

# PRACTICE DIRECTION – APPEALS

## THIS PRACTICE DIRECTION SUPPLEMENTS PART 52.

### CONTENTS OF THIS PRACTICE DIRECTION

- 1.1 This practice direction is divided into three sections:
- Section I – General provisions about appeals
  - Section II – General provisions about statutory appeals and appeals by way of case stated
  - Section III – Provisions about specific appeals

### SECTION I – GENERAL PROVISIONS ABOUT APPEALS

- 2.1 This practice direction applies to all appeals to which Part 52 applies except where specific provision is made for appeals to the Court of Appeal.
- 2.2 For the purpose only of appeals to the Court of Appeal from cases in family proceedings this Practice Direction will apply with such modifications as may be required.

### ROUTES OF APPEAL

- 2A.1 Subject to paragraph 2A.2, the following table sets out to which court or judge an appeal is to be made (subject to obtaining any necessary permission):

Decision of:	Appeal made to:
District judge of a county court	Circuit judge
Master or district judge of the High Court	High Court judge
Circuit judge	High Court judge
High Court judge	Court of Appeal

- 2A.2 Where the decision to be appealed is a final decision–
- (a) in a claim allocated to the multi-track under rules 12.7, 14.8 or 26.5; or
- (b) made in specialist proceedings (to which rule 49(2) refers)
- the appeal is to be made to the Court of Appeal (subject to obtaining any necessary permission).
- 2A.3 A “final decision” is a decision of a court that would finally determine (subject to any possible appeal or detailed assessment of costs) the entire proceedings whichever way the court decided the issues before it.

- 2A.4 A decision of a court is to be treated as a final decision for routes of appeal purposes where it:
- (a) is made at the conclusion of part of a hearing or trial which has been split into parts; and
  - (b) would, if it had been made at the conclusion of that hearing or trial, have been a final decision.

2A.5 An order made:

- (a) on a summary or detailed assessment of costs; or
- (b) is not a “final decision” and any appeal from such an order will follow the appeal routes set out in the table in paragraph 2A.1.

Section 16(1) of the Supreme Court Act 1981 (as amended); section 77(1) of the County Courts Act 1984 (as amended); and the Access to Justice Act 1999 (Destination of Appeals) Order 2000 set out the provisions governing routes of appeal)

- 2A.6 (1) Where the decision to be appealed is a final decision in a Part 8 claim treated as allocated to the multi-track under rule 8.9(c) the court to which the permission application is made should, if permission is given, and unless the appeal would lie to the Court of Appeal in any event, consider whether to order the appeal to be transferred to the Court of Appeal under rule 52.14.
- (2) An appeal against a final decision on a point of law in a case which did not involve any substantial dispute of fact would normally be a suitable appeal to be so transferred.
- (see also paragraph 10.1)

## **GROUND FOR APPEAL**

- 3.1 Rule 52.11(3) (a) and (b) sets out the circumstances in which the appeal court will allow an appeal.
- 3.2 The grounds of appeal should set out clearly the reasons why rule 52.11(3)(a) or (b) is said to apply.

## **PERMISSION TO APPEAL**

- 4.1 Rule 52.3 sets out the circumstances when permission to appeal is required.
- 4.2 The permission of–
- (a) the Court of Appeal; or
  - (b) where the lower court’s rules allow, the lower court
- is required for all appeals to the Court of Appeal except as provided for by statute or rule 52.3

(The requirement of permission to appeal may be imposed by a practice direction – see rule 52.3(b))

- 4.3 Where the lower court is not required to give permission to appeal, it may give an indication of its opinion as to whether permission should be given.

(Rule 52.1(3)(c) defines “lower court”)

### **Appeals from case management decisions**

- 4.4 Case management decisions include decisions made under rule 3.1(2) and decisions about:
- (1) disclosure
  - (2) filing of witness statements or experts reports
  - (3) directions about the timetable of the claim
  - (4) adding a party to a claim
  - (5) security for costs
- 4.5 Where the application is for permission to appeal from a case management decision, the court dealing with the application may take into account whether:
- (1) the issue is of sufficient significance to justify the costs of an appeal;
  - (2) the procedural consequences of an appeal (e.g. loss of trial date) outweigh the significance of the case management decision;
  - (3) it would be more convenient to determine the issue at or after trial

### **Court to which permission to appeal application should be made**

- 4.6 An application for permission should be made orally at the hearing at which the decision to be appealed against is made.
- 4.7 Where:
- (a) no application for permission to appeal is made at the hearing; or
  - (b) the lower court refuses permission to appeal,
- an application for permission to appeal may be made to the appeal court in accordance with rules 52.3(2) and (3).
- 4.8 There is no appeal from a decision of the appeal court, made at an oral hearing, to allow or refuse permission to appeal to that court. See section 54(4) of the Access to Justice Act 1999 and rule 52.3(3) and (4).

