

## 立法會參考資料摘要

### 《刑事訴訟程序條例》 (第 221 章)

### 《2023 年刑事訴訟程序(修訂)條例草案》

#### 引言

在二零二三年五月二十三日的會議上，行政會議建議，行政長官指令，應向立法會提交載於附件 A的《2023 年刑事訴訟程序(修訂)條例草案》(條例草案)。

#### 理據

2. 現有需要在切實可行的範圍內，盡快就《刑事訴訟程序條例》(第 221 章)(《條例》)提出立法修訂，以訂定法定上訴程序供控方(a)就原訟法庭在有陪審團的刑事審訊中作出的無須答辯的判定(無須答辯判定)提出上訴(無須答辯判定的上訴建議)，以及(b)以案件呈述方式，就原訟法庭根據《中華人民共和國香港特別行政區維護國家安全法》(《香港國安法》)第四十六條在沒有陪審團的情況下由三名法官組成的審判庭審理危害國家安全犯罪案件時所作出的無罪裁決或命令提出上訴(《香港國安法》第四十六條的上訴建議)。為了填補刑事上訴制度因控方未能就原訟法庭專業法官錯誤作出的無須答辯判定及無罪裁定提出上訴而出現的法律空隙，避免可能造成司法不公，無須答辯判定的上訴建議及《香港國安法》第四十六條的上訴建議實屬必要、正當和及時的應對方案。

#### 無須答辯判定的上訴建議

3. 上訴法庭於 2022 年 10 月 28 日就由律政司司長轉交的法律問題 2021 年第 1 至 3 號案(Re Secretary for Justice's Reference Nos. 1-3 of 2021 [2022] 5 HKLRD 886)頒下判決(判決)，指出現時並無法定程序可讓控方就原訟法庭法官作出的無須答辯判定提出上訴(無須答辯判定的法律空

隙)，因此有迫切需要改革這方面的法例條文。上訴法庭推翻兩名原訟法庭法官的判定，並裁定相關案件中的法官不當地取代了陪審團的職能，在相關陪審團考慮案情之前錯誤地撤回了案件，在相關的案件造成了嚴重的司法不公。

4. 在現行法律制度下，如因為原訟法庭法官作出錯誤的無須答辯判定並指示陪審團宣告被告人無罪釋放，控方充其量只能根據《條例》第 81D 條將事情轉交上訴法庭，以釐清當中涉及的法律原則。即使法官明顯有錯，被宣告無罪的被告人也不能再次受審。在上述由上訴法庭審理的案件中，控方曾請求法庭作出指引，說明在日後的類似案件中維持現狀的可行方法。其中一項建議是在現有法律條文的框架下讓主審法官根據《條例》第 81 條保留法律問題(即在所舉證據下是否有案須予答辯)，待上訴法庭考慮。然而，這種做法須謹慎地並且僅在最特殊的情況下採用。這種做法未能針對性解決判決所揭露的無須答辯判定的法律空隙。

5. 上訴法庭在判詞中表示，「香港採取與英國類似的措施顯然有相當大的好處」(判決第 145 至 148 段)。

6. 在英國，控方可以根據《2003 年刑事司法法令》(Criminal Justice Act 2003)(英國法令)第 9 部(特別是第 58 條)就法官作出的無須答辯判定提出上訴。

7. 原訟法庭審理的案件全都涉及最嚴重的刑事罪行。無須答辯判定的法律空隙可引致不能逆轉的後果，就是即使原訟法庭法官明顯有錯，根據其無須答辯判定而獲判無罪的被告人也不能再次受審。鑑於上訴法庭在判決中所指，認為有迫切需要在切實可行的範圍內盡快修訂《條例》，以訂定上述法定上訴程序來填補無須答辯判定的法律空隙，並避免可能再次出現司法不公。就此，政府建議參考英國法令第 9 部，就《條例》提出立法修訂。

## 《香港國安法》第四十六條的上訴建議

8. 涉及危害國家安全犯罪的案件可於原訟法庭在一名法官會同陪審團席前審理，或如律政司司長(司長)根據《香港國安法》第四十六條<sup>1</sup>發出證書，在沒有陪審團的情況下由三名法官組成的審判庭審理。

9. 一如由區域法院法官及裁判官等專業法官審理的刑事案件，如案件於原訟法庭在沒有陪審團的情況下由三名法官組成的審判庭審理，審判庭會述明裁決理由。根據現行的《條例》，被告人可就原訟法庭的定罪或刑罰向上訴法庭提出上訴(不論審訊的方式為何)，然而，如由三名法官組成的審判庭判處被告人無罪，即使其裁決理由可能顯示犯下法律上的錯誤，控方也無權向上訴法庭提出上訴。這與《區域法院條例》(第336章)第84條或《裁判官條例》(第227章)第105條(視情況而定)訂明可以案件呈述方式就區域法院法官或裁判官的無罪裁定上訴的規定形成對比。控方在這種情況下無法針對審判庭的無罪裁定向上訴法庭提出上訴，引致一個異常情況。

10. 將有罪的人判無罪釋放所造成的司法不公，不啻將無辜的人定罪。錯誤的無罪裁定所造成的司法不公，以涉及危害國家安全的罪行最為嚴重。如原訟法庭由三名法官組成的審判庭在沒有陪審團的情況下審理危害國家安全犯罪案件時犯下任何法律錯誤，為秉行公義，以及使司法機關妥為履行《香港國安法》下的職責<sup>2</sup>，有效防範、制止和懲治危害國家安全的行為和活動，有必要賦予控方上訴的權利，使上訴法庭有機會檢視並在有理據時糾正該等法律錯誤。

11. 全國人民代表大會常務委員會(全國人大常委會)法制工作委員會負責人在2022年12月30日就全國人大常委會關於《香港國安法》第十四和第四十七條的解釋答記者提問時，表示《香港國安法》第七條的規定應當認真落實到位<sup>3</sup>，即香港特別行政區應當及時修改和完善本

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<sup>1</sup> 《香港國安法》第四十六條第一款訂明：「對高等法院原訟法庭進行的就危害國家安全犯罪案件提起的刑事檢控程序，律政司長可基於保護國家秘密、案件具有涉外因素或者保障陪審員及其家人的人身安全等理由，發出證書指示相關訴訟毋須在有陪審團的情況下進行審理。凡律政司長發出上述證書，高等法院原訟法庭應當在沒有陪審團的情況下進行審理，並由三名法官組成審判庭。」

<sup>2</sup> 特別參閱第三、第八和第四十二條。

<sup>3</sup> 《香港國安法》第七條訂明：「香港特別行政區應當盡早完成香港特別行政區基本法規定的維護國家安全立法，完善相關法律。」

地相關法律，充分運用本地法律解決《香港國安法》實施中遇到的有關法律問題。

12. 因此，我們須及時提出立法修訂，處理上述異常情況和填補有關的法律空隙。政府建議修訂《條例》，以訂定新的法定程序，以使控方就原訟法庭根據《香港國安法》第四十六條由三名法官組成的審判庭所作出的無罪的裁決或命令提出上訴。擬議的上訴機制是以案件呈述方式上訴。這個方式以《區域法院條例》第 84 條及《裁判官條例》第 105 條所訂以案件呈述方式提出上訴的現有程序為藍本。建議的新訂條文主要以《區域法院條例》第 84 條為藍本。上訴所關乎的僅限於法律事宜(在相關案例中已詮釋為包括任何合理的法官在考慮適當因素並正確引導自己後都不可能得出，有悖常理的結論或對事實的裁斷<sup>4</sup>)。

13. 兩項建議提出的立法修訂屬程序性質，適用於立法修訂生效後作出的判定、裁決或命令。政策委員會已審議該兩項建議。

## 其他方案

14. 上述法律空隙只可透過立法訂立擬議的新法定上訴機制填補，別無他法。

## 條例草案

15. 下文撮述條例草案的主要條文。條例草案包括三部分及一個附表。

### 第 1 部——導言

16. 條例草案第 1 條列出簡稱及訂明生效事宜。

### 第 2 部——修訂《條例》

17. 條例草案第 3 條修訂《條例》第 80 條，以加入《香港國安法》的定義。

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<sup>4</sup> 例如李闖偉訴律政司司長(2003) 6 HKCFAR 466 案。

18. 條例草案第 4 條就無須答辯判定的上訴建議在《條例》第 IV 部加入新訂第 3 分部，當中包括 10 條條文(第 81AA 條至 81AAJ 條) -

#### 新訂第 81AA 條

(a) 新訂第 81AA 條載有解釋新訂第 3 分部的定義。

#### 新訂第 81AAB 條

(b) 新訂第 81AAB 條訂明，如原訟法庭根據《香港國安法》第四十六條，在沒有陪審團的情況下由三名法官組成審判庭，審理某危害國家安全犯罪案件，則新訂第 3 分部不該案件適用。我們的政策原意是，由於原訟法庭由三名法官組成的審判庭在沒有陪審團的情況下審理危害國家安全犯罪案件中所作出的無須答辯判定是會引致無罪的命令的法律事宜，控方可根據《香港國安法》第四十六條的上訴建議就無罪的命令以案件呈述方式提出上訴，在此情況下，無必要應用無須答辯判定的上訴建議的機制。

#### 新訂第 81AAC 條

(c) 新訂第 81AAC 條訂明司長經原訟法庭或上訴法庭許可，可針對無須答辯判定，向上訴法庭提出上訴，惟司長必須(i)在無須答辯判定作出後，或(ii)在要求押後審訊以考慮是否提出上訴而審訊押後期間屆滿後，在切實可行的範圍內盡快：

(i) 通知原訟法庭擬針對無須答辯判定提出上訴；

(ii) 如無須答辯判定是就兩項或多於兩項罪行作出的，通知原訟法庭哪一項或哪些罪行屬上訴的標的罪行(標的罪行)；以及

(iii) 就上訴給予無罪保證。

(d) 如司長在無須答辯判定作出後，在切實可行的範圍內盡快要求將審訊押後，以考慮是否針對該判定提出上訴，則原訟法庭須批准將審訊押後至下一個工作日或更後日期。

- (e) 司長在通知原訟法庭擬提出上訴時，也可將另一判定納入為該上訴所針對的判定，前提是該另一判定是與標的罪行相關的。

#### 新訂第 81AAD 條

- (f) 新訂第 81AAD 條訂明，就上文(c)(iii)分段而言，司長如通知原訟法庭其同意如有以下情況，被控告標的罪行的被告人須就該罪行獲判無罪，即屬就有關上訴給予無罪保證：
  - (i) 針對該無須答辯判定的上訴許可不獲批予；或
  - (ii) 不論針對該無須答辯判定的上訴許可是否已獲批予，在上訴法庭就該上訴作出裁決前放棄上訴。

#### 新訂第 81AAE 條

- (g) 新訂第 81AAE 條訂明，如司長要求將審訊押後，以考慮是否針對無須答辯判定提出上訴，則直至審訊押後期間屆滿為止，該無須答辯判定屬無效。如司長通知原訟法庭擬提出上訴，則在上訴法庭就上訴作出裁決或司長放棄上訴前，該無須答辯判定就標的罪行而言屬無效。

#### 新訂第 81AAF 條

- (h) 新訂第 81AAF 條訂明，如司長通知原訟法庭擬針對某無須答辯判定提出上訴，原訟法庭須決定是否加快處理該上訴。

#### 新訂第 81AAG 條

- (i) 新訂第 81AAG 條訂明，如審訊是就兩項或多於兩項罪行提起，而該等罪行當中的一項或多於一項罪行並非標的罪行，則就該等其他罪行而言，該審訊或任何關乎該審訊的法律程序可繼續進行。

### 新訂第 81AAH 條

- (j) 新訂第 81AAH 條訂明，上訴法庭可確認、推翻或更改上訴所針對的判定。然而，上訴法庭須信納某判定涉及法律上或原則上的錯誤，方可推翻或更改該判定。
- (k) 上訴法庭如確認就某罪行而作出的無須答辯判定，便須命令就該罪行而言，有關被告人獲判無罪。上訴法庭如推翻或更改就某罪行而作出的無須答辯判定，便須命令(i)在原訟法庭恢復該罪行的法律程序；(ii)可在法庭就該罪行重審有關被告人；或(iii)就該罪行而言，有關被告人獲判無罪。然而，除非上訴法庭認為在作出第(i)或(ii)項命令後，有關被告人不能獲得公平審訊，否則上訴法庭不得作出第(iii)項命令。

### 新訂第 81AAI 及 81AAJ 條

- (l) 新訂第 81AAI 條就報道關乎根據新分部提出的上訴的法律程序施加限制，違者均屬犯罪。新訂第 81AAJ 條賦權法庭或法院在合適的個案中，放寬對報道的限制。

19. 條例草案第 5 條就《香港國安法》第四十六條的上訴建議在《條例》第 IV 部加入新訂第 6 分部。該分部載有四項條文 -

### 新訂第 81DA 條

- (a) 新訂第 81DA 條：
  - (i) 訂明如原訟法庭在沒有陪審團的情況下由三名法官組成審判庭，審理某危害國家安全犯罪案件，而原訟法庭在該案件中就被告人作出無罪的裁決或命令，則司長可針對該裁決或命令，向上訴法庭提出上訴，而該上訴只可關於法律事宜；以及
  - (ii) 就有關案件呈述的內容及上訴的程序，訂定條文。

### 新訂第 81DB 條

- (b) 新訂第 81DB 條訂明，在緊接原訟法庭作出無罪的裁決或命令後，如司長通知原訟法庭擬提出該上訴，原訟法庭可命令將有關被告人羈留扣押或准予其保釋(《香港國安法》第四十二條的規定適用<sup>5</sup>)。

### 新訂第 81DC 條

- (c) 新訂第 81DC 條賦權上訴法庭發出手令，指示逮捕該上訴的答辯人，並命令將該答辯人羈留扣押或准予其保釋(《香港國安法》第四十二條的規定適用)。

### 新訂第 81DD 條

- (d) 新訂第 81DD 條訂明上訴法庭就該上訴可作出的裁定—
- (i) 不論該上訴的答辯人有否出庭，上訴法庭都有司法管轄權受理上訴(須在符合程序公平的慣常要求下行使)；
  - (ii) 上訴法庭如信納有充分理由干預該裁決或命令，便須推翻該裁決或命令，並指示恢復進行審訊或重審；及
  - (iii) 上訴法庭可作出其認為適合的一切必要及相應的指示(實際上可因應情況所需包括指示原訟法庭裁定答辯人有罪，並對其判處相應刑罰<sup>6</sup>)。

20. 條例草案第 6 條相應地修訂《條例》第 83Y 條，使上訴法庭延展提出案件呈述申請的期限、發出逮捕手令，以及命令將被告人或答辯人羈留扣押或准予其保釋的權力，可由單一名法官行使。

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<sup>5</sup> 《香港國安法》第四十二條第二款訂明，「對犯罪嫌疑人、被告人，除非法官有充足理由相信其不會繼續實施危害國家安全行為的，不得准予保釋。」

<sup>6</sup> 例如上訴法庭在律政司司長訴陳志雲[2016] 3 HKLRD 186 一案中所發出的指示。



### 第 3 部——對《刑事案件訟費條例》(第 492 章)的相關修訂

21. 第 7 及第 9 條在《刑事案件訟費條例》分別加入第 9AA 及第 13AA 條，以賦權上訴法庭根據《條例》新訂第 81AAC 條將無須答辯判定的上訴訟費判給被告人或司長(視情況所需而定)。

22. 第 8 及第 10 條分別修訂《刑事案件訟費條例》第 9A 及第 13A 條，就根據《條例》新訂第 81DA 條以案件呈述方式提出上訴的訟費訂定條文。

#### 附表

23. 附表對《條例》及其附屬法例作出了輕微的技術性修改。

B 24. 被修訂的現行條文載於附件 B

#### 立法程序時間表

25. 立法程序時間表如下一

(a) 刊登憲報	2023 年 5 月 25 日
(b) 首讀和開始二讀辯論	2023 年 5 月 31 日
(c) 恢復二讀辯論、委員會審議階段和三讀	2023 年 7 月 12 日或之前 (待定)

#### 建議的影響

26. 條例草案包含保障措施，確保被告人獲得公平審訊的權利(包括立即受審，不得無故稽延的權利)。條例草案並不牴觸一罪不能兩審的原則<sup>7</sup>。對無須答辯判定的上訴施加報道限制旨在確保確保公正審判，

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<sup>7</sup> 對應《公民權利和政治權利國際公約》第十四條第七款的《香港人權法案》第十一(六)條訂明，「任何人依香港法律及刑事程序經終局判決判定有罪或無罪開釋者，不得就同一罪名再予審判或科刑」。《香港國安法》第五條部分條文也訂明「任何人已經司法程序被最終確定有罪或者宣告無罪的，不得就同一行為再予審判或者懲罰」。如法律訂有供檢控機關就無罪裁定提出上訴的機制而上訴時限尚未屆滿，獲

無論如何，法庭可以視乎案件的情況，放寬報道限制。條例草案符合《基本法》，包括有關人權的條文。

27. 條例草案對經濟、公務員、生產力、環境、可持續發展、家庭或性別議題均沒有影響。該條例草案會對財政有影響，詳情載於附件 C。

C

28. 條例草案不會影響《條例》現有的約束力。

## 諮詢

### *無須答辯判定的上訴建議*

29. 載於附件 D 的諮詢文件曾於 2023 年 1 月送交各持份者，就無須答辯判定的上訴建議進行諮詢。政府收到回應者包括兩個法律專業團體和兩間法律學院(有關意見和建議請參閱下文第 30 段)、連同執法部門在內的多個政府部門，以及另一機構的意見書。整體來說，大多數回應者支持這項立法建議，對此表示歡迎，認為建議屬及時、合理和必要。

