid;

4. Leave to be present.

Date on which Judge's certificate in Form 6 indicating refusal was served on the appellant by the Master (Queen's Bench and Appeals)

.....

[*or* if the appellant is in custody, date on which Form 6 was handed to the appellant]

.....

Signed ..... (Prison Officer)

GROUNDS OF APPLICATION

(*set out any arguments not mentioned in the application(s) refused by the single judge*)

Dated this day of 19 .

Signed

Appellant or Solicitor for the Appellant

To: The Master (Queen's Bench and Appeals)

Notes:

1. An application not renewed in time will be treated as if refused by the full court, which will not extend the time unless the circumstances are wholly exceptional. The time limits are as follows:
   (*a*) if the appellant is not in custody, this form must be returned to the Master (Queen's Bench and Appeals) to reach him within 7 days of the date on which Form 6 was served on the appellant by the Master.
   (*b*) if the appellant is in custody this form must be handed into the Prison Governor (or other person having custody) within 7 days of the date on which Form 6 was handed to the appellant.

FORM 6 Rule 9

CRIMINAL JUSTICE (SERIOUS FRAUD) (NORTHERN IRELAND) ORDER 1988

Judge's Certificate

PARTICULARS OF PREPARATORY HEARING

Full names of appellant .....

Preparatory hearing held at ..... Crown Court

Name of judge .....

Date of hearing .....

ORDER BY THE HON. MR JUSTICE .....

I certify that I have refused your application(s) in respect of (*delete if inapplicable*)

1. Extension of time;

2. Leave to appeal against order/ruling made at preparatory hearing;

3. Legal aid;

4. Leave to be present;

which I heard on the day of 19 .

Signed

Judge of the Court of Appeal

DECLARATION AS TO SERVICE (*delete inapplicable paragraph*)

(*a*) *Where appellant not in custody*

This form was sent by the Master (Queen's Bench and Appeals) to the appellant at (*address*) on the day of 19 .

(*b*) *Where appellant detained in custody*

This form was handed to the appellant at (*address where detained*) on the day of 19 .

Signed _____

Prison Officer

To:

1. The Appellant; and

2. (*Where appellant in custody*) The Prison Governor at (*name of prison*) for declaration as to service to be completed by prison officer.

EXPLANATORY NOTE

(This note is not part of the rules.)

These rules make provision for regulating the practice and procedure of the Court of Appeal for the purposes of appeals against orders or rulings made at preparatory hearings, in cases of fraud, held under Article 8 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 [S.I.1988/1846 (N.I.16)].