## **Second appeals**

- 4.9 An application for permission to appeal from a decision of the High Court or a county court which was itself made on appeal must be made to the Court of Appeal.
- 4.10 If permission to appeal is granted the appeal will be heard by the Court of Appeal.

## **Consideration of Permission without a hearing**

- 4.11 Applications for permission to appeal may be considered by the appeal court without a hearing.
- 4.12 If permission is granted without a hearing the parties will be notified of that decision and the procedure in paragraphs 6.1 to 6.7 will then apply.
- 4.13 If permission is refused without a hearing the parties will be notified of that decision with the reasons for it. The decision is subject to the appellant's right to have it reconsidered at an oral hearing. This may be before the same judge.
- 4.14 A request for the decision to be reconsidered at an oral hearing must be filed at the appeal court within 7 days after service of the notice that permission has been refused. A copy of the request must be served by the appellant on the respondent at the same time. If no request is made for the decision to be reconsidered, it will become final after the time limit for making the request has expired.

## **Permission hearing**

- 4.15 Notice of the hearing need not be given to the respondent unless the court so directs. The appeal court will usually so direct if the appellant is asking for a remedy against the respondent pending the appeal.
- 4.16 If notice of the hearing is to be given to the respondent, the appellant must supply the respondent with a copy of the bundle (see paragraph 5.6) within 7 days of being notified, or such other period as the court may direct. The costs of providing that bundle shall be borne by the appellant initially, but will form part of the costs of the permission application.

## **Appellants in receipt of services funded by the Legal Services Commission applying for permission to appeal**

- 4.17 Where the appellant is in receipt of services funded by the Legal Services Commission (or legally aided) and permission to appeal has been refused by the appeal court without a hearing, the appellant must send a copy of the reasons the appeal court gave for refusing permission to the relevant office of the Legal Services Commission as soon as it has been received from the court. The court will require confirmation that this has been done if a hearing is requested to re-consider the question of permission.

## **Limited permission**

- 4.18 Where a court, under rule 52.3(7) confines its permission to some issues only, it should expressly refuse permission on any remaining issues. Those other issues may only be raised at the hearing of the appeal with the appeal court's permission. The court and the respondent should be informed of any intention to raise such an issue as soon as practicable after notification of the court's order.
- 4.19 An application to raise a remaining issue will normally be dealt with at the outset of the appeal unless the court otherwise directs.

## **APPELLANT'S NOTICE**

- 5.1 An appellant's notice (N161) must be filed and served in all cases. Where an application for permission to appeal is made to the appeal court it must be applied for in the appellant's notice.

## **Extension of time for filing appellant's notice**

- 5.2 If an appellant requires an extension of time for filing his notice the application must be made in the appellant's notice. The notice should state the reason for the delay and the steps taken prior to the application being made.
- 5.3 Where the appellant's notice includes an application for an extension of time and permission to appeal has been given or is not required the respondent has the right to be heard on that application. He must be served with a copy of the appellant's bundle. However, a respondent who unreasonably opposes an extension of time runs the risk of being ordered to pay the appellant's costs of that application.
- 5.4 If an extension of time is given following such an application the procedure at paragraphs 6.1 to 6.6 applies.

## **Applications**

- 5.5 Notice of an application to be made to the appeal court for a remedy incidental to the appeal (e.g. an interim remedy under rule 25.1 or an order for security for costs) may be included in the appeal notice or in a Part 23 application notice.