D

30. 在實施方面，香港律師會和香港大學認為不宜全盤採用英國法令第 9 部的條文。此外，鑑於有關立法建議僅限於就無須答辯判定提出的上訴，所需的實施方法可能比英國法令第 9 部所訂的簡單得多。香港大律師公會、香港律師會、香港大學和香港城市大學也就實施新上訴制度的技術方面提出意見。

31. 政府在 2023 年 2 月 27 日立法會司法及法律事務委員會(事務委員會)的會議上介紹諮詢工作和立法建議的要點，事務委員會委員表示支持。

### *《香港國安法》第四十六條的上訴建議*

32. 律政司於 2023 年 4 月將載於附件 E 的諮詢文件送交各持份者，包括兩個法律專業團體和法律學院，就《香港國安法》第四十六條的上訴建議作諮詢。總體而言，提供實質答覆的回應者均支持這項立法建議。特別是，回應者普遍認為，在原訟法庭設立了危害國家安全犯罪案件的新審判方式後，存在如第 9 段所述的異常情況，而為控方提供上

E

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裁定無罪人士根據法律並不屬於「經終局判決判定無罪開釋者」，因此根本不牽涉上述條文。

訴途徑以糾正由三名法官組成的審判庭所作出的錯誤無罪裁定，可秉行公義，情況就類似控方就區域法院及裁判法院審訊中的無罪裁定所作出的上訴。

33. 我們在 2023 年 5 月 22 日向事務委員會介紹《香港國安法》第四十六條的上訴建議，事務委員會委員表示支持。

## 宣傳安排

34. 我們會在二零二三年五月二十三日發出新聞稿，並會安排發言人解答傳媒查詢。

## 查詢

35. 如對本摘要有任何查詢，請與高級助理法律政策專員(政策事務)<sup>2</sup> 陳婉冰女士(電話：3918 4108) 聯絡。

律政司

二零二三年五月

#583864v4

## 《2023 年刑事訴訟程序(修訂)條例草案》

## 目錄

條次	頁次
<b>第 1 部</b>	
<b>導言</b>	
1.	簡稱及生效日期..... 1
2.	修訂成文法則..... 1
<b>第 2 部</b>	
<b>修訂《刑事訴訟程序條例》(第 221 章)</b>	
3.	修訂第 80 條(刑罰的涵義)..... 2
4.	加入第 IV 部第 3 分部..... 2
<b>第 3 分部 —— 針對無須答辯的判定的上訴</b>	
81AA.	第 3 分部的釋義..... 3
81AAB.	第 3 分部的適用範圍..... 3
81AAC.	針對指明判定的上訴..... 3
81AAD.	無罪保證..... 4
81AAE.	指明判定在上訴待決期間屬無效..... 5
81AAF.	特快上訴及非特快上訴..... 5
81AAG.	不受上訴影響的罪行的法律程序可繼續進行..... 6
81AAH.	上訴法庭就上訴作出裁定..... 6

條次	頁次
81AAI.	對報道關乎根據本分部提出的上訴的法律程序的限制..... 7
81AAJ.	法庭或法院可放寬對報道的限制..... 9
5.	加入第 IV 部第 6 分部..... 9
<b>第 6 分部 —— 以案件呈述方式上訴</b>	
81DA.	針對法庭在沒有陪審團的情況下作出的無罪裁決，以案件呈述方式上訴..... 9
81DB.	緊接無罪裁決後，被告人可被羈留扣押或准予保釋..... 10
81DC.	上訴法庭可發出逮捕答辯人的手令..... 11
81DD.	上訴法庭就上訴作出裁定..... 11
6.	修訂第 83Y 條(可由單一名法官行使的上訴法庭根據第 IV 部具有的權力)..... 12
<b>第 3 部</b>	
<b>對《刑事案件訟費條例》(第 492 章)的相關修訂</b>	
7.	加入第 9AA 條..... 13
9AA.	針對無須答辯的判定的上訴未能成功時的辯方訟費..... 13
8.	修訂第 9A 條(上訴法庭駁回以案件呈述的方式提出的上訴時的辯方訟費)..... 13
9.	加入第 13AA 條..... 13

條次	頁次
13AA.	針對無須答辯的判定的上訴成功時的控方訟 費 ..... 14
10.	修訂第 13A 條(上訴法庭判決以案件呈述的方式提出的上 訴得直時的控方訟費) ..... 14
附表	對《刑事訴訟程序條例》(第 221 章)及其附屬法例 的輕微技術性修訂 ..... 15

# 本條例草案

## 旨在

修訂《刑事訴訟程序條例》，引入機制，以使律政司司長可提出以下上訴，並就該等上訴的程序，訂定條文：凡原訟法庭在有陪審團的情況下進行刑事審訊，並在審訊中判定被告人無須答辯，律政司司長針對該判定提出的上訴，以及凡原訟法庭在沒有陪審團的情況下由 3 名法官組成審判庭，審理危害國家安全犯罪案件，並在案件中作出無罪裁決或命令，律政司司長針對該裁決或命令提出的上訴；對該條例及其附屬法例作出輕微技術性修訂；以及就相關事宜，訂定條文。

由立法會制定。

## 第 1 部

### 導言

#### 1. 簡稱及生效日期

- (1) 本條例可引稱為《2023 年刑事訴訟程序(修訂)條例》。
- (2) 除第(3)款另有規定外，本條例自其於憲報刊登當日起實施。
- (3) 第 4、7 及 9 條及附表第 2 部自律政司司長以憲報公告指定的日期起實施。

#### 2. 修訂成文法則

第 2 及 3 部及附表指明的成文法則現予修訂，修訂方式列於該兩部及該附表。

## 第 2 部

### 修訂《刑事訴訟程序條例》(第 221 章)

#### 3. 修訂第 80 條(刑罰的涵義)

- (1) 第 80 條，標題 ——

廢除

“刑罰的涵義”

代以

“第 IV 部的釋義”。

- (2) 第 80(1)條，中文文本，*刑罰*的定義 ——

廢除

“內。”

代以

“內；”。

- (3) 第 80(1)條 ——

按筆劃數目順序加入

“《香港國安法》(HK National Security Law)指根據《2020 年全國性法律公布》(2020 年第 136 號法律公告)在香港特別行政區實施的《中華人民共和國香港特別行政區維護國家安全法》。”。

#### 4. 加入第 IV 部第 3 分部

第 IV 部，在第 81 條之後 ——

加入

## “第 3 分部 —— 針對無須答辯的判定的上訴

### 81AA. 第 3 分部的釋義

- (1) 在本分部中 ——

*司長* (Secretary)指律政司司長；

*判定* (ruling)包括決定、裁定、指示、裁斷、通知、命令、拒絕、拒絕接納或規定；

*指明判定* (specified ruling)——參閱第 81AAC(1)條；

*無罪保證* (acquittal guarantee)——參閱第 81AAD 條；

*標的罪行* (subject offence)——參閱第 81AAC(2)條。

- (2) 如有 2 名或多於 2 名被告人一同被控告同一罪行，則本分部在猶如有以下情況下適用：在該罪行關乎每名該等被告人的範圍內，該罪行就每名被告人而言均屬各別罪行；因此，在本分部中提述關乎一項或多於一項罪行的判定，包括關乎一項或多於一項該等各別罪行的判定。

### 81AAB. 第 3 分部的適用範圍

如法庭根據《香港國安法》第四十六條，在沒有陪審團的情況下由 3 名法官組成審判庭，審理某危害國家安全犯罪案件，則本分部不該案件適用。

### 81AAC. 針對指明判定的上訴

- (1) 如法庭在審訊期間作出被告人就一項或多於一項罪行無須答辯的判定(*指明判定*)，則本條適用。
- (2) 司長經法庭或上訴法庭許可，可就任何有關罪行(*標的罪行*)，針對指明判定，向上訴法庭提出上訴。
- (3) 為根據第(2)款提出上訴，司長須 ——
- (a) 在指明判定作出後；或

(b) 如法庭根據第(6)款批准將審訊押後——在審訊押後期間屆滿後，

在切實可行的範圍內，盡快作出第(4)款指明的所有作為。

(4) 有關作為是 ——

(a) 通知法庭司長擬針對指明判定，提出上訴；

(b) 如指明判定是就 2 項或多於 2 項罪行作出的——通知法庭哪一項或哪些罪行屬標的罪行；及

(c) 就上訴給予無罪保證。

(5) 司長如需要更多時間考慮是否針對指明判定提出上訴，則可在指明判定作出後，在切實可行的範圍內，盡快要求將審訊押後，以作上述考慮。

(6) 如司長根據第(5)款提出要求，法庭須批准將審訊押後至下一個工作日或更後日期。

(7) 司長在根據第(4)(a)款通知法庭擬提出上訴時，亦可將法庭作出的另一判定納入為該上訴所針對的判定，前提是該另一判定亦是與標的罪行相關的。

(8) 在第(6)款中 ——

*工作日* (business day)指並非關閉日(《釋義及通則條例》(第 1 章)第 71(2)條所界定者)的日子。

#### 81AAD. 無罪保證

(1) 就第 81AAC(4)(c)條而言，司長如就第(2)款指明的事宜，向法庭給予通知，即屬就有關上訴給予無罪保證。

(2) 有關事宜指司長同意，如有以下情況，被控告標的罪行的被告人須就該罪行獲判無罪 ——

(a) 針對指明判定的上訴許可不獲給予；或

(b) 不論針對指明判定的上訴許可是否獲給予——在上訴法庭就該上訴作出裁定前，司長放棄上訴。

(3) 如第(2)(a)或(b)款所述的、關乎無罪保證的其中一項條件獲符合，則法庭或上訴法庭(視情況所需而定)須命令就標的罪行而言，有關被告人獲判無罪。

#### 81AAE. 指明判定在上訴待決期間屬無效

(1) 如司長根據第 81AAC(5)條要求將審訊押後，以考慮是否針對指明判定提出上訴，則該指明判定屬無效，直至審訊押後期間屆滿為止。

(2) 如司長根據第 81AAC(4)(a)條，通知法庭擬就某標的罪行，針對指明判定提出上訴，則該指明判定就該標的罪行而言屬無效，直至上訴法庭就關乎該罪行的上訴作出裁定或司長放棄關乎該罪行的上訴為止。

(3) 為免生疑問，如根據本條，指明判定屬無效 ——

(a) 該判定的任何後果，亦屬無效；

(b) 法庭不可因應該判定而採取任何步驟；及

(c) 即使法庭已採取任何步驟，該等步驟亦屬無效。

#### 81AAF. 特快上訴及非特快上訴

(1) 如司長根據第 81AAC(4)(a)條，通知法庭擬針對指明判定提出上訴，法庭須決定是否加快處理該上訴。

(2) 法庭如決定加快處理上訴，則可命令將有關審訊押後。

(3) 法庭如決定不加快處理上訴，則可 ——

(a) 命令將有關審訊押後；或

(b) 解散有關審訊的陪審團。

- (4) 如法庭決定加快處理上訴，該決定可被法庭或上訴法庭推翻，而一旦該決定被推翻，法庭可如第(3)(a)或(b)款所述般行事。

**81AAG.** 不受上訴影響的罪行的法律程序可繼續進行

如 ——

- (a) 第 81AAC(1)條所述的審訊是就 2 項或多於 2 項罪行提起的；及
- (b) 該等罪行當中的一項或多於一項罪行(其他罪行)並非標的罪行，

則就其他罪行而言，該審訊或任何關乎該審訊的法律程序可繼續進行。

**81AAH.** 上訴法庭就上訴作出裁定

- (1) 凡有根據第 81AAC 條提出的上訴，上訴法庭可確認、推翻或更改該上訴所針對的判定。
- (2) 然而，上訴法庭須信納某判定涉及法律上或原則上的錯誤，方可推翻或更改該判定。
- (3) 上訴法庭如確認就某罪行而作出的指明判定，則須命令就該罪行而言，有關被告人獲判無罪。
- (4) 上訴法庭如推翻或更改就某罪行而作出的指明判定，則須命令 ——
- (a) 在法庭恢復進行該罪行的法律程序；
- (b) 可在法庭就該罪行重審有關被告人；或
- (c) 就該罪行而言，有關被告人獲判無罪。
- (5) 然而，除非上訴法庭認為在根據第(4)(a)或(b)款作出命令後，有關被告人不能獲得公平審訊，否則上訴法庭不可作出第(4)(c)款所指的命令。
- (6) 上訴法庭亦可作出其認為適合的一切必要及相應的指示。

**81AAI.** 對報道關乎根據本分部提出的上訴的法律程序的限制

- (1) 如法庭在審訊期間就被告人作出指明判定，則本條適用。
- (2) 除第(3)及(4)款另有規定外，任何人不得在香港以書面發布或廣播對以下事宜作出的報道 ——
- (a) (凡根據第 81AAC 條針對有關指明判定提出上訴)為該上訴而根據第 81AAC、81AAD、81AAF 或 81AAH 條採取的任何步驟；
- (b) 第 81AAE 條就有關指明判定的應用；
- (c) 根據第 81AAC 條針對有關指明判定提出的上訴；
- (d) (凡上訴法庭根據第 81AAH(3)或(4)條就有關指明判定作出命令)根據《香港終審法院條例》(第 484 章)第 31 條針對該命令提出的上訴；
- (e) 為(c)或(d)段所述的上訴而提出的上訴許可申請；或
- (f) 法庭、上訴法庭或終審法院就(c)或(d)段所述的上訴(或(e)段所述的上訴許可申請)而作出的命令或指示。
- (3) 如有關報道是在以下審訊完結後發布或廣播的，則第(2)款不適用：對有關被告人進行的審訊或對該審訊中的任何其他被告人(其他被告人)進行的審訊，或根據第 81AAH(4)(b)條命令對有關被告人或其他被告人進行的重審(以最遲者為準)。
- (4) 如某報道只載有一項或多於一項以下事宜，則第(2)款不適用於該報道 ——
- (a) 法庭的名稱及法官的姓名；
- (b) 被告人及證人的姓名或名稱；
- (c) 被告人被控告的罪行；
- (d) 有關法律程序中的大律師及律師的姓名；



- (e) 如有關法律程序被押後——該程序被押後至何日及何地；
- (f) 任何就保釋而作出的安排；
- (g) 就有關法律程序而言，是否已根據《刑事案件法律援助規則》(第 221 章，附屬法例 D)，向被告人或任何一名被告人提供法律代表。
- (5) 如有報道在違反第(2)款的情況下發布或廣播，每一名以下人士均屬犯罪 ——
- (a) 如屬作為報章或期刊的一部分而發布的書面報道——該報章或期刊的東主、編輯、出版人或發行人；
- (b) 如屬並非作為報章或期刊的一部分而發布的書面報道——發布或分發該報道的人；
- (c) 如屬在某節目內廣播的報道 ——
- (i) 傳播或提供該節目的人；或
- (ii) 對該節目而言，職能相當於報章或期刊編輯的人。
- (6) 任何人犯第(5)款所訂罪行，一經定罪，可處第 5 級罰款及監禁 6 個月。
- (7) 除非經司長同意，否則不得就本條所訂罪行提起法律程序。
- (8) 在本條中 ——
- 發布** (publish)就報道而言，指將報道單獨發布或作為報章或期刊的一部分發布，以分發給公眾；
- 廣播** (broadcast)指透過無線電訊，或透過利用導線或其他物料造成線路的高頻率播送系統，將聲音或視覺圖像廣播予大眾接收。

**81AAJ. 法庭或法院可放寬對報道的限制**

- (1) 法庭、上訴法庭或終審法院可就其席前進行的法律程序，命令第 81AAI(2)條不適用於(或在指明的範圍內不適用於)對該程序作出的報道。
- (2) 如法庭、上訴法庭或終審法院擬根據第(1)款作出命令，有關法律程序中的被告人可反對作出該命令。
- (3) 如被告人根據第(2)款提出反對，法庭、上訴法庭或終審法院(視情況所需而定)須在考慮被告人的申述後，信納作出有關命令有利於司法公正，方可作出該命令。
- (4) 如有命令根據第(3)款作出，在某報道關乎有關反對或申述的範圍內，該命令並不適用。”。

**5. 加入第 IV 部第 6 分部**

第 IV 部，在第 81D 條之後 ——

加入

**“第 6 分部 —— 以案件呈述方式上訴****81DA. 針對法庭在沒有陪審團的情況下作出的無罪裁決，以案件呈述方式上訴**

- (1) 如 ——
- (a) 法庭根據《香港國安法》第四十六條，在沒有陪審團的情況下由 3 名法官組成審判庭，審理某危害國家安全犯罪案件；及
- (b) 法庭在該案件中，就某被告人作出無罪的裁決或命令(包括因指稱控罪欠妥或缺乏司法管轄權而撤銷或駁回控罪的命令)，
- 則本條適用。
- (2) 律政司司長(司長)可針對有關裁決或命令，向上訴法庭提出上訴。

- (3) 有關上訴只可關於法律事宜。
- (4) 為根據第(2)款提出上訴，司長須藉書面方式向法庭提出申請，要求法庭對案件作出呈述，以徵詢上訴法庭的意見。
- (5) 第(4)款所指的申請，只可在以下期間屆滿前提出 ——
  - (a) 法庭記錄有關裁決或命令的理由後的 14 整日期間；或
  - (b) 如上訴法庭於(a)段所述的期間屆滿之前或之後，延展該期間——經延展的期間。
- (6) 如司長在第(5)款指明的期間屆滿前，根據第(4)款提出申請，法庭須對有關案件作出呈述。
- (7) 根據第(6)款作出的案件呈述，須列出 ——
  - (a) 達致或作出有關裁決或命令所據的事實及理由；及
  - (b) 該裁決或命令受質疑的理由。
- (8) 《裁判官條例》(第 227 章)第 106、107、108 及 109 條(適用條文)經必要的變通後，適用於有關案件呈述的擬備和修訂，以及有關上訴的排期聆訊。
- (9) 在不局限第(8)款的原則下，適用條文經以下變通而適用 ——
  - (a) 在適用條文中，凡提述“裁判官”，即為提述法庭；及
  - (b) 在適用條文中，凡提述“法官”，即為提述上訴法庭。

