

**THE SUPREME COURT
FALKLAND ISLANDS
PRACTICE DIRECTION**

Appeals from the Magistrate's and Summary Court

A. Introduction

- A1.1 Unless otherwise stated, all references are to the Administration of Justice Ordinance.
- A1.2 Sections 19 and 31 provide a right of appeal to the Supreme Court against sentences imposed by the Magistrate's and Summary Courts in all cases, and against convictions where the accused did not plead guilty. By section 19 an appeal from either Court must be lodged within 21 days of the order appealed against.
- A1.3 The powers of the Supreme Court on appeal are set out in section 57. This Practice Direction has been drafted to provide information about how to commence and conduct appeal proceedings before the Supreme Court. Please note; the Criminal Appeal Act 1968 does not apply in the Falkland Islands. Section 48(2) of the Administration of Justice Ordinance prescribes that the practice and procedure of the Supreme Court when exercising its appellate jurisdiction shall be that of the Court of Appeal (England and Wales).
- A1.4 Practitioners should make themselves familiar with the content of this Practice Direction prior to issuing any appeal proceedings. They may also find it of assistance to refer to the case of *Brian John Williams* (SC/CRIM/03/05) in which the criminal appeal procedure in the Falkland Islands was considered. To the extent that there are differences between the procedure as identified in *Williams* and that set out in this Practice Direction, the procedure as identified in this Practice Direction should be followed.
- A1.5 Copies of up to date forms, and the decision in *Williams*, are available on the Courts and Tribunals Service website at www.courts.gov.fk. Hard copy forms may also be obtained from the court office.
- A1.6 The procedures set out below are to apply to all appeals commenced after 1 October 2015.

B. Advice and Assistance

- B 1.1 Legal practitioners should not wait to be asked for advice by the defendant. Immediately following the conclusion of the case, legal practitioners should consider and discuss the prospects of an appeal with the defendant. In all cases the practitioner should record their views on appeal in writing and all oral advice provided to the defendant should be confirmed in writing immediately thereafter. If, in the opinion of the legal practitioner, there are reasonable grounds for an appeal, grounds of appeal should be drafted, signed and sent to the defendant for confirmation. All grounds shall be drafted on Form NG(CrimApp) (“the Form”). Where a defendant has been granted a Criminal Representation Order under the Falkland Islands Legal Aid Scheme for the trial, advice and assistance up to and including the drafting and lodging of grounds of appeal will be automatically covered.
- B 1.2 Following conviction the defendant will receive from the Court a form setting out details of the offence(s) of which he has been convicted, the penalties attributed to the offence(s) and any other information required by law to be communicated to the accused. This information is to be used to complete Form NG(CrimApp). Please note; an existing Criminal Representation Order will not cover work done on an appeal beyond lodging the Form NG(CrimApp). A defendant seeking legal aid for the appeal must either request extension of an existing Criminal Representation Order or submit a new legal aid application to the Legal Aid Administrator

C. Form and Grounds of Appeal

- C 1.1 Where Form NG(CrimApp) has been drafted it must be sent to the Clerk to the Court from which an appeal is sought. The Form may only be lodged in hard copy and the appropriate fee must be paid at the time of lodgement. The Form must be served within the relevant time limit in all cases. (For information regarding time limits see above).
- C 1.2 Grounds of appeal must be settled with sufficient particularity to enable the Supreme Court to identify clearly the matters relied upon. The following information must be contained in Form NG(CrimApp)
- Specify
 - (i) the conviction, verdict or finding,

- (ii) the sentence, or
- (iii) the order about which the appellant wants to appeal;
- Identify each ground of appeal on which the appellant relies, numbering them consecutively (if more than one) and concisely outlining each argument in support;
- Identify any transcript(s) that the appellant considers the Court will need, if the appellant wants to appeal against conviction;
- Identify any directions that the appellant seeks relating to the production of documents, exhibits or evidence;
- In appeals against sentence, attach the social inquiry report used by the lower court at the time of sentence. If one has not previously been prepared, whether the appellant seeks the preparation of a social inquiry report. If one has been prepared, whether the appellant seeks the updating of the report;
- Summarise the relevant facts;
- Identify the relevant authorities;
- Include or attach any application for the following, with reasons
 - (i) any application for an extension of time,
 - (ii) bail pending appeal,
 - (iii) a direction to attend in person, if the appellant is in custody,
 - (iv) an order requiring a witness to attend court,
 - (v) a direction for special measures for a witness,
 - (vi) an application for leave to call a witness in support of an appeal against conviction (as to which see further below);
- Specify a time estimate for the hearing of the case;
- Identify any other document or thing that the appellant thinks the court will need to decide the appeal;
- Any issues of availability for listing for hearing of the appeal

C 1.3 Any document mentioned in the Form should be identified clearly, by exhibit number or otherwise.

D. Time

D 1.1 Form NG(CrimApp) should reach the Clerk to the appropriate court within 21 days from the date of conviction in the case of an application to appeal against conviction and

within 21 days from the date of sentence in the case of an application to appeal against sentence.

D 1.2 Any application for extension of the 21 day period must be supported by reasons why the application was not submitted in time (if that be the case), and should be made on notice to the Crown. If there is no objection from the Crown to the extension in principle or in length (confirmation of which should be obtained in writing from the Crown) then the application may be made orally to the resident Judge without any need for the Crown to attend. If there is no resident Judge available, or if the application for an extension is objected to by the Crown, then the application must be made in writing, and will be determined by the appropriate court.