(Rule 25.15 deals with security for costs of an appeal)

(Paragraph 10 of this practice direction contains other provisions relating to applications)

## **Documents**

- 5.6 The appellant must lodge the following documents with his appellant's notice in every case except where the appellant's notice relates to a refusal of

permission to apply for judicial review (see paragraph 15.3 below):

- (1) one additional copy of the appellant's notice for the appeal court; and
- (2) one copy of the appellant's notice for each of the respondents ;
- (3) one copy of any skeleton argument (see paragraph 5.9)
- (4) a sealed copy of the order being appealed;
- (5) any order giving or refusing permission to appeal, together with a copy of the reasons for that decision;
- (6) any witness statements or affidavits in support of any application included in the appellant's notice; and
- (7) a bundle of documents in support of the appeal – this should include copies of the documents referred to in paragraphs (1) to (6) and any other documents which the appellant reasonably considers necessary to enable the appeal court to reach its decision on the hearing of the application or appeal. Documents which are extraneous to the issues to be considered should be excluded. The other documents will, subject to paragraph 5.7, include:
  - (a) any affidavit or witness statement filed in support of the application for permission to appeal or the appeal,
  - (b) a suitable record of the reasons for judgment of the lower court (see paragraph 5.12);
  - (c) where permission to appeal has been given or permission is not required; any relevant transcript or note of evidence (see paragraph 5.15 below)
  - (d) statements of case,
  - (e) any application notice (or case management documentation) relevant to the subject of the appeal,
  - (f) in cases where the decision appealed was itself made on appeal, the first order, the reasons given and the appellant's notice of appeal from that order,
  - (g) in cases where the appeal is from a Tribunal, a copy of the Tribunal's reasons for the decision, a copy of the decision reviewed by the Tribunal and the reasons for the original decision
  - (h) in the case of judicial review or a statutory appeal, the original decision which was the subject of the application to the lower court
  - (i) relevant affidavits, witness statements, summaries, experts' reports and exhibits;
  - (j) any skeleton arguments relied on in the lower court; and
  - (k) such other documents as the court may direct.

- 5.7 Where it is not possible to file all the above documents, the appellant must indicate which documents have not yet been filed and the reasons why they are not currently available.
- 5.8 Where bundles comprise more than 150 pages excluding transcripts of judgment and other transcripts of the proceedings in the lower court only those documents which the court may reasonably be expected to pre-read should be included. A full set of documents should then be brought to the hearing for reference.

### **Skeleton arguments**

- 5.9 (1) The appellant's notice must, subject to (2) and (3) below, be accompanied by a skeleton argument. Alternatively the skeleton argument may be included in the appellant's notice. Where the skeleton argument is so included it will not form part of the notice for the purposes of rule 52.8.
- (2) Where it is impracticable for the appellant's skeleton argument to accompany the appellant's notice it must be lodged and served on all respondents within 14 days of filing the notice.
- (3) An appellant who is not represented need not lodge a skeleton argument but is encouraged to do so since this will be helpful to the court.

### **Content of skeleton arguments**

- 5.10 Skeleton arguments for the appeal court should contain a numbered list of points stated in no more than a few sentences which should both define and confine the areas of controversy. Each point should be followed by references to any documentation on which the appellant proposes to rely.
- 5.11 The appellant should consider what other information the appeal court will need. This may include a list of persons who feature in the case or glossaries of technical terms. A chronology of relevant events will be necessary in most appeals. In the case of points of law, authorities relied on should be cited with reference to the particular pages where the principle concerned is set out.

### **Suitable record of the judgment**

- 5.12 Where the judgment to be appealed has been officially recorded by the court, an approved transcript of that record should accompany the appellant's notice. Photocopies will not be accepted for this purpose. However, where there is no officially recorded judgment, the following documents will be acceptable:

### **Written judgments**

- (1) Where the judgment was made in writing a copy of that judgment endorsed with the judge's signature.

### ***Note of judgment***

- (2) When judgment was not officially recorded or made in writing a note of the judgment (agreed between the appellant's and respondent's advocates) should be submitted for approval to the judge whose decision is being appealed. If the parties cannot agree on a single note of the judgment, both versions should be provided to that judge with an explanatory letter. For the purpose of an application for permission to appeal the note need not be approved by the respondent or the lower court judge.

### ***Advocates' notes of judgments where the appellant is unrepresented***

- (3) When the appellant was unrepresented in the lower court it is the duty of any advocate for the respondent to make his/her note of judgment promptly available, free of charge to the appellant where there is no officially recorded judgment or if the court so directs. Where the appellant was represented in the lower court it is the duty of his/her own former advocate to make his/her note available in these circumstances. The appellant should submit the note of judgment to the appeal court.