**81DB. 緊接無罪裁決後，被告人可被羈留扣押或准予保釋**

- (1) 在緊接法庭就某被告人作出第 81DA(1)(b)條所述的裁決或命令後，如律政司司長通知法庭擬根據第

81DA(2)條，針對該裁決或命令提出上訴，法庭可 ——

- (a) 應司長的申請，命令將該被告人羈留扣押，以待上訴法庭就該上訴作出裁定；或
  - (b) 准予該被告人保釋。
- (2) 為免生疑問，第(1)款受限於《香港國安法》第四十二條。

**81DC. 上訴法庭可發出逮捕答辯人的手令**

- (1) 如律政司司長為根據第 81DA(2)條提出上訴，根據第 81DA(4)條提出申請，上訴法庭可應司長在內庭提出的申請，發出致予警務人員的手令，指示逮捕該上訴的答辯人，並將之帶到上訴法庭席前。
- (2) 如有關答辯人根據第(1)款被逮捕，上訴法庭可 ——
  - (a) 命令將該答辯人羈留扣押，以待上訴法庭就有關上訴作出裁定；或
  - (b) 准予該答辯人保釋。
- (3) 為免生疑問，第(2)款受限於《香港國安法》第四十二條。

**81DD. 上訴法庭就上訴作出裁定**

- (1) 凡有根據第 81DA 條針對某裁決或命令提出的上訴，不論該上訴的答辯人是否出席該上訴的聆訊，上訴法庭 ——
  - (a) 如信納沒有充分理由干預該裁決或命令——須駁回該上訴；或
  - (b) 如信納有充分理由干預該裁決或命令——須推翻該裁決或命令，並指示 ——
    - (i) (凡該裁決或命令是在某審訊中就該答辯人作出的)在法庭恢復進行該審訊；或

(ii) 在法庭重審該答辯人。

(2) 上訴法庭亦可作出其認為適合的一切必要及相應的指示。”。

6. 修訂第 83Y 條(可由單一名法官行使的上訴法庭根據第 IV 部具有的權力)

(1) 在第 83Y(2)(b)條之後 ——

加入

“(ba) 延展可根據第 81DA(4)條提出申請的期間；”。

(2) 在第 83Y(2)(e)條之後 ——

加入

“(ea) 根據第 81DC(1)條發出手令；

(eb) 根據第 81DC(2)條命令將答辯人羈留扣押或准予其保釋；”。

(3) 第 83Y(2)條 ——

廢除(i)段。

### 第 3 部

#### 對《刑事案件訟費條例》(第 492 章)的相關修訂

7. 加入第 9AA 條

在第 9 條之後 ——

加入

“9AA. 針對無須答辯的判定的上訴未能成功時的辯方訟費

如律政司司長根據《刑事訴訟程序條例》(第 221 章)第 81AAC(4)(a)條，通知原訟法庭擬針對指明判定(該條例第 81AAC(1)條所界定者)提出上訴，則如有以下情況，上訴法庭可命令將訟費判給被告人 ——

(a) 根據該條例第 81AAC 條針對該指明判定提出上訴的許可不獲給予；

(b) 在上訴法庭就該上訴作出裁定前，司長放棄上訴；或

(c) 上訴法庭確認該指明判定。”。

8. 修訂第 9A 條(上訴法庭駁回以案件呈述的方式提出的上訴時的辯方訟費)

第 9A 條，在“根據”之後 ——

加入

“《刑事訴訟程序條例》(第 221 章)第 81DA 條或”。

9. 加入第 13AA 條

在第 13 條之後 ——

加入

“13AA. 針對無須答辯的判定的上訴成功時的控方訟費

如有根據《刑事訴訟程序條例》(第 221 章)第 81AAC 條針對指明判定(該條例第 81AAC(1)條所界定者)提出的上訴，上訴法庭如推翻或更改該指明判定，則可命令將訟費判給律政司司長。”。

10. 修訂第 13A 條(上訴法庭判決以案件呈述的方式提出的上訴得直時的控方訟費)

第 13A 條，在“根據”之後 ——

加入

“《刑事訴訟程序條例》(第 221 章)第 81DA 條或”。

附表

[第 2 條]

對《刑事訴訟程序條例》(第 221 章)及其附屬法例的輕微技術性修訂

第 1 部

在《刑事訴訟程序條例》(第 221 章)第 IV 部中，廢除小標題及加入分部標題

1. 廢除在第 80 條之前的小標題  
在第 80 條之前的小標題 ——  
廢除該小標題。

2. 加入第 IV 部第 1 分部標題  
在第 80 條之前 ——  
加入

“第 1 分部 —— 釋義”。

3. 廢除在第 81 條之前的小標題  
在第 81 條之前的小標題 ——  
廢除該小標題。

4. 加入第 IV 部第 2 分部標題  
在第 81 條之前 ——  
加入

“第 2 分部 —— 法律問題的保留”。

5. 廢除在第 81A 條之前的小標題  
在第 81A 條之前的小標題 ——  
廢除該小標題。

6. 加入第 IV 部第 4 分部標題  
在第 81A 條之前 ——  
加入

“第 4 分部 —— 應律政司司長的申請覆核刑罰”。

7. 廢除在第 81D 條之前的小標題  
在第 81D 條之前的小標題 ——  
廢除該小標題。

8. 加入第 IV 部第 5 分部標題  
在第 81D 條之前 ——  
加入

“第 5 分部 —— 法律問題的轉交”。

9. 廢除在第 81E 條之前的小標題  
在第 81E 條之前的小標題 ——  
廢除該小標題。

10. 加入第 IV 部第 7 分部標題  
在第 81E 條之前 ——  
加入

“第 7 分部 —— 針對釋放的上訴”。

11. 廢除在第 82 條之前的小標題  
在第 82 條之前的小標題 ——  
廢除該小標題。

12. 加入第 IV 部第 8 分部標題  
在第 82 條之前 ——  
加入

“第 8 分部 —— 針對循公訴程序作出的定罪的上訴”。

13. 廢除在第 83E 條之前的小標題  
在第 83E 條之前的小標題 ——  
廢除該小標題。

14. 加入第 IV 部第 9 分部標題  
在第 83E 條之前 ——  
加入

“第 9 分部 —— 重審”。

15. 廢除在第 83G 條之前的小標題  
在第 83G 條之前的小標題 ——  
廢除該小標題。

16. 加入第 IV 部第 10 分部標題  
在第 83G 條之前 ——  
加入

“第 10 分部 —— 針對刑罰的上訴”。

17. 廢除在第 83J 條之前的小標題  
在第 83J 條之前的小標題 ——  
廢除該小標題。

18. 加入第 IV 部第 11 分部標題  
在第 83J 條之前 ——  
加入

“第 11 分部 —— 精神錯亂案件的上訴”。

19. 廢除在第 83M 條之前的小標題  
在第 83M 條之前的小標題 ——  
廢除該小標題。

20. 加入第 IV 部第 12 分部標題  
在第 83M 條之前 ——  
加入

“第 12 分部 —— 不適宜受審”。

21. 廢除在第 83O 條之前的小標題  
在第 83O 條之前的小標題 ——  
廢除該小標題。

22. 加入第 IV 部第 13 分部標題  
在第 83O 條之前 ——  
加入

“第 13 分部 —— 關於上訴及保留的法律問題的其他  
條文”。

23. 廢除在第 83P 條之前的小標題  
在第 83P 條之前的小標題 ——  
廢除該小標題。

24. 加入第 IV 部第 14 分部標題  
在第 83P 條之前 ——  
加入

“第 14 分部 —— 上訴法庭對循公訴程序審訊的案件的  
覆核”。

25. 廢除在第 83Q 條之前的小標題  
在第 83Q 條之前的小標題 ——  
廢除該小標題。

26. 加入第 IV 部第 15 分部標題  
在第 83Q 條之前 ——  
加入

“第 15 分部 —— 由上訴通知至聆訊的程序”。

27. 廢除在第 83U 條之前的小標題  
在第 83U 條之前的小標題 ——  
廢除該小標題。

28. 加入第 IV 部第 16 分部標題  
在第 83U 條之前 ——

加入

“第 16 分部 —— 聆訊”。

29. 廢除在第 83W 條之前的小標題  
在第 83W 條之前的小標題 ——  
廢除該小標題。

30. 加入第 IV 部第 17 分部標題  
在第 83W 條之前 ——  
加入

“第 17 分部 —— 取決於上訴結果的其他事宜”。

31. 廢除在第 83Y 條之前的小標題  
在第 83Y 條之前的小標題 ——  
廢除該小標題。

32. 加入第 IV 部第 18 分部標題  
在第 83Y 條之前 ——  
加入

“第 18 分部 —— 補充條文”。

## 第 2 部

以“報道”取代“報導”

### 第 1 分部 —— 修訂《刑事訴訟程序條例》(第 221 章)

33. 修訂第 9P 條(對報導保釋法律程序的限制)

(1) 第 9P 條，中文文本，標題 ——  
廢除  
“報導”  
代以  
“報道”。

(2) 第 9P(1)、(2)及(3)條，中文文本 ——  
廢除  
所有“報導”  
代以  
“報道”。

(3) 第 9P(5)條，中文文本，*發布*的定義 ——  
廢除  
所有“報導”  
代以  
“報道”。

34. 修訂第 16 條(被控人被交付審訊後未經聆訊的釋放)

第 16(7)及(8)條，中文文本 ——  
廢除  
“報導”  
代以

“報道”。

第 2 分部 —— 修訂《刑事訴訟程序(針對釋放提出上訴)規則》(第 221 章，附屬法例 F)

35. 修訂第 6 條(對報導上訴的限制)

(1) 第 6 條，中文文本，標題 ——

廢除

“報導”

代以

“報道”。

(2) 第 6(1)、(2)及(3)條，中文文本 ——

廢除

“報導”

代以

“報道”。

第 3 分部 —— 修訂《刑事訴訟程序(根據本條例第 16 條提出的申請)規則》(第 221 章，附屬法例 G)

36. 修訂第 16 條(書面及廣播報導)

(1) 第 16 條，中文文本，標題 ——

廢除

“報導”

代以

“報道”。

(2) 第 16(1)、(2)及(3)條，中文文本 ——

廢除

“報導”

代以

“報道”。



**摘要說明**

本條例草案的主要目的是修訂《刑事訴訟程序條例》(第 221 章)(《第 221 章》)，引入機制，以使律政司司長(司長)可提出以下上訴，並就該等上訴的程序，訂定條文——

- (a) 凡原訟法庭在有陪審團的情況下進行刑事審訊，並在審訊中判定被告人無須答辯——針對該判定(無須答辯的判定)提出的上訴；及
- (b) 凡原訟法庭在沒有陪審團的情況下由 3 名法官組成審判庭，審理危害國家安全犯罪案件，並在案件中作出無罪裁決或命令——針對該裁決或命令提出的上訴。

2. 本條例草案載有 3 部及 1 個附表。

**第 1 部——導言**

3. 草案第 1 條列出簡稱，並就生效日期訂定條文。

**第 2 部——修訂《第 221 章》**

4. 草案第 3 條修訂《第 221 章》第 80 條，以加入《香港國安法》的定義。

5. 草案第 4 條在《第 221 章》第 IV 部中加入新訂第 3 分部。其中——

- (a) 新訂第 81AA 條載有解釋新訂分部的定義，而新訂第 81AAB 條訂明新訂分部的適用範圍；
- (b) 新訂第 81AAC 條——
  - (i) 訂明司長經原訟法庭或上訴法庭許可，可針對原訟法庭在審訊期間作出的無須答辯的判定，向上訴法庭提出上訴；及
  - (ii) 訂明司長為提出該上訴須採取的步驟；

- (c) 新訂第 81AAD 條就司長就該上訴所須給予的無罪保證，訂定條文；
- (d) 新訂第 81AAE 條訂明無須答辯的判定在該上訴待決期間屬無效；
- (e) 新訂第 81AAF 條規定原訟法庭須決定是否加快處理該上訴；
- (f) 新訂第 81AAG 條訂明如某罪行並非該上訴所針對者，則就該罪行而言，該審訊或任何相關法律程序可繼續進行；
- (g) 新訂第 81AAH 條訂明上訴法庭可就該上訴作出的裁定，以及可基於甚麼理由作出該等裁定；
- (h) 新訂第 81AAI 條就對關乎上訴的法律程序而作出的報道，施加限制；及
- (i) 新訂第 81AAJ 條賦權法庭或法院在合適的個案中，放寬對報道的限制。

6. 草案第 5 條在《第 221 章》第 IV 部中加入新訂第 6 分部。其中——

- (a) 新訂第 81DA 條——
  - (i) 訂明如原訟法庭在沒有陪審團的情況下由 3 名法官組成審判庭，審理某危害國家安全犯罪案件，而原訟法庭在該案件中就某被告人作出無罪的裁決或命令，則司長可以案件呈述方式，針對該裁決或命令，向上訴法庭提出上訴，而該上訴只可關於法律事宜；及
  - (ii) 就該案件呈述的內容及該上訴的程序，訂定條文；
- (b) 新訂第 81DB 條訂明，如司長在緊接原訟法庭作出無罪裁決或命令後，通知原訟法庭擬提出該上訴，則原訟法庭可命令將該被告人羈留扣押或准予其保釋；

- (c) 新訂第 81DC 條賦權上訴法庭發出手令，指示逮捕該上訴的答辯人，並命令將該答辯人羈留扣押或准予其保釋；及
  - (d) 新訂第 81DD 條訂明上訴法庭可就該上訴作出的裁定。
7. 草案第 6 條相應地修訂《第 221 章》第 83Y 條，使上訴法庭根據《第 221 章》第 IV 部新訂第 6 分部新獲賦予的某些權力，可由單一名法官行使。

### 第 3 部——對《刑事案件訟費條例》(第 492 章)(《第 492 章》)的相關修訂

8. 草案第 7 及 9 條在《第 492 章》中分別加入新訂第 9AA 及 13AA 條，以賦權上訴法庭命令將根據《第 221 章》新訂第 81AAC 條針對無須答辯的判定提出的上訴的訟費，判給被告人或司長(視情況所需而定)。
9. 草案第 8 及 10 條分別修訂《第 492 章》第 9A 及 13A 條，以就根據《第 221 章》新訂第 81DA 條以案件呈述方式提出的上訴的訟費，訂定條文。

### 附表

10. 附表對《第 221 章》及其附屬法例作出輕微技術性修訂。

## 釋義

## 80. 刑罰的涵義

(1) 在本部中 ——

**刑罰** (sentence) · 就罪行而言，包括法庭處置罪犯時作出的任何命令，包括入院令在內。 (由1979年第20號第3條修訂)

(2) 上訴法庭判處刑罰的任何權力，包括根據《入境條例》(第115章)第21條作出遞解離境建議的權力。 (由1997年第80號第103條修訂)

(由1972年第34號第15條代替)

[比照 1968 c. 19 s. 50 U.K.]

## 補充條文

## 83Y. 可由單一名法官行使的上訴法庭根據第IV部具有的權力

(1) 上訴法庭根據本部具有而在第(2)款所指明的權力，及根據《刑事罪行條例》(第200章)第156(5)條發出指示的權力，可由單一名法官行使，方式與上訴法庭行使該等權力的方式一樣，並受相同條文約束。 (由1978年第25號第5條修訂)

(2) 該等權力如下 ——

(a) 給予上訴許可；

(b) 延展發出上訴通知或申請上訴許可的通知的期限；

(c) 容許上訴人出席任何法律程序；

(d) 命令證人出庭接受訊問；

(e) 准予上訴人保釋；

(f) 根據第83F(2)條作出命令和撤銷或更改該等命令；

(g) 根據第83W(1)條作出指示；

(h) 給予許可根據第81A條申請覆核刑罰；

(i) 就訟費的支付根據第83XX條作出命令； (由1978年第2號第4條增補)

(j) 根據第81A(3)條作出將答辯人羈留扣押的命令。 (由1979年第20號第8條增補)

(3) 如上訴人或申請人就上述指明的任何權力的行使提出申請，以使其受惠，而單一名法官拒絕申請，則上訴人或申請人有權使該申請由上訴法庭裁定。

- (4) 在本條中，凡提述單一名法官，即提述上訴法庭或原訟法庭的單一名法官。 (由1978年第29號第2條增補)
- (由1972年第34號第18條增補。由1998年第25號第2條修訂)
- [比照1968 c. 19 s. 31 U.K.]

**9A. 上訴法庭駁回以案件呈述的方式提出的上訴時的辯方訟費**

上訴法庭如駁回根據《區域法院條例》(第336章)第84條提出的上訴，則可命令將訟費判給被告人。

*(由2002年第23號第9條增補)*

**13A. 上訴法庭判決以案件呈述的方式提出的上訴得直時的控方訟費**

上訴法庭如在聆訊根據《區域法院條例》(第336章)第84條提出的上訴時，推翻有關的裁定無罪的裁決或命令，則可命令將訟費判給檢控人。

*(由2002年第23號第10條增補)*

## 釋義

### 80. 刑罰的涵義

(1) 在本部中 ——

**刑罰** (sentence) · 就罪行而言，包括法庭處置罪犯時作出的任何命令，包括入院令在內。 (由1979年第20號第3條修訂)

(2) 上訴法庭判處刑罰的任何權力，包括根據《入境條例》(第115章)第21條作出遞解離境建議的權力。 (由1997年第80號第103條修訂)

(由1972年第34號第15條代替)

[比照 1968 c. 19 s. 50 U.K.]