E. Respondent's notice

E 1.1 Upon receipt of the Form the court administration will serve the appeal notice on any party directly affected by the appeal. That party may then serve a respondent's notice if it wishes to make representations and must do if it is directed to do so on behalf of the court. The respondent's notice must be served within 14 days of receipt of the appeal notice or a direction and shall be served upon the appellant, the court and any other party that was served with the appeal notice. The respondent's notice must be in the specified form "RN(CrimApp)" and must contain the following:

- The date on which the respondent was served with the appeal notice
- Each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identify the ground of appeal to which each relates;
- Summary of any relevant facts not already summarised in the appeal notice
- Include or attach any application for the following, with reasons –
 - (i) an extension of time within which to serve the respondent's notice
 - (ii) an order requiring a witness to attend court
 - (iii) a direction for special measures for a witness
- Any document or thing that the respondent considers the court will need to decide the appeal;
- Any issues of availability for listing for hearing of the appeal

- E 1.2 In conviction cases, the Crown is required to submit a respondent's notice. In relation to sentence cases, the Crown shall only submit a respondent's notice at the invitation of the Court.
- E 1.3 Upon receipt of the respondent's notice or the expiry of 14 days the court administration will refer the matter to the Judge for directions, which will include, but not be limited to, consideration of all directions necessary for the further conduct of the appeal, including the listing of the case. Directions will be communicated to the parties as soon as reasonably practicable. Any listing date will be solely dependent upon the availability of the Court, although regard will be had, where possible, to availability of legal representatives that has been indicated in either the Form NG(CrimApp) or the respondent's notice.

F. Bail pending appeal

- F 1.1 Bail pending appeal may be granted either by the lower court or by the Supreme Court and all applications for bail pending appeal should be made to the lower court in the first instance. If, upon application to the lower court, conditional bail is granted any application to vary conditions must be made to the lower Court. An application for bail pending appeal to the Supreme Court should only be made following a refusal of bail by the lower Court.
- F 1.2 Where bail pending appeal before the Supreme Court is sought, written representations in support of the application for bail must be submitted to the Court on Form B(CrimApp), which will not be considered before Form NG(CrimApp) has been served. The written representations must confirm that a copy of the same has been served upon the prosecution. Upon receipt of the application and associated confirmation, the Court will obtain a listing date and inform all parties as soon as practicable of that date. An application for bail will not normally be listed for hearing before the prosecution have had at least 24 hours to consider the application and any proposed bail conditions (unless no objection is taken by the Crown to an earlier hearing). All hearings will be dealt with in Chambers and, where the Chief Justice is considering the application, may be dealt with via a remote link.

G. Witnesses

- G 1.1 Leave to call witnesses can only be sought in cases of appeal against conviction. Section 48(2) of the Administration of Justice Ordinance prescribes that the practice and procedure of the Supreme Court when exercising its appellate jurisdiction shall be that of the Court of Appeal (England and Wales). In such circumstances the appeal is not a re-hearing or fresh trial and the Supreme Court will only be concerned with whether the conviction is unsafe.
- G 1.2 An application for leave to call witnesses should be made in writing on Form W(CrimApp) and set out all the circumstances on which reliance is placed in support of the application. The application should in every case deal with the matters set out below namely that:-
- a) The evidence appears credible.
 - b) The evidence would have been admissible in the original proceedings.
 - c) The evidence is relevant to the appeal.
 - d) The evidence was not adduced at the original hearing.
 - e) There is a reasonable explanation for the failure to adduce the evidence at the original hearing.
- G 1.3 The court administration will forward any application for leave to call a witness to the Crown. Following any representations from the Crown (and any reply thereto on behalf of the Appellant), the court administration will forward the application to the Judge for consideration ex parte in Chambers.

H. Directions regarding time in custody

- H 1.1 Section 44 of the Prison Ordinance provides that “subject to any direction of the Supreme Court, the time during which an appellant is in custody shall not count as part of his sentence...” The Court will only consider whether such a direction allowing time spent in custody from the date of lodging appeal should count towards sentence if the appellant addresses the Court accordingly. Form NG(CrimApp) includes a box for the appellant to give reasons why such a direction should be made by the Court. Oral submissions on the point will also be expected.

I Abandonment

- I 1.1 An appeal may be abandoned at any time before the hearing by giving notice in writing to the court administration on Form A(CrimApp). Upon receipt the court administration will send a copy to the Attorney General and the appeal will be treated as if it had been dismissed by the Court. The Court will take no further action unless the Attorney General submits a written request that the question of costs be considered by the Court whereupon directions will be given for a hearing.

J Procedure at hearing

- J 1.1 The appeal hearing will be heard in open court in all but exceptional circumstances.
- J 1.2 Unless leave has been given to call or submit evidence and unless otherwise directed by the Judge, the hearing will be opened by the Appellant or his Legal Practitioner. The Respondent will reply and the Appellant will have the right to respond to any new matter raised by the Respondent or the Court. In addressing the Court parties should assume that the Court is familiar with the facts of the case and the grounds of appeal. Where leave has been given to call or submit fresh evidence the Appellant will take the witness in examination in chief, the Respondent can cross-examine and the Appellant re-examine, after which the Respondent can call any evidence (for which permission has been obtained).
- J 1.3 Practitioners are reminded that they will not be permitted to address the Court on matters which are not encompassed by the grounds of appeal and that there may be a penalty in costs if the hearing has to be adjourned to enable late amendment or expansion of grounds.

Dated this 30th day of September 2015

Simon Bryan QC
Chief Justice