### ***Reasons for Judgment in Tribunal cases***

- (4) A sealed copy of the Tribunal's reasons for the decision.
- 5.13 An appellant may not be able to obtain an official transcript or other suitable record of the lower court's decision within the time within which the appellant's notice must be filed. In such cases the appellant's notice must still be completed to the best of the appellant's ability on the basis of the documentation available. However it may be amended subsequently with the permission of the appeal court.

### ***Advocates' notes of judgments***

- 5.14 Advocates' brief (or, where appropriate, refresher) fee includes:
- (1) remuneration for taking a note of the judgment of the court;
  - (2) having the note transcribed accurately;
  - (3) attempting to agree the note with the other side if represented;
  - (4) submitting the note to the judge for approval where appropriate;
  - (5) revising it if so requested by the judge,
  - (6) providing any copies required for the appeal court, instructing solicitors and lay client; and
  - (7) providing a copy of his note to an unrepresented appellant

### ***Transcripts or Notes of Evidence***

- 5.15 When the evidence is relevant to the appeal an official transcript of the



relevant evidence must be obtained. Transcripts or notes of evidence are generally not needed for the purpose of determining an application for permission to appeal.

### **Notes of evidence**

- 5.16 If evidence relevant to the appeal was not officially recorded, a typed version of the judge's notes of evidence must be obtained

### **Transcripts at public expense**

- 5.17 Where the lower court or the appeal court is satisfied that an unrepresented appellant is in such poor financial circumstances that the cost of a transcript would be an excessive burden the court may certify that the cost of obtaining one official transcript should be borne at public expense.
- 5.18 In the case of a request for an official transcript of evidence or proceedings to be paid for at public expense, the court must also be satisfied that there are reasonable grounds for appeal. Whenever possible a request for a transcript at public expense should be made to the lower court when asking for permission to appeal.

### **Filing and service of appellant's notice**

- 5.19 Rule 52.4 sets out the procedure and time limits for filing and serving an appellant's notice. The appellant must file the appellant's notice at the appeal court within such period as may be directed by the lower court which should not normally exceed 28 days or, where the lower court directs no such period, within 14 days of the date of the decision that the appellant wishes to appeal.
- 5.20 Where the lower court judge announces his decision and reserves the reasons for his judgment or order until a later date, he should, in the exercise of powers under rule 52.4(2)(a), fix a period for filing the appellant's notice at the appeal court that takes this into account.
- 5.21 Except where the appeal court orders otherwise a sealed copy of the appellant's notice, including any skeleton arguments must be served on all respondents to the appeal in accordance with the timetable prescribed by rule 52.4(3) except where this requirement is modified by paragraph 5.9(2) in which case the skeleton argument should be served as soon as it is lodged.
- 5.22 Unless the court otherwise directs a respondent need not take any action when served with an appellant's notice until such time as notification is given to him that permission to appeal has been given.
- 5.23 The court may dispense with the requirement for service of the notice on a respondent. Any application notice seeking an order under rule 6.9 to dispense with service should set out the reasons relied on and be verified by a statement of truth.

- 5.24 Where the appellant is applying for permission to appeal in his appellant's notice, there is no requirement at this stage for copies of the documents referred to at paragraph 5.6 to be served on the respondents. However, if permission has been given by the lower court or permission is not required, copies of all the documents must be served on the respondents with the appellant's notice.

(Paragraph 5.6 provides for certain documents to be filed with an appellant's notice)

### **Amendment of Appeal Notice**

- 5.25 An appeal notice may be amended with permission. Such an application to amend and any application in opposition will normally be dealt with at the hearing unless that course would cause unnecessary expense or delay in which case a request should be made for the application to amend to be heard in advance.

### **PROCEDURE AFTER PERMISSION IS OBTAINED**

- 6.1 This paragraph sets out the procedure where:
- (1) permission to appeal is given by the appeal court; or
  - (2) the appellant's notice is filed in the appeal court and—
    - (a) permission was given by the lower court; or
    - (b) permission is not required.
- 6.2 If the appeal court gives permission to appeal, copies of all the documents referred to at paragraph 5.6 must be served on the respondents within 7 days of receiving the order giving permission to appeal.
- (Part 6 (service of documents) provides rules on service)
- 6.3 The appeal court will send the parties—
- (1) notification of—
    - (a) the date of the hearing or the period of time (the "listing window") during which the appeal is likely to be heard; and
    - (b) in the Court of Appeal, the date by which the appeal will be heard (the "hear by date");
  - (2) where permission is granted by the appeal court a copy of the order giving permission to appeal; and
  - (3) any other directions given by the court.