## 法律問題的保留

### 81. 保留法律問題待上訴法庭考慮的權力

(1) 主審法庭的法官可將在公訴書的審訊中出現的任何法律問題保留，待上訴法庭考慮。

(2) 法官可主動或應律政司司長或辯方的申請而根據第(1)款行使其權力。 (由1997年第362號法律公告修訂)

(3) 法官如根據第(1)款保留法律問題，而被控人已被定罪，則可 ——

(a) 押後判決，直至法律問題已獲考慮和決定為止；及

(b) 將被定罪的人交付監獄，或在有一名或多於一名有足夠條件的擔保人或無擔保人的條件下以法官認為適合的款額准予保釋，作為須在法官所指示的某個時間或各個時間出現和接受判決的條件。

(4) 上訴法庭在考慮根據第(1)款保留的問題時，可 ——

(a) 確認或撤銷該項定罪或命令重新審訊；及

(b) 作出為實施其決定所需的其他命令：

但如上訴法庭認為實際上並無司法不公，則即使上訴法庭認為就如此保留的法律問題或會作出對被定罪的人有利的決定，上訴法庭仍可確認該項定罪。

(由1972年第34號第15條代替。由1998年第25號第2條修訂)

## 應律政司司長的申請覆核刑罰

## 81A. 由律政司司長申請覆核刑罰

- (1) 律政司司長經上訴法庭許可，可就上訴法庭以外任何法庭所判處的刑罰(法律所固定的刑罰除外)，基於該刑罰並非經法律認可、原則上錯誤、或明顯過重或明顯不足的理由，向上訴法庭申請覆核。(由1997年第362號法律公告修訂)
- (2) 根據第(1)款提出的申請——
  - (a) 須以書面提出並由律政司司長簽署；(由1997年第362號法律公告修訂)
  - (b) 須附有第(2A)款所指明的文件或文件的副本；
  - (c) 須於判處刑罰之日後21天內或上訴法庭所容許的更長時間內，或根據《裁判官條例》(第227章)第104條就覆核刑罰或覆核所判處刑罰的定罪而進行的任何法律程序被撤回或獲處置之日後21天內或上訴法庭所容許的更長時間內，送交司法常務官存檔。(由1979年第20號第4條修訂)
- (2A) 就第(2)(b)款而言，所指明的文件如下——
  - (a) 如屬裁判官判處刑罰的案件，一份裁判官所裁斷的或在其席前承認的事實和判處該刑罰的理由的陳述書；
  - (b) 如屬區域法院法官判處刑罰的案件，按照《區域法院條例》(第336章)第80條載於紀錄的裁決理由陳述書，以及一份判處該刑罰的理由的陳述書；
  - (c) 如屬高等法院法官判處刑罰的案件，在法官席前進行的全部法律程序的紀錄，但在該等法律程序中進行的任何審訊中所提供的證據除外；
  - (d) 在任何案件中，任何關於答辯人而又在判處刑罰的法庭席前呈交的報告。(由1979年第20號第4條增補)
- (2B) 第(2A)款所指明的文件或文件的副本，須在為此以書面向判處刑罰的裁判官或區域法院法官提出要求後7天內，或如該刑罰是由高等法院法官判處的，則須在為此以書面向司法常務官提出要求後7天內，交付律政司司長。(由1979年第20號第4條增補。由1997年第362號法律公告修訂)
- (3) 上訴法庭可命令將答辯人羈留扣押，直至根據第81B(1)條作出命令為止。
- (4) 上訴法庭如覺得適合，可應答辯人的申請，准予答辯人保釋，以聽候申請的聆訊。
- (5) 上訴法庭如拒絕申請，可判令律政司司長支付上訴法庭所裁定的訟費款額，但如答辯人獲得法律援助，該款額不得超逾答辯人所須支付的分擔費用的總額。(由1997年第362號法律公告修訂)

(6) 在本條以及第81B及81C條中 ——

**答辯人** (respondent)指已被判處刑罰的人。

(由1972年第18號第2條增補。由1979年第20號第4條修訂；由1998年第25號第2條修訂)  
[比照 N.Z. Crimes Act 1961 s. 383]

## 法律問題的轉交

### 81D. 在裁定無罪後將法律問題轉交上訴法庭

- (1) 凡循公訴程序受審的人已獲裁定無罪(不論是關於公訴書的全部或部分)，律政司司長如意欲上訴法庭就案件所出現的一項法律問題給予意見，可將該問題轉交上訴法庭，而上訴法庭須按照本條考慮該論點並就此給予意見。(由1997年第362號法律公告修訂)
- (2) 為考慮根據本條所轉交的問題，上訴法庭須聆聽 ——
  - (a) 由律政司司長或由代表律政司司長的出庭代訟律師作出的論點；(由1997年第362號法律公告修訂)
  - (b) (如獲裁定無罪的人意欲提出任何論點)由大律師代表獲裁定無罪的人提出的論點，或如經上訴法庭許可，則由獲裁定無罪的人自己提出的論點；及
  - (c) 如上訴法庭有所指示，由獲司法常務官委任為法庭之友的大律師提出的論點。
- (3) 凡有問題根據本條轉交上訴法庭，獲裁定無罪的人為向上訴法庭提出任何論點而由大律師代表出庭，他有權獲得其訟費，即有權獲得從政府一般收入中撥出的合理地足夠補償他因該轉交而需大律師代表所恰當招致的任何開支的款項；而司法常務官須在切實可行的範圍內盡快確定根據本款可予追討的任何款額。
- (4) 根據本條作出的轉交，不影響轉交所關乎的審訊或在該審訊中作出的任何無罪裁定。

(由1979年第20號第7條增補。由1998年第25號第2條修訂)  
[比照1972 c. 71 s. 36 U.K.]

## 針對釋放的上訴

(由1988年第57號第31條修訂)

### 81E. 在釋放後向上訴法庭提出的上訴

- (1) 凡任何人根據第16或79G條或根據《複雜商業罪行條例》(第394章)第22條獲釋放，律政司司長可針對該人的釋放向上訴法庭提出上訴。(由1988年第57號第32條修訂；由1995年第69號第4條修訂；由1997年第362號法律公告修訂；由1998年第25號第2條修訂)



- (2) 上訴可基於以下的理由 ——
  - (a) 任何涉及法律問題的理由；
  - (b) 就控罪書內列明的罪行或被控人可就該控罪書而被定罪的任何其他罪行而言，在法庭席前的文件及證據足以針對被告人構成表面證據。
- (3) 上訴法庭如根據本條判決上訴得直，可撤銷被控人的無罪裁定並命令該人受審。
- (4) 上訴法庭在命令進行審訊時，可作出上訴法庭覺得為了將被命令受審的人扣押或准予保釋而所需的命令。
- (5) 第81D(2)及(3)條的條文適用於根據本條提出的上訴，一如該等條文適用於根據第81D(1)條提出的上訴。

*(由1983年第48號第4條增補)*

### 針對循公訴程序作出的定罪的上訴

#### 82. 上訴的權利

- (1) 循公訟程序被定罪的人可針對其定罪向上訴法庭提出上訴。
- (2) 上訴可基於以下的理由 ——
  - (a) 任何僅涉及法律問題的理由；及
  - (b) (經上訴法庭許可)任何僅涉及事實問題的理由，或是涉及法律兼事實問題的理由，或上訴法庭覺得是足夠的上訴理由的任何其他理由；

但如主審法庭的法官發給一份證明書，證明該案件適合基於涉及事實問題的理由或涉及法律兼事實問題的理由提出上訴，則可無需經上訴法庭許可而根據本條提出上訴。

*(由1972年第34號第18條代替。由1998年第25號第2條修訂)*

*[比照1968 c. 19 s. 1 U.K.]*

### 重審

#### 83E. 命令重審的權力

- (1) 凡上訴法庭就針對定罪而提出的上訴判決得直和覺得為了司法公正而有所需要，上訴法庭可命令將上訴人重審。
- (2) 除以下罪行外，不得根據本條命令將任何人重審 ——
  - (a) 該人在原來審訊中被定罪的罪行，並已就該罪行而如第(1)款所述般判決其上訴得直的；
  - (b) 該人在原來審訊中本可就首述罪行的公訴書而被定罪的另一罪行；或

- (c) 公訴書所控告的交替罪名的罪行，而陪審團由於判該人首述罪行有罪而致被解除就該交替罪名的罪行作出裁決的職責。

(由1972年第34號第18條增補)  
[比照1968 c. 19 s. 7 U.K.]

### 針對刑罰的上訴

#### 83G. 循公訴程序被定罪後針對刑罰而提出的上訴

任何人如循公訴程序就某罪行被定罪，可針對他就該罪行而被判處的任何刑罰(並非法律所固定的刑罰)向上訴法庭提出上訴，不論該刑罰是他被定罪時所判處或是在繼後的法律程序中所判處的。

(由1972年第34號第18條增補。由1998年第25號第2條修訂)  
[比照1968 c. 19 s. 9 U.K.]

### 精神錯亂案件的上訴

#### 83J. 針對因精神錯亂而無罪的裁決提出的上訴

任何人如在其案件中有因精神錯亂而無罪的裁決作出，可基於以下的理由針對該裁決向上訴法庭提出上訴——

- (a) 任何僅涉及法律問題的上訴理由；及
- (b) (經上訴法庭許可)任何僅涉及事實問題的理由，或是涉及法律兼事實問題的理由，或上訴法庭覺得是足夠的上訴理由的任何其他理由，

但如主審法庭的法官發給一份證明書，證明該案件適合基於涉及事實問題的理由或涉及法律兼事實問題的理由提出上訴，則可無須經上訴法庭許可而根據本條提出上訴。

(由1972年第34號第18條增補。由1998年第25號第2條修訂)  
[比照1968 c. 19 s. 12 U.K.]

### 不適宜受審

#### 83M. 針對無行為能力的裁斷提出上訴的權利

- (1) 凡已根據第75條對某人是否適宜受審的問題作出裁定，而陪審團已作出該人是無行為能力的裁斷，該人可針對該裁斷向上訴法庭提出上訴。
- (2) 根據本條提出的上訴可基於以下的理由——
  - (a) 任何僅涉及法律問題的上訴理由；及

- (b) (經上訴法庭許可)任何僅涉及事實問題的理由，或是涉及法律兼事實問題的理由，或上訴法庭覺得是足夠的上訴理由的任何其他理由，

但如主審法庭的法官發給一份證明書，證明該案件適合基於涉及事實問題的理由或涉及法律兼事實問題的理由提出上訴，則可無需經上訴法庭許可而根據本條提出上訴。

- (3) 在不抵觸第(4)款的規定下，第75(6)及(7)條適用於本條，一如其適用於第75條。 (由1996年第37號第6條增補)
- (4) 在不損害《裁判官條例》(第227章)第105及113條的實施的原則下，本條不適用於裁判官根據第75條作出的裁定。 (由1996年第37號第6條增補)

(由1972年第34號第18條增補；由1998年第25號第2條修訂)  
[比照1968 c. 19 s. 15 U.K.]

### 關於上訴及保留的法律問題的其他條文

#### 83O. 禁止基於指明的理由而擱置或推翻判決或判決上訴得直

除上訴法庭認為實際上有司法不公外，不得基於以下各項而根據第81條擱置或推翻判決，亦不得根據第83、83K或83N條判決上訴得直——

- (a) 以有欠妥之處為理由，而該欠妥之處是如在選任陪審團前或在審訊過程中獲指出則主審法庭可能會修正的；或
- (b) 因在傳召陪審員或在執行陪審員宣誓方面出錯；或
- (c) 因任何本可述明為反對某人出任陪審員的理由；或
- (d) 因證人的宣誓形式不當。

(由1972年第34號第18條增補)

### 上訴法庭對循公訴程序審訊的案件的覆核

#### 83P. 由行政長官作出的轉交

- (1) 如某人循公訴程序被定罪或循公訴程序受審和被裁斷因精神錯亂而無罪或被陪審團裁斷為無行為能力，行政長官如認為適合，可在任何時間——
- (a) 將整宗案件轉交上訴法庭，而該案件就所有目的而言，須視作為該人向上訴法庭提出的上訴；或
- (b) 如他意欲上訴法庭就案件中出現的任何論點給予協助，可將該論點轉交上訴法庭以取得其意見，而上訴法庭須考慮該如此轉交的論點，並須據此就該論點向行政長官提供意見。 (由1998年第25號第2條修訂)

- (2) 行政長官根據本條作出的轉交，可應第(1)款所提述的人的申請而作出或在無該申請的情況下作出。
- (3) 為免生疑問，特此宣布，本條亦適用於上訴已經由終審法院聆訊和裁定的案件。*(由1995年第79號第50條增補)*  
*(由1972年第34號第18條增補。由1999年第39號第3條修訂)*  
*[比照1968 c. 19 s. 17 U.K.]*

### 由上訴通知至聆訊的程序

#### 83Q. 提出上訴的程序

- (1) 擬根據本部向上訴法庭提出上訴或向上訴法庭取得上訴許可的人，須以根據第9條訂立的規則及作出的命令所規定的方式，發出上訴通知或申請上訴許可的通知(視屬何情況而定)。*(由1998年第25號第2條修訂)*
- (2) 上訴通知或申請上訴許可的通知，須自上訴所針對的定罪、裁決或裁斷之日起計28天內提出，或如屬針對刑罰而提出的上訴，則自判處刑罰之日起計28天內提出，或如屬定罪時作出或視為定罪時作出的命令，則自該命令作出之日起計28天內提出；  
但如刑罰是在定罪、裁決或裁斷之日後多於7天才判處，針對該定罪、裁決或裁斷的上訴通知或申請上訴許可的通知，可自判處刑罰之日起計28天內提出。
- (3) 根據本條發出通知的期限，可在期限屆滿前或屆滿後由上訴法庭延展。*(由1998年第25號第2條修訂)*
- (4)-(5) *(由1993年第24號第11條廢除)*
- (6) (a) 凡受保護的戰俘或受保護的囚犯被判處2年或多於2年的監禁，儘管第(1)款的條文已有規定，他必須發出上訴通知或申請上訴許可的通知的期限，是自其定罪之日或(如屬針對刑罰而提出的上訴)自其被判處刑罰之日至他接獲由以下的人發出通知之日後10天屆滿為止的期間——*(由1993年第24號第11條修訂)*
  - (i) 如屬受保護的戰俘，由英軍軍官發出；
  - (ii) 如屬受保護的囚犯，由懲教署署長或其代表發出，  
該通知是述明保護當局已獲悉其定罪及刑罰。*(由1982年第346號法律公告代替)*
- (b) 就本款而言，**受保護的戰俘**(protected prisoner of war)、**受保護的囚犯**(protected internee)及**保護當局**(the protecting power)等詞，具有藉《1959年日內瓦公約法令(殖民地)樞密院頒令》\*而適用於香港的《1957年日內瓦公約法令》†所給予它們的涵義。*[比照 1968 c. 19 Sch. 5 Part I U.K.]*

(由1972年第34號第18條增補)

[比照 1968 c. 19 s. 18 U.K.]

編輯附註：

\* “《1959年日內瓦公約法令(殖民地)樞密院頒令》”乃“Geneva Conventions Act (Colonial Territories) Order in Council 1959”之譯名。

† “《1957年日內瓦公約法令》”乃“Geneva Conventions Act, 1957”之譯名。

## 聆訊

### 83U. 上訴人出席的權利

- (1) 被告人有權出席申請上訴許可的聆訊和上訴的聆訊，但如上訴法庭認為為了司法公正、公安或安全有所需要而另作命令，則屬例外。(由1995年第79號第50條代替。由1999年第39號第3條修訂)
- (2) (由1995年第79號第50條廢除)
- (3) 上訴法庭判處任何人刑罰的權力，即使該人因任何理由而沒有出席，仍可予以行使。

(由1972年第34號第18條增補)

[比照 1968 c. 19 s. 22 U.K.]

## 取決於上訴結果的其他事宜

### 83W. 上訴對刑罰的效力

- (1) 除上訴法庭有相反指示外，上訴人在聽候對其上訴作裁定時在扣押中的時間，須作為他當其時所受刑罰的部分刑期計算。
- (2) 凡上訴法庭根據第(1)款作出相反指示，上訴法庭須述明如此行事的理由；而凡有以下情況，上訴法庭不得作出任何該等指示——
  - (a) 已給予上訴許可；或
  - (b) 主審法庭的法官已根據第82條發給一份證明書；或 (由1998年第25號第2條修訂)
  - (c) 案件是由行政長官根據第83P條轉交上訴法庭的。(由1999年第39號第3條修訂)
- (3) 凡根據第83R條上訴人獲准保釋，他獲准保釋後不在羈留中的時間，在計算他當其時所受刑罰的刑期時，不得計算在內。
- (4) 除非上訴法庭另有指示，否則上訴法庭根據第83A、83B、83C、83I或83K(4)條所判處的任何刑罰的刑期的開始計算時間，須與該刑期若是在上訴所來自的法律程序中判處則本應開始計算的時間一樣。

(由1972年第34號第18條增補)

[比照1968 c. 19 s. 29 U.K.]