## Appeal Questionnaire in the Court of Appeal

- 6.4 The Court of Appeal will send an Appeal Questionnaire to the appellant when it notifies him of the matters referred to in paragraph 6.3.
- 6.5 The appellant must complete and lodge the Appeal Questionnaire within 14 days of the date of the letter of notification of the matters in paragraph 6.3. The Appeal Questionnaire must contain:
  - (1) if the appellant is legally represented, the advocate's time estimate for the hearing of the appeal;
  - (2) where a transcript of evidence is relevant to the appeal; confirmation that a transcript of evidence has been ordered where this is not already in the bundle of documents.
  - (3) confirmation that copies of the appeal bundle are being prepared and will be held ready for the use of the Court of Appeal and an undertaking that they will be supplied to the court on request. For the purpose of these bundles photocopies of the transcripts will be accepted
  - (4) confirmation that copies of the Appeal Questionnaire and the appeal bundle have been served on the respondents and the date of that service;

## Time estimates

- 6.6 The time estimate included in an Appeal Questionnaire must be that of the advocate who will argue the appeal. It should exclude the time required by the court to give judgment. If the respondent disagrees with the time estimate, the respondent must inform the court within 7 days of receipt of the Appeal Questionnaire. In the absence of such notification the respondent will be deemed to have accepted the estimate proposed on behalf of the appellant.

## RESPONDENT

- 7.1 A respondent who wishes to ask the appeal court to vary the order of the lower court in any way must appeal and permission will be required on the same basis as for an appellant.
- 7.2 A respondent who wishes only to request that the appeal court upholds the judgment or order of the lower court whether for the reasons given in the lower court or otherwise does not make an appeal and does not therefore require permission to appeal in accordance with rule 52.3(1).
- 7.3 A respondent who wishes to appeal or who wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court must file a respondent's notice.

## Time limits

- 7.4 The time limits for filing a respondent's notice are set out in rule 52.5 (4) and (5).

- 7.5 Where an extension of time is required the extension must be requested in the respondent's notice and the reasons why the respondent failed to act within the specified time must be included.

### **Respondent's skeleton argument**

- 7.6 The respondent must provide a skeleton argument for the court in all cases where he proposes to address arguments to the court. The respondent's skeleton argument may be included within a respondent's notice. Where a skeleton argument is included within a respondent's notice it will not form part of the notice for the purposes of rule 52.8.
- 7.7 Where the skeleton argument is not included within a respondent's notice it should be lodged and served no later than 21 days after the respondent receives the appellant's skeleton argument.

(Rule 52.5(4) sets out the period for filing and serving a respondent's notice)

### **Content of skeleton arguments**

- 7.8 A respondent's skeleton argument must conform to the directions at paragraphs 5.10 and 5.11 above with any necessary modifications. It should, where appropriate, answer the arguments set out in the appellant's skeleton argument.

### **Applications within respondent's notices**

- 7.9 A respondent may include an application within a respondent's notice in accordance with paragraph 5.5 above.

### **Filing respondent's notices and skeleton arguments**

- 7.10 The respondent must lodge the following documents with his respondent's notice in every case:
- (1) two additional copies of the respondent's notice for the appeal court
  - (2) one copy each for the appellant and any other respondents; and
  - (3) two copies of any skeleton arguments
- 7.11 If the respondent does not file a respondent's notice, he will not be entitled, except with the permission of the court, to rely on any ground not relied on in the lower court.
- 7.12 If the respondent wishes to rely on any documents in addition to those filed by the appellant he must prepare a supplemental bundle and lodge it at the appeal court with his respondent's notice. He must serve a copy of the supplemental bundle at the same time as serving the respondent's notice on the persons required to be served in accordance with rule 52.5(6).

- 7.13 The respondent's notice and any skeleton argument must be served in accordance with the time limits set out in rule 52.5(6) except this requirement is modified by paragraph 7.7.

## Appeals to the High Court

- 8.1 This paragraph applies where an appeal lies to a High Court judge from the decision of a county court or a district judge of the High Court.
- 8.2 The following table sets out the following venues for each Circuit–
- (a) Appeal centres – court centres where appeals to which this paragraph applies may be managed and heard.
  - (b) Hearing only centres – court centres where appeals to which this paragraph applies may be heard by order made at an appeal centre (see paragraph 8.5)

Circuit	Appeal Centres	Hearing Only Centres
Midland and Oxford Circuit	Birmingham Nottingham	Oxford Lincoln Leicester Northampton Stafford
North Eastern Circuit	Leeds Newcastle Sheffield	Teesside
Northern Circuit	Manchester Liverpool Preston	Carlisle
Wales and Chester Circuit	Cardiff Swansea Chester	
Western Circuit	Bristol Exeter Winchester	Truro Plymouth
South Eastern Circuit	<u>Central London:</u> Royal Courts of Justice <u>Provincial:</u> Lewes Luton Norwich Reading	Chelmsford St Albans Maidstone

- 8.3 The appellant's notice must be filed in the District Registry at an appeal centre on the Circuit in which the lower court is situated. Unless the appeal court otherwise orders the appeal will be managed and heard at that appeal centre.

- 8.4 The appeal court may transfer an appeal to another appeal centre (whether or not on the same circuit). In deciding whether to do so the court will have regard to the criteria in rule 30.3 (criteria for a transfer order). The appeal court may do so either on application by a party or of its own initiative. Where an appeal is transferred under this paragraph, notice of transfer must be served on every person on whom the appellant's notice has been served. An appeal may not be transferred to an appeal centre on another circuit, either for management or hearing, unless the consent of a Presiding Judge of that circuit has been obtained.
- 8.5 Directions may be given for–
- (a) an appeal to be heard at a hearing only centre; or
  - (b) an application in an appeal to be heard at any other venue.
- instead of at the appeal centre managing the appeal.
- 8.6 Unless a direction has been made under 8.5, any application in the appeal must be made at the appeal centre where the appeal is being managed.
- 8.7 A respondent's notice must be filed at the appeal centre where the appellant's notice was filed unless the appeal has been transferred to another appeal centre, in which case it must be filed at that appeal centre.
- 8.8 The appeal court may adopt all or any part of the procedure set out in paragraphs 6.4 to 6.6.
- 8.9
- (1) Appeals and applications for permission to appeal will be heard by a High Court Judge or by a person authorised under paragraphs (1), (2) or (4) of the Table in section 9(1) of the Supreme Court Act 1981 to act as a judge of the High Court;
  - (2) Other applications in the appeal may be heard and directions in the appeal may be given either by a High Court Judge or by any person authorised under section 9(1) of the Supreme Court Act 1981 to act as a judge of the High Court.

### **Appeals to a judge of a county court from a district judge**

- 8A.1 The Designated Civil Judge in consultation with his Presiding Judges has responsibility for allocating appeals from decisions of district judges to circuit judges.

### **Re-hearings**

- 9.1 The hearing of an appeal will be a re-hearing (as opposed to a review of the decision of the lower court) if the appeal is from the decision of a minister, person or other body and the minister, person or other body–
- (1) did not hold a hearing to come to that decision; or

- (2) held a hearing to come to that decision, but the procedure adopted did not provide for the consideration of evidence.

## **Appeals Transferred to the Court of Appeal**

- 10.1 Where an appeal is transferred to the Court of Appeal under rule 52.14 the Court of Appeal may give such additional directions as are considered appropriate.

## **Applications**

- 11.1 Where a party to an appeal makes an application whether in an appeal notice or by Part 23 application notice, the provisions of Part 23 will apply.
- 11.2 The applicant must file the following documents with the notice
- (1) one additional copy of the application notice for the appeal court and one copy for each of the respondents;
  - (2) where applicable a sealed copy of the order which is the subject of the main appeal;
  - (3) A bundle of documents in support which should include:
    - (a) the Part 23 application notice
    - (b) any witness statements and affidavits filed in support of the application notice
    - (c) the documents specified in paragraph 5.6 (6) above in so far as they have not already been filed with the appellant's notice.