## 補充條文

### 83Y. 可由單一名法官行使的上訴法庭根據第IV部具有的權力

- (1) 上訴法庭根據本部具有而在第(2)款所指明的權力，及根據《刑事罪行條例》(第200章)第156(5)條發出指示的權力，可由單一名法官行使，方式與上訴法庭行使該等權力的方式一樣，並受相同條文約束。(由1978年第25號第5條修訂)
- (2) 該等權力如下——
  - (a) 給予上訴許可；
  - (b) 延展發出上訴通知或申請上訴許可的通知的期限；
  - (c) 容許上訴人出席任何法律程序；
  - (d) 命令證人出庭接受訊問；
  - (e) 准予上訴人保釋；
  - (f) 根據第83F(2)條作出命令和撤銷或更改該等命令；
  - (g) 根據第83W(1)條作出指示；
  - (h) 給予許可根據第81A條申請覆核刑罰；
  - (i) 就訟費的支付根據第83XX條作出命令；(由1978年第2號第4條增補)
  - (j) 根據第81A(3)條作出將答辯人羈留扣押的命令。(由1979年第20號第8條增補)
- (3) 如上訴人或申請人就上述指明的任何權力的行使提出申請，以使其受惠，而單一名法官拒絕申請，則上訴人或申請人有權使該申請由上訴法庭裁定。
- (4) 在本條中，凡提述單一名法官，即提述上訴法庭或原訟法庭的單一名法官。(由1978年第29號第2條增補)

(由1972年第34號第18條增補。由1998年第25號第2條修訂)

[比照1968 c. 19 s. 31 U.K.]

**9P. 對報導保釋法律程序的限制**

- (1) 除非法庭覺得為了社會公正而有所需要，否則任何人不得就任何保釋法律程序，在香港以書面發布或廣播載有任何並非第(2)款所准許發布或廣播的事宜的報導。
- (2) 保釋法律程序的報導可載有——
  - (a) 是該等法律程序的標的之人的姓名；
  - (b) 是該等法律程序的標的之人所被控告的罪行；
  - (c) 法庭的名稱，以及裁判官、區域法院法官或法官的姓名(視屬何情況而定)； (由1998年第25號第2條修訂)
  - (d) 在保釋法律程序中受聘的大律師及律師的姓名(如有的話)；
  - (e) 保釋法律程序的結果及(如是該等法律程序的標的之人獲准保釋但須受第9D(2)條所指的任何條件規限)任何該等條件的詳情；
  - (f) (凡保釋法律程序被押後)押後至何日及何地。
- (3) 如違反本條而發布或廣播報導，以下的人即屬有罪，一經定罪，可處第5級罰款及監禁6個月—— (編輯修訂——2021年第4號編輯修訂紀錄)
  - (a) (如屬作為報章或期刊的一部分而發布的書面報導)報章或期刊的任何東主、編輯、出版人或發行人；
  - (b) (如屬並非作為報章或期刊的一部分而發布的書面報導)發布或分發該報導的人；
  - (c) (如屬廣播的報導)任何傳播或提供包括廣播該項報導的節目的人，以及任何對該節目而言職能相當於報章或期刊編輯的人。
- (4) 除非由律政司司長或經律政司司長同意，否則不得就本條所訂的罪行提起法律程序。 (由1997年第362號法律公告修訂)
- (5) 在本條中——

**發布** (publish)就報導而言，指將報導單獨發布或作為報章或期刊一部分發布，以分發給公眾；

**廣播** (broadcast)指透過無線電訊，或透過利用導線或其他物料造成線路的高頻率播送系統，將聲音或視覺圖像廣播予大眾接收。

**被控人的釋放**

## 16. 被控人被交付審訊後未經聆訊的釋放

- (1) 凡根據《裁判官條例》(第227章)第80C(4)條將被控人交付審訊，或法律程序根據《區域法院條例》(第336章)第77A(6)條移交法院審訊——
  - (a) 如律政司司長沒有在第14(1)(a)或(aa)條(視屬何情況而定)指明的期限內提起法律程序，被控人可在該期限屆滿後；或
  - (b) 被控人可在公訴書送交存檔後，但須在就公訴書被公訴提控前，(由1983年第395號法律公告修訂)  
隨時向法官申請將他釋放，所基於的理由是根據《裁判官條例》(第227章)第80C(1)條遞交法院的文件或根據第10A條交付司法常務官的文件(視屬何情況而定)所披露的證據，連同律政司司長已知會被控人他將謀求在審訊中令法庭接納的任何其他證據一併理解時，並不足以就他所被控告的罪行，或就他基於該控罪而可能被定罪的任何其他罪行，針對他而確立表面的案。(由1992年第59號第5條修訂；由1997年第362號法律公告修訂；由1998年第25號第2條修訂)
- (2) 如根據第(1)款在該款(a)段指明的情況下提出申請——
  - (a) 法官可主動或應被控人的申請，規定律政司司長於命令指明的期限內將公訴書送交存檔，並就訟費施加命令所指明的條款(如有的話)；
  - (b) 除非有命令根據(a)段作出，否則律政司司長可在有申請根據第(1)款提出後的任何時間，但須在該申請獲最終裁定之前，將一份公訴書送交存檔，如因過時將該份公訴書送交存檔而令申請人招致任何訟費，法官可判令律政司司長支付訟費。(由1997年第362號法律公告修訂；由1998年第25號第2條修訂)
- (3) 法官在詳閱文件和聆聽被控人及律政司司長作出的申述(如有的話)後，可指示被控人無須就控罪被公訴提控，並指示將被控人釋放。(由1997年第362號法律公告修訂；由1998年第25號第2條修訂)
- (4) 在不抵觸第81E(3)條的條文下，根據本條作出的釋放須當作為裁定無罪。
- (5) 被控人如已根據第(1)款提出申請，而其後放棄或不繼續進行其申請，則不得提出進一步申請或將他以往所曾提出的申請恢復。
- (6) 凡已將公訴書送交存檔，則本條內對控罪的提述須解釋為對公訴書所列控罪的提述。



(7) 在不減損規則委員會根據第9條所具有的權力的一般性的原則下，規則委員會可根據該條訂立規則，以規管和限制就根據本條或第79G或81E條進行的法律程序作書面或廣播報導。*(由1995年第13號第26條修訂；由1995年第69號第2條修訂)*

(8) 《裁判官條例》(第227章)第87A(8)及(9)條，連同本條第(7)款一併理解時適用於對根據第9條訂立的規則的違反，一如其適用於違反第87A條而發布或廣播的報導。

*(由1983年第48號第4條增補)*

## 6. 對報導上訴的限制

- (1) 除非上訴法庭應答辯人的申請而另有指示，否則任何人不得就上訴的任何法律程序，在香港以書面發布或廣播載有任何並非第(3)款所准許載有的事宜的報導。
- (2) 儘管第(1)款已有規定，凡上訴法庭駁回上訴，或判決上訴得直但並無撤銷答辯人的無罪裁決和命令他受審，則就該上訴的法律程序所作的報導，即使載有任何並非第(3)款所准許載有的事宜，仍可予以發布。
- (3) 就上訴的法律程序所作的報導，可載有——
  - (a) 法庭的名稱及法庭的法官的姓名； (1998年第25號第2條)
  - (b) 上訴所關乎的就根據本條例第16條提出的申請而進行的法律程序的詳情(按照《刑事訴訟程序(根據本條例第16條提出的申請)規則》(第221章，附屬法例G)屬可合法地發布或廣播的)； (2019年第6號編輯修訂紀錄)
  - (c) 上訴的理由或其摘要；
  - (d) 在法律程序中受聘的大律師及律師的姓名；
  - (e) 上訴法庭就處置上訴所作的任何決定，及一旦上訴法庭裁定答辯人須受審，亦可載有他須受審的控罪；
  - (f) (凡上訴的法律程序被押後)押後所至的日期；
  - (g) 答辯人是否獲給予法律援助。

**16. 書面及廣播報導**

- (1) 除非法官應申請人的申請而另有指示，否則任何人不得就申請的任何法律程序，在香港以書面發布或廣播載有任何並非第(3)款所准許載有的事宜的報導。
- (2) 儘管第(1)款已有規定，凡法官指示被控人無須就控罪被公訴提控，並指示將他釋放，而可針對該釋放提出上訴的期間亦已屆滿，且並無任何上訴提出，或曾有上訴提出，但該上訴已遭放棄或駁回，則就該申請的法律程序所作的報導，即使載有任何並非第(3)款所准許載有的事宜，亦可予以發布或廣播。
- (3) 就申請的法律程序所作的報導，可載有——
  - (a) 法官的姓名；
  - (b) 申請人被交付審判的罪行或其摘要；
  - (c) 申請的理由或其摘要；
  - (d) 在法律程序中受聘的大律師及律師的姓名；
  - (e) 法官就申請所作的任何裁定；
  - (f) (凡申請的法律程序被押後)押後所至的日期及地點；
  - (g) 申請人是否獲給予法律援助。

(1998年第25號第2條)

## 建議對財政的影響

### 對財政的影響

條例草案訂定的建議或會對司法機構的工作量造成影響。然而，除非有關的無須答辯判定涉及法律上或原則上的錯誤，或由三名法官組成的審判庭所作出的無罪裁定在法律上屬錯誤，否則無須提出上訴。因此，不大可能出現大量在新機制下的上訴，由此產生的工作量可能不多。

2. 儘管如此，如果司法機構未來無法承擔額外的工作量，它將與政府協商並解決必要的財務和人力資源需求，並按照既定機制尋求資源支持。

## **Consultation Paper on the Criminal Procedure (Amendment) Bill**

### **INTRODUCTION**

The Department of Justice (“**DoJ**”) would like to invite comments on the proposed Criminal Procedure (Amendment) Bill (“**the proposed Bill**”) which seeks to provide for a statutory appeal procedure for the prosecution to appeal against rulings of no case to answer by judges of the Court of First Instance (“**CFI**”) in criminal trials.

### **BACKGROUND**

2. In the judgment of *Re Secretary for Justice’s Reference Nos. 1-3 of 2021* [2022] HKCA 1635 (“**the Judgment**”) handed down on 28 October 2022, the Court of Appeal (“**CA**”) overturned the rulings of two judges in the CFI and held that each of the cases under consideration had resulted in a serious miscarriage of justice in the sense that the judges concerned impermissibly usurped the function of the juries and incorrectly withdrew the cases before their respective juries could consider them.

3. The CA made an observation that there is at present no statutory procedure for the prosecution to appeal against CFI’s judges’ rulings of no case to answer (“**the Lacuna**”) and that there is an urgent need for the statutory provisions to be reformed in this respect.

4. Under the current statutory regime, if a CFI judge has made an incorrect ruling of no case to answer and acquitted the defendant, the best that the prosecution can do is to refer the matter to the CA for clarification of the legal principles involved under section 81D of the Criminal Procedure Ordinance (“**CPO**”). The acquitted accused cannot be retried, even if the judge had plainly erred. In the cases before the CA, the prosecution did invite the court to provide guidance on the viable way of preserving the status quo in similar future cases and one of the proposals under the existing statutory

framework was for the trial judge to make a reservation of a question of law, namely whether there is a case to answer on the evidence adduced, for the consideration of the CA pursuant to section 81 of the CPO. The CA accepted that such a course was to be adopted “*sparingly*” and only in the “*most exceptional cases*”. The CPO has to be urgently amended to put in place such an appeal procedure in order to fill the Lacuna as exposed by the Judgment.

5. The CA considered that there is “*obviously considerable merit, therefore, in Hong Kong adopting a similar measure to that which operates in the United Kingdom*” (§§145-148 of the Judgment).

## **PURPOSE**

6. In the United Kingdom (“UK”), the Crown can appeal against a judge’s ruling of no case to answer under Part 9 of the Criminal Justice Act 2003 (“UK Act”) (a copy of which is at **Annex**), specifically section 58. After careful consideration of the Judgment, the DoJ proposes to provide for a statutory appeal procedure similar to that under Part 9 of the UK Act for the prosecution to appeal against rulings of no case to answer by judges of the CFI in criminal trials by way of the proposed Bill. This aims to provide an immediate solution to fill the Lacuna mentioned in the Judgment so as to prevent further possible miscarriage of justice.

7. The DoJ would like to seek the views of the Judiciary, legal profession and other relevant stakeholders on the proposed Bill.

## **OVERVIEW OF THE PROPOSED BILL**

8. The proposed Bill seeks to add new provisions to the CPO, which are modelled on the provisions in Part 9 of the UK Act with modifications. In this regard, we set out in the following paragraphs an overview of the proposed Bill and issues on which we would like to seek your views and comments.

## I. Scope

9. Currently, criminal appeals are provided under Part IV of the CPO. Sections 81A-81F provide for various types of prosecution's appeal, and sections 82-83Z govern appeals by defendants. We therefore propose to add new provisions to Part IV of the CPO after section 81A-81F, but before sections 82-83Z.

### A. *Right of appeal*

10. As mentioned in paragraph 3 above, there is currently no statutory procedure for the prosecution to appeal against a ruling of no case to answer by CFI judges.

11. The UK Act provides a general right of appeal against rulings in relations to trials on indictment. Section 58 of the UK Act allows the Crown to appeal a ruling by the judge that: -

- (a) relates to one or more offences included in the indictment (section 58(1));
- (b) was made at any time until the start of the judge's summing-up (section 58(1), (13)-(14)); and
- (c) has the effect of terminating the trial, as explained in *R v Thompson & another* [2007] 1 WLR 1123, *R v Clark* [2008] 1 Cr App R 33 and *CPS v C, M and H* [2009] EWCA Crim 2614.

There is, therefore, no right of appeal against a judge misdirecting a jury in his summing-up.

12. In order to provide an immediate solution to fill the Lacuna mentioned in the Judgment so as to prevent further possible miscarriage of justice, we propose to confine the scope of this amendment exercise to appeals against a ruling of no case to answer by CFI judges in criminal trials only, instead of covering "a ruling by the judge that has the effect of

terminating the trial” which appears to be unnecessarily too wide for the present purpose. We therefore propose that the new provisions will be expressly confined to the ruling of no case to answer and only preconditions (a) and (b) of paragraph 11 be adopted without adopting the precondition (c) of paragraph 11. In line with adopting the precondition (b), we propose that there should be no right of appeal against a judge’s misdirection in a summing-up.

13. By virtue of section 57 of the UK Act, the right of appeal in the UK does not extend to a ruling that a jury should be discharged, or to a ruling that can be appealed to the CA by virtue of any other enactment. We propose that this should be adopted.

14. **DoJ invites views and comments on the proposed scope of the right of appeal under the new appeal regime set out in paragraphs 12 and 13 above.**

***B. Level of court and types of trials***

15. Section 57 of the UK Act provides that in relation to a trial on indictment, the prosecution is to have the rights of appeal to the CA for which provision is made by Part 9 and such appeal may be brought only with the leave of the trial judge or the CA. We propose to adopt a similar approach in Hong Kong for an appeal against a ruling of no case to answer by CFI judges. The appeal should be subject to the leave of the trial judge or the CA. As in the UK regime and in line with other appeals where leave can be granted by the trial judge or the CA, where leave is refused by the trial judge, the applicant can make a renewed application to the CA.

16. Under sections 41-42 of the CPO, all criminal cases in the CFI are to be tried by a judge and a jury, unless the Secretary for Justice files a motion that the case shall be tried before two judges and a jury (i.e. trial at bar). Article 46 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region provides that in criminal proceedings in the CFI concerning offences endangering national security, the Secretary for Justice may issue a certificate



directing that the case shall be tried without a jury; the case shall be tried in the CFI without a jury by a panel of three judges. We propose that the new appeal regime should provide for appeals against a ruling of no case to answer by CFI judges in criminal trials with or without a jury.

17. The prosecution can challenge a no case to answer ruling of a District Court judge by way of case stated under section 84 of the District Court Ordinance (Cap. 336). For cases in the Magistrates' Courts, the prosecution can challenge a magistrate's ruling of no case to answer either by way of a review under section 104 of the Magistrates Ordinance (Cap. 227), or an appeal by way of case stated under section 105 of that Ordinance. We consider that it is not necessary to apply the new appeal procedure to criminal trials in the District Court or the Magistrates' Courts.

18. **DoJ invites views and comments on the proposed level of court and types of trials the rulings of which are to be subject to the new appeal regime.**

***C. Rulings to be heard together***

19. The rulings preceding the final ruling of no case to answer may well have been the reason or foundation of the no case ruling. If the prosecution is precluded from challenging the underlying rulings, it may be severely handicapped in overturning the decision on no case. The Court of Final Appeal made a ruling along this line in the case of *HKSAR v Milne John* [2022] HKCFA 22 in the context of the prosecution's appeal against the trial judge's termination of trial by ordering a permanent stay of proceedings. See §§20-25 of the judgment.

20. In accordance with section 58(7) of the UK Act, where the ruling is one of no case to answer, the prosecution may nominate other rulings that relate to the offence for the CA to consider. The prosecution must do so at the same time as it informs the Court of its intention to appeal. The other nominated rulings will be regarded as subject to the appeal.

21. DoJ proposes that the prosecution may at the same time nominate one or more other rulings which have been made by a judge(s) in relation to the trial on indictment and which relate to the offence(s) which are the subject of the appeal and the other ruling(s) will also be treated as the subject of the appeal. **DoJ invites views and comments on this proposal.**

## II. Appeal mechanism

### A. *Timing of application*

22. Section 58(4) of the UK Act provides that the prosecution may not appeal in respect of the ruling unless –

- (a) following the making of the ruling, it –
  - (i) informs the court that it intends to appeal, or
  - (ii) requests an adjournment to consider whether to appeal, and
- (b) if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.

23. We propose to adopt the same restrictions on the timing of making an appeal under section 58(4) of the UK Act. **DoJ invites views and comments on this proposal.**

### B. *Acquittal guarantee*

24. Under the UK regime, at or before the time the Crown informs the Court that it intends to appeal, the prosecutor must give the guarantee of acquittal required by section 58(8)-(9) of the UK Act. If this step is not followed there can be no appeal (*R v LSA* [2008] 1 WLR 2881, *C, M and H & R v NT* [2010] WLR 2655).