## **DISPOSING OF APPLICATIONS OR APPEALS BY CONSENT**

### **Dismissal of applications or appeals by consent**

- 12.1 These paragraphs do not apply where any party to the proceedings is a child or patient.
- 12.2 Where an appellant does not wish to pursue an application or an appeal, he may request the appeal court for an order that his application or appeal be dismissed. Such a request must contain a statement that the appellant is not a child or patient. If such a request is granted it will usually be on the basis that the appellant pays the costs of the application or appeal.
- 12.3 If the appellant wishes to have the application or appeal dismissed without costs, his request must be accompanied by a consent signed by the respondent or his legal representative stating that the respondent is not a child or patient and consents to the dismissal of the application or appeal without costs.

- 12.4 Where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the court stating that none of them is a child or patient, and asking that the application or appeal be dismissed by consent. If the request is granted the application or appeal will be dismissed.

### **Allowing unopposed appeals or applications on paper**

- 13.1 The appeal court will not make an order allowing an appeal unless satisfied that the decision of the lower court was wrong. Where the appeal court is requested by all parties to allow an application or an appeal the court may consider the request on the papers. The request should state that none of the parties is a child or patient and set out the relevant history of the proceedings and the matters relied on as justifying the proposed order and be accompanied by a copy of the proposed order.

### **Procedure for Structured settlements and consent orders involving a child or patient**

- 13.2 Settlements relating to appeals and applications where one of the parties is a child or a patient; and structured settlements which are agreed upon at the appeal stage require the court's approval.

#### **Child**

- 13.3 In cases involving a child a copy of the proposed order signed by the parties' solicitors should be sent to the appeal court, together with an opinion from the advocate acting on behalf of the child.

#### **Patient**

- 13.4 Where a party is a patient the same procedure will be adopted, but the documents filed should also include any relevant reports prepared for the Court of Protection and a document evidencing formal approval by that court where required.

### **Structured settlements**

- 13.5 Where a structured settlement has been negotiated in a case which is under appeal the documents filed should include those which would be required in the case of a structured settlement dealt with at first instance. Details can be found in the Practice Direction which supplements CPR Part 40.

## **SUMMARY ASSESSMENT OF COSTS**

- 14.1 Costs are likely to be assessed by way of summary assessment at the following hearings:
- (1) contested directions hearings;



- (2) applications for permission to appeal at which the respondent is present;
  - (3) dismissal list hearings in the Court of Appeal at which the respondent is present;
  - (4) appeals from case management decisions; and
  - (5) appeals listed for one day or less.
- 14.2 Parties attending any of the hearings referred to in paragraph 14.1 should be prepared to deal with the summary assessment.

## **OTHER SPECIAL PROVISIONS REGARDING THE COURT OF APPEAL**

### **Filing of Documents**

- 15.1 (1) The documents relevant to proceedings in the Court of Appeal, Civil Division must be filed in the Civil Appeals Office Registry, Room E307, Royal Courts of Justice, Strand, London, WC2A 2LL.
- (2) The Civil Appeals Office will not serve documents and where service is required by the CPR or this practice direction it must be effected by the parties.

### **Master in the Court of Appeal, Civil Division**

- 15.2 When the Head of the Civil Appeals Office acts in a judicial capacity pursuant to rule 52.16, he shall be known as Master. Other eligible officers may also be designated by the Master of the Rolls to exercise judicial authority under rule 52.16 and shall then be known as Deputy Masters.

### **Judicial Review Appeals**

- 15.3 Where the Court of appeal gives permission to apply for judicial review under rule 52.15(3) the court may, hear the application for judicial review. This will be rare, but may be appropriate where, for example, the High Court is bound by authority or for some other reason, an appeal to the Court of Appeal will be inevitable.
- 15.4 Paragraphs 5.6 and 5.19 above do not apply to cases where the appeal notice seeks permission to appeal a refusal to give permission to apply for judicial review. In such cases the following documents must be filed with the appellant's notice:
- (1) one additional copy of the appellant's notice for the Court of Appeal
  - (2) one copy of the appellant's notice for each of the respondents to be sealed and returned
  - (3) the order refusing permission to apply for judicial review
  - (4) Form 86A;

- (5) a copy of the original decision which is the subject of the application to the High Court
  - (6) any witness statements or affidavits in support of any application included in the appellant's notice;
  - (7) a copy of the bundle of documents used in the High Court
  - (8) the skeleton argument relied on in the High Court; and
  - (9) a transcript of the judgment.
- 15.5 The time for filing an appellant's notice in these circumstances is set out in rule 52.15(1). The arrangements for service on the respondent in paragraph 5.21 apply.
- 15.6 Where it is not possible to file all these documents, the appellant must indicate which documents have not yet been filed and the reasons why they are not currently available.