25. The prosecutor must give the “acquittal guarantee” at or before informing the trial Court that it intends to appeal. The acquittal guarantee will usually be given orally in Court when the parties are present. Under

section 58(12) of the UK Act, where the prosecution has given the “acquittal guarantee”, and either of the conditions mentioned in section 58(9) of the UK Act is fulfilled, the judge or the CA must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence. The conditions mentioned in section 58(9) are that (a) leave to appeal to the CA is not obtained, and (b) the appeal is abandoned before it is determined by the CA.

26. We propose that the arrangements under section 58(8), (9) and (12) of the UK Act be adopted. **The DoJ invites views and comments on this proposal.**

### ***C. Suspension of effect of ruling***

27. Pursuant to section 58(3) and (10) of the UK Act, when the prosecution informs the judge of the intention to appeal, or requests an adjournment to consider an appeal, the judge’s ruling of no case to answer is to have no effect and continues to be so whilst the appeal is pursued. This means that the ruling and any not guilty verdict resulting from it is suspended pending the outcome of the appeal.

28. Further, under section 58(11) of the UK Act, during suspension of the ruling, any consequences of the ruling are also to have no effect, the judge may not take any steps in consequence of the ruling, and if he does so, any such steps are also to have no effect.

29. The suspension of the effect of the ruling of no case to answer is important as it maintains the *status quo* and prevents the judge(s) from pressing on and directing the jury to acquit. Since the judge(s) should not be allowed to proceed in any way, such consequences or steps taken in consequence of the ruling should remain to have no effect even when the appeal is unsuccessful or abandoned before determination. In the event the appeal is unsuccessful or abandoned before determination, the CA will deal with the matter and direct an acquittal as per section 58(12) of the UK Act.

30. We therefore propose that the arrangements under section 58(3), (10) and (11) of the UK Act be adopted. **The DoJ invites views and comments on this proposal.**

***D. Expedited and non-expedited appeals***

31. In accordance with section 59 of the UK Act, where the prosecution informs the court of its intention to appeal, the judge must decide whether or not the appeal should be expedited, so that in urgent cases the appeal can be heard swiftly and, if successful, the trial can continue without further delay.

32. It would be in the interest of justice that appeals of this nature be determined as soon as practicable. It avoids unnecessary discharge of the jury, especially where the trial is long and complex and involves a significant amount of public resources. We therefore propose that a provision similar to section 59 of the UK Act should be adopted. **The DoJ invites views and comments on this proposal.**

***E. Determination of appeals***

33. In accordance with section 61 of the UK Act, on appeal, the CA may confirm, reverse or vary any ruling to which the appeal relates. Where the CA confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence. Where the CA reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is subject of the appeal, do any of the following –

- (a) order that proceedings for that offence may be resumed in the Crown Court,
- (b) order that a fresh trial may take place in the Crown Court for that offence,
- (c) order that the defendant in relation to that offence be acquitted of that offence.

34. But the CA may not make an order in (c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order in (a) or (b) were made.

35. We propose this arrangement under section 61 of the UK Act be adopted and the references to “Crown Court” should be replaced by the CFI. **The DoJ invites views and comments on this proposal.**

#### ***F. Reversal of rulings***

36. Section 67 of the UK Act provides that the CA may not reverse a ruling unless it is satisfied that: -

- (a) the ruling was wrong in law;
- (b) the ruling involved an error of law or principle; or
- (c) the ruling was a ruling that it was not reasonable for the judge to have made.

37. We propose that the three criteria under section 67 of the UK Act for the reversal of a no case to answer ruling should be adopted. **The DoJ invites views and comments on this proposal.**

#### ***G. Costs***

38. Costs provisions pertaining to specific types of prosecution’s appeal can be found in the CPO, for example, sections 81A(5), 81D(3) and 81F(6).

39. Pursuant to section 69(2) of the UK Act, the CA may make a costs order in favour of the defendant on appeal under Part 9 of the UK Act. Section 69(3) provides that where the CA reverses or varies a ruling on an appeal under Part 9 of the UK Act, it may make such order as to the costs to be paid by the defendant, to such person as may be named in the order, as it considers just and reasonable. Under section 69(4) of the UK Act, the costs

ordered to be paid by the defendant may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court.

40. We consider it appropriate to make similar provision to provide that the CA may make such order as to costs to be paid by the defendant to such person as it considers just and reasonable when the CA reverses or varies the ruling on appeals.

41. As for the costs of transcripts, they would in any event be covered by the CA's costs order if they are properly obtained (i.e. just and reasonable). It is also noted that there is no similar stipulation for transcripts in other costs provisions under the CPO or the Costs in Criminal Cases Ordinance (Cap. 492). There does not appear to be any compelling reason to expressly include the costs of transcripts in the costs provisions specifically for this type of appeal.

42. **The DoJ invites views and comments on this proposal.**

#### ***H. Restrictions on reporting***

43. Sections 71-72 of the UK Act provide for restrictions and offences on reporting of (a) anything done under the provisions governing general right of appeal in respect of rulings or expediting of appeals (section 71(1)(a)), or (b) an appeal to the CA under Part 9 or to the Supreme Court in relation to an appeal under Part 9 (including any application for leave to make such appeal) (section 71(1)(b)-(d)).

44. The reporting restrictions under sections 71-72 of the UK Act would prevent the jury from being influenced and the defendant from being prejudiced by adverse publicity. Similar provisions on reporting restriction in relation to bail proceedings can be found in section 9P of the CPO. We therefore propose that imposition of reporting restrictions similar to those under sections 71-72 of the UK Act should be adopted. **The DoJ invites views and comments on this proposal.**

### **III. Procedural rules**

45. We also propose that, following the passing of the proposed Bill, procedural rules should be implemented by enacting new subsidiary legislation to facilitate smooth operation of the new appeal regime in practice. **The DoJ invites views and comments on this proposal.**

### **SUMMARY OF THE PROPOSED NEW PROVISIONS**

46. In summary, the DoJ wishes to invite views and comments on the following new provisions which are modelled on Part 9 of the UK Act and to be added to the CPO:

- (a) The prosecution will have a right to appeal against a ruling of no case to answer by CFI judges in criminal trials with or without a jury, and such appeal may be brought only with the leave of the trial judge(s) or the CA (*cf. sections 57 and 58 of the UK Act*, see paragraphs 10 to 18 above);
- (b) The new appeal procedure does not apply to criminal trials in the District Court or the Magistrates' Courts (see paragraphs 17-18 above);
- (c) The prosecution may at the same time nominate one or more other rulings which have been made by a judge(s) in relation to the trial on indictment and which relate to the offence(s) which are the subject of the appeal and the other rulings will also be treated as the subject of the appeal (*cf. section 58(7) of the UK Act*, see paragraphs 19-21 above);
- (d) The prosecution may not appeal in respect of the ruling unless following the making of the ruling, it (i) informs the court that it intends to appeal, or (ii) requests an adjournment to consider whether to appeal, and if such an adjournment is granted, it informs the court following the adjournment that it intends to

appeal (*cf. section 58(4) of the UK Act*, see paragraphs 22-23 above);

- (e) At or before the time the prosecution informs the Court of its intention to appeal against a ruling of no case to answer, the prosecution must give a guarantee of acquittal, such that in the event that the leave to appeal the CA is not obtained or the appeal is abandoned before determination by the CA, the defendant must be acquitted. If this step is not followed, there can be no appeal (*cf. section 58(8)&(9) of the UK Act*, see paragraphs 24-26 above);
- (f) If the prosecution informs the court of its intention to appeal, the ruling is to continue to have no effect in relation to the offence(s) which are the subject of the appeal whilst the appeal is pursued (*cf. section 58(3)&(10) of the UK Act*, see paragraphs 27-30 above);
- (g) Where the prosecution informs the court of its intention to appeal, the court must decide whether or not the appeal should be expedited, so that urgent cases can be heard swiftly and, if successful, the trials can continue without delay (*cf. section 59 of the UK Act*, see paragraphs 31 to 32 above);
- (h) The CA may confirm, reverse or vary any ruling to which the appeal relates. Where CA confirms the ruling, it must order that the defendant be acquitted of the relevant offence. Where the CA reverses or varies the ruling, it must order that (i) proceedings for that offence may be resumed or (ii) a fresh trial may take place, or (iii) the defendant be acquitted if the CA considers that the defendant could not receive a fair trial if an order for (i) or (ii) were made (*cf. section 61 of the UK Act*, see paragraphs 33 to 35 above);
- (i) The CA may not reverse a ruling of no case to answer unless it is satisfied that the ruling was wrong in law, involved an error of



law or principle, or was one that it was not reasonable for the judge(s) to have made (*cf. section 67 of the UK Act, see paragraphs 36 to 37 above*);

- (j) Where the CA reverses or varies the ruling on appeal, it may make such order as to costs to be paid by the defendant to such person as it considers just and reasonable (*cf. section 69 of the UK Act, see paragraphs 38-42 above*);
- (k) Restrictions will be imposed on the reporting of matters relating to the prosecution's appeal against a ruling of no case to answer and any person in contravention will be guilty of an offence. (*cf. sections 71 and 72 of the UK Act, see paragraphs 43 to 44 above*);
- (l) Following the passing of the proposed Bill, procedural rules will be implemented by enacting new subsidiary legislation to facilitate smooth operation of the new appeal regime in practice (see paragraph 45 above).

## **CONSULTATION**

47. Before taking the matter forward, DoJ would like to seek the views of the Judiciary, legal professional bodies and other relevant stakeholders on the proposed Bill outlined above.

48. Please address your views and comments to the following on or before 2 February 2023 –

Policy Affairs Unit 2  
Constitutional and Policy Affairs Division  
Department of Justice  
5/F, East Wing, Justice Place  
18 Lower Albert Road  
Central, Hong Kong SAR  
(Subject: Criminal Procedure (Amendment) Bill Consultation)

Fax: 3918 4799

E-mail: [cpo@doj.gov.hk](mailto:cpo@doj.gov.hk)

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**Constitutional and Policy Affairs Division**  
**Department of Justice**  
**January 2023**

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*Status: This version of this part contains provisions that are prospective.*  
**Changes to legislation:** Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 10 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 9

#### PROSECUTION APPEALS

##### *Introduction*

#### 57 Introduction

- (1) In relation to a trial on indictment, the prosecution is to have the rights of appeal for which provision is made by this Part.
- (2) But the prosecution is to have no right of appeal under this Part in respect of—
  - (a) a ruling that a jury be discharged, or
  - (b) a ruling from which an appeal lies to the Court of Appeal by virtue of any other enactment.
- (3) An appeal under this Part is to lie to the Court of Appeal.
- (4) Such an appeal may be brought only with the leave of the judge or the Court of Appeal.

#### **Commencement Information**

- II** S. 57 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\)](#), [Sch. 1 para. 4](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

#### *General right of appeal in respect of rulings*

#### 58 General right of appeal in respect of rulings

- (1) This section applies where a judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.

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*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 10 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (2) The prosecution may appeal in respect of the ruling in accordance with this section.
- (3) The ruling is to have no effect whilst the prosecution is able to take any steps under subsection (4).
- (4) The prosecution may not appeal in respect of the ruling unless—
  - (a) following the making of the ruling, it—
    - (i) informs the court that it intends to appeal, or
    - (ii) requests an adjournment to consider whether to appeal, and
  - (b) if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.
- (5) If the prosecution requests an adjournment under subsection (4)(a)(ii), the judge may grant such an adjournment.
- (6) Where the ruling relates to two or more offences—
  - (a) any one or more of those offences may be the subject of the appeal, and
  - (b) if the prosecution informs the court in accordance with subsection (4) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.
- (7) Where—
  - (a) the ruling is a ruling that there is no case to answer, and
  - (b) the prosecution, at the same time that it informs the court in accordance with subsection (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time and which relate to the offence or offences which are the subject of the appeal,that other ruling, or those other rulings, are also to be treated as the subject of the appeal.
- (8) The prosecution may not inform the court in accordance with subsection (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions mentioned in subsection (9) is fulfilled.
- (9) Those conditions are—
  - (a) that leave to appeal to the Court of Appeal is not obtained, and
  - (b) that the appeal is abandoned before it is determined by the Court of Appeal.
- (10) If the prosecution informs the court in accordance with subsection (4) that it intends to appeal, the ruling mentioned in subsection (1) is to continue to have no effect in relation to the offence or offences which are the subject of the appeal whilst the appeal is pursued.
- (11) If and to the extent that a ruling has no effect in accordance with this section—
  - (a) any consequences of the ruling are also to have no effect,
  - (b) the judge may not take any steps in consequence of the ruling, and
  - (c) if he does so, any such steps are also to have no effect.
- (12) Where the prosecution has informed the court of its agreement under subsection (8) and either of the conditions mentioned in subsection (9) is fulfilled, the judge or the

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 10 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Court of Appeal must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence.

(13) In this section “applicable time”, in relation to a trial on indictment, means any time (whether before or after the commencement of the trial) before the [<sup>F1</sup>time when the judge starts his] summing-up to the jury.

[<sup>F2</sup>(14) The reference in subsection (13) to the time when the judge starts his summing-up to the jury includes the time when the judge would start his summing-up to the jury but for the making of an order under Part 7.]

#### Textual Amendments

- F1** Words in s. 58(13) substituted (8.1.2007) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), [ss. 30\(1\)](#), 60; [S.I. 2006/3423](#), [art. 2](#) (subject to [art. 3](#))
- F2** S. 58(14) inserted (8.1.2007) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), [ss. 30\(2\)](#), 60; [S.I. 2006/3423](#), [art. 2](#) (subject to [art. 3](#))

#### Commencement Information

- I2** S. 58 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 4](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

## 59 Expedited and non-expedited appeals

- (1) Where the prosecution informs the court in accordance with section 58(4) that it intends to appeal, the judge must decide whether or not the appeal should be expedited.
- (2) If the judge decides that the appeal should be expedited, he may order an adjournment.
- (3) If the judge decides that the appeal should not be expedited, he may—
  - (a) order an adjournment, or
  - (b) discharge the jury (if one has been sworn).
- (4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in subsection (3)(a) or (b).

#### Commencement Information

- I3** S. 59 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 4](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

## 60 Continuation of proceedings for offences not affected by ruling

- (1) This section applies where the prosecution informs the court in accordance with section 58(4) that it intends to appeal.
- (2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 10 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

#### Commencement Information

- I4** S. 60 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

### 61 Determination of appeal by Court of Appeal

- (1) On an appeal under section 58, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.
- (2) Subsections (3) to (5) apply where the appeal relates to a single ruling.
- (3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.
- (4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—
  - (a) order that proceedings for that offence may be resumed in the Crown Court,
  - (b) order that a fresh trial may take place in the Crown Court for that offence,
  - (c) order that the defendant in relation to that offence be acquitted of that offence.
- <sup>F3</sup>(5) But the Court of Appeal may not make an order under subsection (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under subsection (4)(a) or (b).]
- (6) Subsections (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.
- (7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.
- (8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in subsection (4)(a) to (c) (but subject to subsection (5)).

#### Textual Amendments

- F3** S. 61(5) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 44**, 153 (with Sch. 27 para. 16); S.I. 2008/1586, **art. 2(1)**, Sch. 1 para. 23

#### Commencement Information

- I5** S. 61 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 10 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

PROSPECTIVE

### *Right of appeal in respect of evidentiary rulings*

## **62 Right of appeal in respect of evidentiary rulings**

- (1) The prosecution may, in accordance with this section and section 63, appeal in respect of—
  - (a) a single qualifying evidentiary ruling, or
  - (b) two or more qualifying evidentiary rulings.
- (2) A “qualifying evidentiary ruling” is an evidentiary ruling of a judge in relation to a trial on indictment which is made at any time (whether before or after the commencement of the trial) before the opening of the case for the defence.
- (3) The prosecution may not appeal in respect of a single qualifying evidentiary ruling unless the ruling relates to one or more qualifying offences (whether or not it relates to any other offence).
- (4) The prosecution may not appeal in respect of two or more qualifying evidentiary rulings unless each ruling relates to one or more qualifying offences (whether or not it relates to any other offence).
- (5) If the prosecution intends to appeal under this section, it must before the opening of the case for the defence inform the court—
  - (a) of its intention to do so, and
  - (b) of the ruling or rulings to which the appeal relates.
- (6) In respect of the ruling, or each ruling, to which the appeal relates—
  - (a) the qualifying offence, or at least one of the qualifying offences, to which the ruling relates must be the subject of the appeal, and
  - (b) any other offence to which the ruling relates may, but need not, be the subject of the appeal.
- (7) The prosecution must, at the same time that it informs the court in accordance with subsection (5), inform the court of the offence or offences which are the subject of the appeal.
- (8) For the purposes of this section, the case for the defence opens when, after the conclusion of the prosecution evidence, the earliest of the following events occurs—
  - (a) evidence begins to be adduced by or on behalf of a defendant,
  - (b) it is indicated to the court that no evidence will be adduced by or on behalf of a defendant,
  - (c) a defendant’s case is opened, as permitted by section 2 of the Criminal Procedure Act 1865 (c. 18).
- (9) In this section—

“evidentiary ruling” means a ruling which relates to the admissibility or exclusion of any prosecution evidence,

“qualifying offence” means an offence described in Part 1 of Schedule 4.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Criminal Justice Act 2003, Part 9 is up to date with all changes known to be in force on or before 10 November 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (10) The Secretary of State may by order amend that Part by doing any one or more of the following—
- (a) adding a description of offence,
  - (b) removing a description of offence for the time being included,
  - (c) modifying a description of offence for the time being included.
- (11) Nothing in this section affects the right of the prosecution to appeal in respect of an evidentiary ruling under section 58.

### **63 Condition that evidentiary ruling significantly weakens prosecution case**

- (1) Leave to appeal may not be given in relation to an appeal under section 62 unless the judge or, as the case may be, the Court of Appeal is satisfied that the relevant condition is fulfilled.
- (2) In relation to an appeal in respect of a single qualifying evidentiary ruling, the relevant condition is that the ruling significantly weakens the prosecution's case in relation to the offence or offences which are the subject of the appeal.
- (3) In relation to an appeal in respect of two or more qualifying evidentiary rulings, the relevant condition is that the rulings taken together significantly weaken the prosecution's case in relation to the offence or offences which are the subject of the appeal.

### **64 Expedited and non-expedited appeals**

- (1) Where the prosecution informs the court in accordance with section 62(5), the judge must decide whether or not the appeal should be expedited.
- (2) If the judge decides that the appeal should be expedited, he may order an adjournment.
- (3) If the judge decides that the appeal should not be expedited, he may—
  - (a) order an adjournment, or
  - (b) discharge the jury (if one has been sworn).
- (4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in subsection (3)(a) or (b).

### **65 Continuation of proceedings for offences not affected by ruling**

- (1) This section applies where the prosecution informs the court in accordance with section 62(5).
- (2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

### **66 Determination of appeal by Court of Appeal**

- (1) On an appeal under section 62, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.



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- (2) In addition, the Court of Appeal must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—
  - (a) order that proceedings for that offence be resumed in the Crown Court,
  - (b) order that a fresh trial may take place in the Crown Court for that offence,
  - (c) order that the defendant in relation to that offence be acquitted of that offence.
- (3) But no order may be made under subsection (2)(c) in respect of an offence unless the prosecution has indicated that it does not intend to continue with the prosecution of that offence.

### *Miscellaneous and supplemental*

## **67 Reversal of rulings**

The Court of Appeal may not reverse a ruling on an appeal under this Part unless it is satisfied—

- (a) that the ruling was wrong in law,
- (b) that the ruling involved an error of law or principle, or
- (c) that the ruling was a ruling that it was not reasonable for the judge to have made.

### **Commencement Information**

- I6** S. 67 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 4](#) (subject to [art. 2\(2\), Sch. 2](#))

## **68 Appeals to the House of Lords**

- (1) In section 33(1) of the 1968 Act (right of appeal to House of Lords) after “this Act” there is inserted “ or Part 9 of the Criminal Justice Act 2003 ”.
- (2) In section 36 of the 1968 Act (bail on appeal by defendant) after “under” there is inserted “ Part 9 of the Criminal Justice Act 2003 or ”.
- (3) In this Part “the 1968 Act” means the Criminal Appeal Act 1968 (c. 19).

### **Commencement Information**

- I7** S. 68 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 4](#) (subject to [art. 2\(2\), Sch. 2](#))

## **69 Costs**

- (1) The Prosecution of Offences Act 1985 (c. 23) is amended as follows.
- (2) In section 16(4A) (defence costs on an appeal under section 9(11) of Criminal Justice Act 1987 may be met out of central funds) after “hearings” there is inserted “ or under Part 9 of the Criminal Justice Act 2003 ”.
- (3) In section 18 (award of costs against accused) after subsection (2) there is inserted—

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“(2A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part 9 of the Criminal Justice Act 2003, it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.”

(4) In subsection (6) after “subsection (2)” there is inserted “ or (2A) ”.

#### Commencement Information

**I8** S. 69 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

### 70 Effect on time limits in relation to preliminary stages

(1) Section 22 of the Prosecution of Offences Act 1985 (c. 23) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings) is amended as follows.

(2) After subsection (6A) there is inserted—

“(6B) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part 9 of the Criminal Justice Act 2003 shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned.”

#### Commencement Information

**I9** S. 70 wholly in force at 4.4.2005, see s. 336(3) and S.I. 2005/950, **art. 2(1)**, Sch. 1 para. 4 (subject to art. 2(2), Sch. 2)

### 71 Restrictions on reporting

(1) Except as provided by this section no publication shall include a report of—

- (a) anything done under section 58, 59, 62, 63 or 64,
- (b) an appeal under this Part,
- (c) an appeal under Part 2 of the 1968 Act in relation to an appeal under this Part, or
- (d) an application for leave to appeal in relation to an appeal mentioned in paragraph (b) or (c).

(2) The judge may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—

- (a) anything done under section 58, 59, 62, 63 or 64, or
- (b) an application to the judge for leave to appeal to the Court of Appeal under this Part.

(3) The Court of Appeal may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—

- (a) an appeal to the Court of Appeal under this Part,

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- (b) an application to that Court for leave to appeal to it under this Part, or
  - (c) an application to that Court for leave to appeal to the [<sup>F4</sup>Supreme Court] under Part 2 of the 1968 Act.
- (4) The [<sup>F5</sup>Supreme Court] may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—
- (a) an appeal to [<sup>F6</sup>the Supreme Court] under Part 2 of the 1968 Act, or
  - (b) an application to [<sup>F6</sup>the Supreme Court] for leave to appeal to it under Part 2 of that Act.
- (5) Where there is only one defendant and he objects to the making of an order under subsection (2), (3) or (4)—
- (a) the judge, the Court of Appeal or the [<sup>F7</sup>Supreme Court is] to make the order if (and only if) satisfied, after [<sup>F8</sup>considering] the representations of the defendant, that it is in the interests of justice to do so, and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (6) Where there are two or more defendants and one or more of them object to the making of an order under subsection (2), (3) or (4)—
- (a) the judge, the Court of Appeal or the [<sup>F7</sup>Supreme Court is] to make the order if (and only if) satisfied, after [<sup>F9</sup>considering] the representations of each of the defendants, that it is in the interests of justice to do so, and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (7) Subsection (1) does not apply to the inclusion in a publication of a report of—
- (a) anything done under section 58, 59, 62, 63 or 64,
  - (b) an appeal under this Part,
  - (c) an appeal under Part 2 of the 1968 Act in relation to an appeal under this Part, or
  - (d) an application for leave to appeal in relation to an appeal mentioned in paragraph (b) or (c),
- at the conclusion of the trial of the defendant or the last of the defendants to be tried.
- (8) Subsection (1) does not apply to a report which contains only one or more of the following matters—
- (a) the identity of the court and the name of the judge,
  - (b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses,
  - (c) the offence or offences, or a summary of them, with which the defendant or defendants are charged,
  - (d) the names of counsel and solicitors in the proceedings,
  - (e) where the proceedings are adjourned, the date and place to which they are adjourned,
  - (f) any arrangements as to bail,
  - [<sup>F10</sup>(g) whether, for the purposes of the proceedings, representation was provided to the defendant or any of the defendants under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.]

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- (9) The addresses that may be included in a report by virtue of subsection (8) are addresses—
- (a) at any relevant time, and
  - (b) at the time of their inclusion in the publication.
- (10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication.
- (11) In this section—
- “programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42),
- “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings,
- “relevant time” means a time when events giving rise to the charges to which the proceedings relate are alleged to have occurred,
- “relevant programme” means a programme included in a programme service.

#### Textual Amendments

- F4** Words in s. 71(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148, [Sch. 9 para. 82\(3\)\(a\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F5** Words in s. 71(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148, [Sch. 9 para. 82\(3\)\(b\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F6** Words in s. 71(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148, [Sch. 9 para. 82\(3\)\(b\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F7** Words in s. 71(5)(6) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148, [Sch. 9 para. 82\(3\)\(c\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F8** Word in s. 71(5)(a) substituted (28.6.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), [ss. 15\(7\)](#), 51(3)
- F9** Word in s. 71(6)(a) substituted (28.6.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), [ss. 15\(7\)](#), 51(3)
- F10** S. 71(8)(g) substituted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 5 para. 65](#); S.I. 2013/453, [art. 3\(h\)](#) (with savings and transitional provisions in S.I. 2013/534, [art. 6](#))

#### Commencement Information

- I10** S. 71 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 4](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

## 72 Offences in connection with reporting

- (1) This section applies if a publication includes a report in contravention of section 71.
- (2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where the publication is a relevant programme—

*Status: This version of this part contains provisions that are prospective.*

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- (a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and
  - (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
- is guilty of an offence.
- (4) In the case of any other publication, any person publishing it is guilty of an offence.
- (5) If an offence under this section committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,
- an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (7) If the affairs of a body corporate are managed by its members, “director” in subsection (6) means a member of that body.
- (8) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Proceedings for an offence under this section may not be instituted—
- (a) in England and Wales otherwise than by or with the consent of the Attorney General, or
  - (b) in Northern Ireland otherwise than by or with the consent of—
    - (i) before the relevant date, the Attorney General for Northern Ireland, or
    - (ii) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.
- (11) In subsection (10) “the relevant date” means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

#### Commencement Information

**III** S. 72 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 4](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

## 73 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.
- (2) Without limiting subsection (1), rules of court may in particular make provision—
- (a) for time limits which are to apply in connection with any provisions of this Part,
  - (b) as to procedures to be applied in connection with this Part,

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- (c) enabling a single judge of the Court of Appeal to give leave to appeal under this Part or to exercise the power of the Court of Appeal under section 58(12).
- (3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court.

## 74 Interpretation of Part 9

- (1) In this Part—
  - “programme service” has the meaning given by section 71(11),
  - “publication” has the meaning given by section 71(11),
  - “qualifying evidentiary ruling” is to be construed in accordance with section 62(2),
  - “the relevant condition” is to be construed in accordance with section 63(2) and (3),
  - “relevant programme” has the meaning given by section 71(11),
  - “ruling” includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement,
  - “the 1968 Act” means the Criminal Appeal Act 1968 (c. 19).
- (2) Any reference in this Part (other than section 73(2)(c)) to a judge is a reference to a judge of the Crown Court.
- (3) There is to be no right of appeal under this Part in respect of a ruling in relation to which the prosecution has previously informed the court of its intention to appeal under either section 58(4) or 62(5).
- (4) Where a ruling relates to two or more offences but not all of those offences are the subject of an appeal under this Part, nothing in this Part is to be regarded as affecting the ruling so far as it relates to any offence which is not the subject of the appeal.
- (5) Where two or more defendants are charged jointly with the same offence, the provisions of this Part are to apply as if the offence, so far as relating to each defendant, were a separate offence (so that, for example, any reference in this Part to a ruling which relates to one or more offences includes a ruling which relates to one or more of those separate offences).
- (6) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions)—
  - (a) the jurisdiction of the Court of Appeal under this Part is to be exercised by the criminal division of that court, and
  - (b) references in this Part to the Court of Appeal are to be construed as references to that division.
- [<sup>F11</sup>(7) In its application to a trial on indictment in respect of which an order under section 17(2) of the Domestic Violence, Crime and Victims Act 2004 has been made, this Part is to have effect with such modifications as the Secretary of State may by order specify.]

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*Status:* This version of this part contains provisions that are prospective.

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**Textual Amendments**

**F11** S. 74(7) inserted (8.1.2007) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, [Sch. 10 para. 62](#); [S.I. 2006/3423](#), [art. 2](#) (subject to [art. 3](#))

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**Commencement Information**

**I12** S. 74 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 4](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2574, Sch. by [S.I. 2012/2761 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 29(2C)-(2E) inserted by [2022 c. 35 Sch. 2 para. 4\(2\)\(c\)](#)
- s. 29(2AA) inserted by [2022 c. 35 Sch. 2 para. 4\(2\)\(b\)](#)
- s. 150(aa) inserted by [2012 c. 10 Sch. 26 para. 19\(2\)](#) (This amendment not applied to legislation.gov.uk. Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 150(ba) inserted by [2012 c. 10 Sch. 26 para. 19\(3\)](#) (This amendment not applied to legislation.gov.uk. Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 151(A1) inserted by [2008 c. 4 s. 11\(3\)](#)
- s. 151(1A) inserted by [2008 c. 4 s. 11\(5\)](#)
- s. 151(1A)(b) word substituted by [2008 c. 4 Sch. 4 para. 76\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(1A)(c) substituted by [2009 c. 25 Sch. 17 para. 8\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(4A) inserted by [2009 c. 25 Sch. 17 para. 8\(5\)](#)
- s. 151(8)(c)-(f) inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(c\)](#)
- s. 165(5) inserted by [2014 c. 12 s. 179\(3\)](#)
- s. 237(1A) inserted by [2006 c. 48 s. 34\(3\)](#)
- s. 237(1B)(f)(g) inserted by [2021 c. 11 Sch. 13 para. 40\(b\)](#)
- s. 239A inserted by [2015 c. 2 s. 8\(1\)](#)
- s. 239A cross-heading inserted by [2015 c. 2 Sch. 3 para. 5](#)
- s. 250(5C) inserted by [2015 c. 2 Sch. 3 para. 7\(4\)](#)
- s. 255A(4A) inserted by [2015 c. 2 s. 9\(2\)](#)
- s. 255B(3A) inserted by [2015 c. 2 s. 9\(3\)\(b\)](#)
- s. 255B(4A)-(4C) inserted by [2015 c. 2 s. 9\(3\)\(d\)](#)
- s. 255C(3A) inserted by [2015 c. 2 s. 9\(4\)\(b\)](#)
- s. 255C(4A)-(4C) inserted by [2015 c. 2 s. 9\(4\)\(d\)](#)
- s. 256A(1)-(1B) substituted for s. 256A(1) by [2015 c. 2 s. 9\(6\)\(a\)](#)
- s. 256A(4A)(4B) inserted by [2015 c. 2 s. 9\(6\)\(f\)](#)
- s. 256A(5)(6) substituted for s. 256A(5) by [2015 c. 2 s. 9\(6\)\(g\)](#)
- s. 256AZA inserted by [2015 c. 2 s. 10\(1\)](#)
- s. 257(3) inserted by [2006 c. 48 s. 34\(4\)](#)
- s. 258(1A) inserted by [2006 c. 48 s. 34\(5\)](#)
- s. 260(4)(aa) substituted for word by [2008 c. 4 s. 34\(7\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 34(2)(4)(b)(7)(10) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(b); S.I. 2012/2906, art. 2(d))



- Sch. 15B para. 49A omitted by [S.I. 2019/780 reg. 26\(4\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 15B para. 49B omitted by [S.I. 2019/780 reg. 26\(4\)\(d\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 20B para. 34(6)(7) substituted for Sch. 20B para. 34(6) by [2015 c. 2 Sch. 3 para. 10](#)

有關引入機制就原訟法庭由三名法官組成的審判庭  
在危害國家安全犯罪案件中作出的無罪裁決提出上訴的立法建議  
諮詢文件

## 引言

律政司建議修訂《刑事訴訟程序條例》(第 221 章)(《條例》)，以訂立法定程序，供控方以案件呈述方式，就原訟法庭根據《中華人民共和國香港特別行政區維護國家安全法》(《香港國安法》)第四十六條在沒有陪審團的情況下由三名法官組成的審判庭(審判庭)審理危害國家安全犯罪案件時所作出的無罪裁決或命令提出上訴。現就上述立法建議(該建議)徵詢意見。

## 背景

### 有關一般刑事審訊上訴機制的現行法律

2. 普通法規則規定任何上訴權利均須由法例明文賦予。現行法例訂明，刑事案件被告人有權就各級主審法院(即裁判法院<sup>1</sup>、區域法院<sup>2</sup>及原訟法庭<sup>3</sup>)作出的定罪及／或刑罰提出上訴。

3. 至於控方根據現行法例在刑事案件中的上訴權，律政司司長(司長)可就裁判官<sup>4</sup>或區域法院<sup>5</sup>作出的無罪裁定，以案件呈述方式分

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<sup>1</sup> 《裁判官條例》(第 227 章)第 113 條。

<sup>2</sup> 《條例》第 82 及第 83G 條，該等條文應與《區域法院條例》(第 336 章)第 83 條一併閱讀。

<sup>3</sup> 《條例》第 82 及第 83G 條。

<sup>4</sup> 《裁判官條例》第 105 條。

<sup>5</sup> 《區域法院條例》第 84 條。

別向原訟法庭或上訴法庭上訴，亦可向上訴法庭申請覆核任何由裁判官和區域法院<sup>6</sup>判處的刑罰。

4. 在*李聞偉訴律政司司長*<sup>7</sup>一案中，終審法院闡釋以案件呈述方式上訴的性質(就《裁判官條例》第105條而言，但其中的原則一般適用)。以案件呈述方式上訴並非以重審方式上訴，而是上訴法院基於法律上的錯誤或超越司法管轄權這些有限的理由進行覆核。如某裁判官或法官得出的結論或對事實的裁斷，是任何合理的裁判官或法官在考慮適當因素並正確引導自己後都不可能得出的，即視為法律上的錯誤。該等結論或裁斷通常被形容為“有悖常理”。上訴法院如信納裁判官或法官在得出其結論或裁斷時，就事實錯誤引導自己或誤解了事實，或考慮了不相關因素或忽略了相關因素，則上訴法院有權介入，而有關裁判官或法官的結論或裁斷將會被推翻。

5. 另一方面，控方就原訟法庭刑事審訊提出上訴的權利則受較大規限。目前，司長只可就原訟法庭法官作出實際上導致被告人在沒有進行全面審訊下獲判無罪的若干決定提出上訴<sup>8</sup>，以及可就原訟法庭判處的刑罰申請覆核<sup>9</sup>。然而，《條例》並無訂明控方有權就被告人在原訟法庭進行全面審訊後獲判無罪而向上訴法庭提出上訴。《條例》訂定程序供控方把該類審訊所引起的法律問題轉交上訴法庭以獲取意見<sup>10</sup>，但相關的無罪裁定不會受影響，而且即使上訴法庭裁定有削弱該無罪裁定的法律上的錯誤，已獲判無罪的被告人不可被重審。

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<sup>6</sup> 《條例》第81A條。

<sup>7</sup> *李聞偉訴律政司司長* (2003) 6 HKCFAR 466 案。

<sup>8</sup> 即針對《條例》第16條所指釋放而根據《條例》第81E條提出的上訴，以及針對《條例》第53條所指撤銷公訴書的命令而根據《條例》第81F條提出的上訴。律政司最近也建議修訂《條例》，以訂定法定上訴程序供控方就原訟法庭法官在刑事審訊中作出的無須答辯的裁定提出上訴(見下文第17段)。

<sup>9</sup> 《條例》第81A條。

<sup>10</sup> 《條例》第81D條。

6. 如獲終審法院給予許可，被告人及控方可就原訟法庭或上訴法庭(視屬何情況而定)的最終決定向終審法院提出上訴<sup>11</sup>。然而，“陪審團的裁決或裁定”被明確豁除於可予上訴的原訟法庭最終決定之外，即控方不可就原訟法庭陪審團作出的無罪裁定向終審法院提出上訴。

### **在原訟法庭審理危害國家安全犯罪案件**

7. 《香港國安法》自 2020 年 6 月 30 日起生效。第四十一條第一款訂明香港特別行政區(香港特區)管轄危害國家安全犯罪案件的立案偵查、檢控、審判和刑罰的執行等程序事宜，適用《香港國安法》和香港特區本地法律。

8. 《香港國安法》第四十六條訂明：

“對高等法院原訟法庭進行的就危害國家安全犯罪案件提起的刑事檢控程序，律政司長可基於保護國家秘密、案件具有涉外因素或者保障陪審員及其家人的人身安全等理由，發出證書指示相關訴訟毋須在有陪審團的情況下進行審理。凡律政司長發出上述證書，高等法院原訟法庭應當在沒有陪審團的情況下進行審理，並由三名法官組成審判庭。”

9. 《香港國安法》制定後，原訟法庭審訊危害國家安全犯罪案件的模式有兩種：(i)按常規在一名法官會同陪審團席前進行審訊；以及(ii)凡司長根據《香港國安法》第四十六條發出證書，則在沒有陪審團的情況下於由三名法官組成的審判庭席前進行審訊。正如上訴法庭在*唐英傑訴律政司司長*<sup>12</sup>一案中指出：

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<sup>11</sup> 《香港終審法院條例》(第 484 章)第 31 及第 32 條。

<sup>12</sup> *唐英傑訴律政司司長* [2021] 3 HKLRD 350。

“的確在原訟法庭的審訊中設陪審團是常規審訊模式，但不應視為在刑事法律程序中達致公平審訊的唯一方式。[《基本法》第八十七條]或[《香港人權法案》(《人權法案》)第十條]均無訂明，在有陪審團的情況下進行審訊是公平審判中裁定刑事控罪不可缺少的元素。當發生第三項理由所述的情況而導致出現未能通過陪審團以達致公平審訊的目的之實際風險，唯一確保達致公平審訊的方法是按照[《香港國安法》第四十六條第一款]由三名法官組成審判庭在沒有陪審團的情況下審理案件。此審訊方式符合控方維護公平審訊的合法權益，亦保障被告人獲得公平審訊的憲制權利。”

10. 儘管陪審團無須給予裁決理由，凡任何原訟法庭的危害國家安全犯罪案件由審判庭在沒有陪審團的情況下進行審訊，審判庭會頒布裁決理由<sup>13</sup>。被告人、控方及市民大眾均可得知審判庭為作出裁決而對證據和法律進行的分析，以及對事實和法律所作的裁斷。

11. 由於《香港國安法》並無任何關乎上訴的條文，在原訟法庭審訊的危害國家安全犯罪案件，不論由一名法官會同陪審團審訊，抑或由審判庭在沒有陪審團的情況下審訊，其上訴機制繼續受香港特區的本地法律(特別是《條例》)規管。因此，就在原訟法庭由審判庭審訊的危害國家安全犯罪案件而言，被告人有權就審判庭的定罪向上訴法庭提出上訴，但現行的《條例》不容許控方就審判庭作出的無罪裁定向上訴法庭提出上訴。

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<sup>13</sup> 法庭在香港特別行政區 訴 唐英傑[2021] HKCFI 2200 案中正是這樣做。該案是首宗由審判庭在沒有陪審團的情況下於原訟法庭審理的危害國家安全犯罪案件。

## 理據

12. 控方不能就在原訟法庭由審判庭審訊的危害國家安全犯罪案件所作出的無罪裁定向上訴法庭提出上訴，引致一個異常情況。一如由裁判官或區域法院審訊的案件，審判庭會述明裁決理由。附有理由的裁決可讓控方確定法庭有否犯下法律上的錯誤，如有，該等錯誤對最終的無罪裁定有何影響。就如容許控方以案件呈述方式就裁判官或區域法院作出的錯誤無罪裁定提出上訴符合正當的公眾利益，沒有理由不容許控方在類似情況下就審判庭作出的錯誤無罪裁定提出上訴。

13. 偵破罪案及把罪犯繩之於法是廣為認同的公眾利益<sup>14</sup>。容許控方提出上訴，讓上訴法庭得以審視並糾正原審法庭所犯的任何法律錯誤，乃屬秉行公義，並不會在任何方面損害被控刑事罪行的被告人所享的憲制權利(包括獲得公平審訊的權利)<sup>15</sup>。此上訴機制就辦理危害國家安全犯罪案件而言尤其重要，為確保司法機關妥為履行《香港國安法》<sup>16</sup>下的職責，有效防範、制止和懲治危害國家安全的行為和活動，實屬必要。

14. 全國人民代表大會常務委員會(全國人大常委會)法制工作委員會負責人在2022年12月30日就全國人大常委會關於《香港國安法》第十四和第四十七條的解釋答記者問時，表示《香港國安法》第七條的規定應當認真落實到位<sup>17</sup>，即香港特區應當及時修改和完

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<sup>14</sup> 如見香港特別行政區訴李明治及證券及期貨事務監察委員會(介入人)(2003) 6 HKCFAR 336案第396頁A至C行第187段；香港特別行政區訴陳裘大 [2006] 1 HKLRD 400案第116(5)段。

<sup>15</sup> 《基本法》第八十七條和《人權法案》第十和第十一條。另見《香港國安法》第四和第五條。

<sup>16</sup> 請特別參閱第三、第八和第四十二條。

<sup>17</sup> 《香港國安法》第七條訂明香港特區應當盡早完成《基本法》規定的維護國家安全立法，完善相關法律。

善本地相關法律，充分運用本地法律解決《香港國安法》實施中遇到的法律問題。

15. 控方就無罪裁定提出上訴的法定程序並不牴觸終局性原則或一罪不能兩審的原則。對應《公民權利和政治權利國際公約》(《公約》)第十四條第七款的《人權法案》第十一(六)條訂明，“任何人依香港法律及刑事程序經終局判決判定有罪或無罪開釋者，不得就同一罪名再予審判或科刑”。如法律訂有供檢控機關就無罪裁定提出上訴的機制而上訴時限尚未屆滿，獲裁定無罪人士根據法律並不屬於“經終局判決判定無罪開釋者”，因此根本不牽涉《人權法案》第十一(六)條或《公約》第十四條第七款<sup>18</sup>。

16. 總括而言，律政司認為修訂《條例》以制定法定程序，讓控方以案件呈述方式就根據《香港國安法》第四十六條組成的審判庭在原訟法庭就危害國家安全犯罪案件作出無罪的裁決或命令，向上訴法庭提出上訴，實屬必要和正當，應在切實可行的範圍內盡快提出立法修訂以實施該建議。

17. 律政司最近建議修訂《條例》以訂定法定上訴程序，供控方就原訟法庭法官在刑事審訊中作出無須答辯的裁定提出上訴(無須答辯裁定的上訴建議)<sup>19</sup>。與無須答辯裁定的上訴建議如出一轍，現時

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<sup>18</sup> 在特立尼達和多巴哥國訴 *Boyce*(*State of Trinidad and Tobago v Boyce*) [2006] 2 AC 76 案判案書第 15 段中，樞密院司法委員會不接納防止控方就無罪裁定提出上訴的舊有普通法規則是一項基本權利或自由的觀點。案中法官在該判案書第 15 至第 16 段中指出：

“[15]… … 他們確實不認為控方有權就無罪裁定提出上訴有違[一罪不能兩審的原則]。

[16]… … 若被控人因法律上的錯誤而錯誤地獲釋或裁定無罪，上訴法院可根據法定規則糾正這個錯誤並下令就該人是否有罪或無辜的問題依法妥善作出裁定，這項法定規則並無特別不公平或不公義之處。很多國家都有這項規則… …”

<sup>19</sup> 有關無須答辯裁定的上訴建議詳情，請參閱立法會司法及法律事務委員會於 2023 年 2 月 27 日會議的討論文件(立法會 CB(4)130/2023(01)號文件，網址為 <https://www.legco.gov.hk/yr2023/chinese/panels/ajls/papers/ajls20230227cb4-130-1-c.pdf>)。

的建議是為了處理刑事上訴制度因控方未能就原訟法庭專業法官作出或指示作出的無罪裁定提出上訴而出現的法律空隙，避免可能造成的司法不公。如此重大的法律空隙有必要及早處理。律政司務求在切實可行的範圍內盡快以一項修訂條例草案提出兩項立法建議。

## **該建議的要點**

18. 律政司擬徵詢司法機構、法律業界及其他相關持份者對該建議的意見。下文載述該建議的要點。

### ***上訴方式及涵蓋範圍***

19. 該建議會在《條例》第 IV 部增訂條文，訂明司長有權就原訟法庭根據《香港國安法》第四十六條由三名法官組成的審判庭在沒有陪審團的情況下審理危害國家安全犯罪案件後作出無罪裁決或命令，向上訴法庭提出上訴，當中包括因指稱控罪欠妥或缺乏司法管轄權而撤銷或駁回控罪的命令。該建議對由原訟法庭在有陪審團的情況下審理的案件(不論是否涉及危害國家安全罪行)並無影響。

20. 如上文所述，擬議的上訴機制是以案件呈述方式上訴。這個方式主要以《區域法院條例》第 84 條及《裁判官條例》第 105 條所訂現有的案件呈述上訴程序為藍本，為法官及執業者所熟悉。擬議條文主要以《區域法院條例》第 84 條為藍本。我們相信這有助就審判庭的無罪裁定提出上訴的新機制發展相關的程序、常規和法理，並使控方對各級法院的無罪裁定提出上訴的做法一致。

21. 上訴所關乎的“僅限於法律事宜”，其含義一如既有案例所闡述(見上文第 4 段)。



## 上訴機制

22. 根據該建議，上訴會由司長藉向審判庭提出書面申請以呈述案件的方式提出。申請須在裁決理由記錄或裁定無罪的命令作出(以較後者為準)後 14 整天內，或在上訴法庭准許的較長期間內提出。建議的期限較根據《區域法院條例》第 84 條以案件呈述方式上訴的上訴期限(7 天並可由法庭延展)為長。鑑於涉及危害國家安全罪行的案件性質獨特，往往牽涉相對複雜和嶄新的法律觀點和複雜的事實背景，因此有需要給予控方更多時間考慮是否提出上訴。相比之下，建議上訴期限較《條例》下其他類別的控方上訴的上訴期限為短(例如申請覆核刑罰<sup>20</sup>及針對釋放提出上訴<sup>21</sup>均為 21 天內)。

23. 案件呈述須列出達致或作出無罪裁決或命令所據的事實及理由，以及質疑該無罪裁定的理由，以徵詢上訴法庭的意見。

24. 我們知道根據《香港國安法》第四十六條，審判庭是由三名法官組成，但不認為審理就審判庭的決定提出上訴的上訴法庭因此必須由多於三名上訴法庭法官組成。現行《高等法院條例》(第 4 章)第 32(2)(b)條訂明，就對任何根據《條例》第 IV 部提出的上訴作裁定而言，上訴法庭如是由非偶數而不少於三名的上訴法庭法官組成，即屬妥為組成。就審理個別上訴，上訴法庭應自行決定其認為適當的上訴法庭法官人數<sup>22</sup>。

25. 在控方上訴待決期間，須維持被告人／答辯人的現狀。參照《香港終審法院條例》(第 484 章)第 35 條及《區域法院條例》第 84(b)條，我們建議新增以下條文：

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<sup>20</sup> 《條例》第 81A(2)(c)條。

<sup>21</sup> 《刑事訴訟程序(針對釋放提出上訴)規則》(第 221F 章)第 3(2)條。

<sup>22</sup> 憑藉《高等法院條例》第 5(2)條，原訟法庭法官應終審法院首席法官之請，可以上訴法庭額外法官身分行事。

- (a) 緊接審判庭頒下無罪裁決或命令後，控方可給予意欲上訴的通知。如控方給予此通知，審判庭可(i)應控方申請，在上訴待決期間，將被告人還押羈留或(ii)准予被告人保釋。
- (b) 控方如已申請案件呈述，亦可向上訴法庭申請手令，將答辯人逮捕。當答辯人被根據手令帶到上訴法庭席前，上訴法庭可還押羈留答辯人或准予其保釋。
- (c) 為免生疑問，《香港國安法》第四十二條適用於審理還押羈留及保釋事宜。<sup>23</sup>

26. 《條例》第 83Y 條現時訂明，上訴法庭根據《條例》第 IV 部具有的某些權力(例如延展發出上訴通知的期限、准予上訴人保釋，或作出將答辯人羈留扣押的命令)，可由單一名法官行使。依照現行做法，我們建議上訴法庭延展提出案件呈述申請的期限、發出逮捕令，以及羈留答辯人和准予答辯人保釋的權力，可由單一名法官行使。

27. 參照《區域法院條例》第 84(c)條，我們建議上訴法庭在裁定上訴時，可採取以下行動：

- (a) 上訴法庭如信納沒有充分理由對無罪裁決或命令進行干預，須駁回上訴；
- (b) 上訴法庭如信納有充分理由干預無罪裁決或命令，須推翻該裁決或命令，並指示(i)恢復審訊或(ii)將被告人重新審訊。即使上訴法庭裁定審判庭犯了法律上的錯誤，也不代

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<sup>23</sup> 《香港國安法》第四十二條第二款訂明，對犯罪嫌疑人、被告人，除非法官有充足理由相信其不會繼續實施危害國家安全行為的，不得准予保釋。

表上訴法庭必須對該無罪裁決進行干預，而須有“充分理由進行干預”<sup>24</sup>；

(c) 上訴法庭也可作出其認為適合的一切必要及相應的指示。

28. 就以案件呈述方式就區域法院作出的無罪裁定提出上訴而言，《區域法院條例》第 84(c)(ii)條賦權上訴法庭判答辯人有罪、將其定罪予以記錄和處以法官本可對其判處的刑罰。該建議不會採用此特定權力，因為在律政司司長訴 *Wong Sau Fong*<sup>25</sup>一案中，上訴法庭認為這種權力會牴觸《人權法案》第十一條第四款有關保障被定罪人就判刑提出上訴的權利。

29. 《刑事案件訟費條例》(第 492 章)第 9A 和第 13A 條分別訂明根據《區域法院條例》第 84 條以案件呈述方式提出上訴的辯方和控方訟費。我們建議修訂《刑事案件訟費條例》，以就新上訴機制下的辯方和控方訟費事宜作出規定。

### 程序規則

30. 參考《區域法院條例》第 84(a)條，我們建議對於擬備、修訂和排期聆訊案件呈述，《裁判官條例》第 106 至第 109 條的條文經加以必要的變通後予以適用。

31. 現時並無法例就根據《區域法院條例》第 84 條和《裁判官條例》第 105 條以案件呈述方式提出的上訴訂明法院規則，而上訴機制的運作迄今也沒有遇到重大困難。因此，我們相信無須以附屬法例訂立程序規則以便利新上訴機制的運作。然而，如日後司法機構及法律執業者認為有需要為新上訴機制訂立程序規則，根據《條例》

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<sup>24</sup> 律政司司長訴 *Fan Kin Chung* 刑事上訴 2022 年第 381 號 (2003 年 3 月 5 日)。

<sup>25</sup> 律政司司長訴 *Wong Sau Fong* [1998] 2 HKLRD 254 案。

第 9 條，刑事訴訟程序規則委員會可訂立規則及命令以規管有關常規與程序。

## 諮詢

32. 在推展此事情前，律政司擬請司法機構、法律專業團體和其他相關持份者就上文所載的該建議發表意見。

33. 請在 2023 年 5 月 8 日或之前，將閣下的意見和評論送交：

香港特區中環下亞厘畢道 18 號

律政中心東座 5 樓

律政司

憲制及政策事務科

政策事務組 2

(所涉事項：就控方根據《香港國安法》第四十六條組成的審判庭作出的無罪裁定提出上訴的諮詢)

傳真：3918 4799

電郵：[cpo@doj.gov.hk](mailto:cpo@doj.gov.hk)

34. 律政司可視乎情況，在無需尋求提交意見人士的准許下以任何形式複製、引述、撮述或發表所收到的書面意見的全部或部分內容。

35. 提交意見人士的姓名及所屬機構的名稱，可能會在諮詢工作結束後，在律政司以不同方式發表或發放的其他文件中提述。如提交意見人士不願意公開姓名及／或所屬機構的名稱，請在提交書面意見時說明。所提供的個人資料，只供律政司及／或政府其他部門／

代理機構用於與此諮詢有直接關係的用途。

律政司

2023 年 4 月

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