### Listing and hear-by dates

- 15.7 The management of the list will be dealt with by the listing officer under the direction of the Master.
- 15.8 The Civil Appeals List of the Court of Appeal is divided as follows:
- *The applications list* – applications for permission to appeal and other applications.
  - *The appeals list* – appeals where permission to appeal has been given or where an appeal lies without permission being required.
  - *The expedited list* – appeals or applications where the Court of Appeal has directed an expedited hearing. The current practice of the Court of Appeal is summarised in *Unilever plc. v. Chefaro Proprietaries Ltd. (Practice Note)* [1995] 1 W.L.R. 24.
  - *The stand-out list* – Appeals or application which, for good reason, are not at present ready to proceed and have been stood out by judicial direction.
  - *The fixtures list* – where a hearing date for the appeal is fixed in advance.
  - *The second fixtures list* – if an appeal is designated as a “second fixture” it means that a hearing date is arranged in advance on the express basis that the list is fully booked for the period in question and therefore the case will be heard only if a suitable gap occurs in the list.
  - *The short-warned list* – appeals which the court considers may be prepared for the hearing by an advocate other than the one originally instructed with a half day's notice, or, if the court so directs, 48 hours notice.
- 15.9 Once an appeal is listed for hearing from the short warned list it becomes the immediate professional duty of the advocate instructed in the appeal, if he is

unable to appear at the hearing, to take all practicable measures to ensure that his lay client is represented at the hearing by an advocate who is fully instructed and able to argue the appeal.

### **Requests for directions**

- 15.10 To ensure that all requests for directions are centrally monitored and correctly allocated, all requests for directions or rulings (whether relating to listing or any other matters) should be made to the Civil Appeals Office. Those seeking directions or rulings must not approach the supervising Lord Justice either directly, or via his or her clerk.

### **Lists of authorities**

- 15.11 Once the parties have been notified of the date fixed for hearing the appellant's advocate shall file, after consulting his opponent, for the purpose of pre-reading by the court, one bundle containing photocopies of the principal authorities upon which each side will rely at the hearing, with the relevant passages marked. There will in general be no need to include authorities for propositions not in dispute. This bundle should be made available 28 days before the hearing, unless the period of notice of the hearing is less than 28 days in which case the bundle should be filed immediately. Such bundles should not normally contain more than 10 authorities. If any party intends, during the hearing to refer to other authorities these may be included in a second agreed bundle to be filed by the parties at the hearing. Alternatively, and in place of the second bundle only, a list of authorities and text may be delivered to the office of the Head Usher of the Court of Appeal no later than 5.30pm on the last working day before the hearing is to commence.

### **Reserved judgments of the Court of Appeal**

- 15.12 Unless the court orders otherwise, copies of a written judgment will be made available to the parties' legal advisers by 4 p.m. on the second working day before judgment is due to be pronounced on the condition that the contents are not communicated to the parties themselves until one hour before the listed time for pronouncement of judgment.
- 15.13 The judgment is made available to legal advisers primarily to enable them to consider the judgment and decide what consequential orders they should seek. The condition is imposed to prevent the outcome of the case being publicly reported before judgment is given, since the judgment is confidential until then. Every page of the judgment will be marked "Unapproved judgment: No permission is given to copy or use in court". These words carry the authority of the court.
- 15.14 Where a party is not legally represented a copy of the judgment will be made available to him at the same time as to legal advisers. It must be treated as confidential until pronouncement of judgment.

## SECTION II – GENERAL PROVISIONS ABOUT STATUTORY APPEALS AND APPEALS BY WAY OF CASE STATED

- 16.1 This section of this practice direction contains general provisions about statutory appeals (paragraphs 17.1-17.6) and appeals by way of case stated (paragraphs 18.1-18.20).
- 16.2 Where any of the provisions in this section provide for documents to be filed at the appeal court, these documents are in addition to any documents required under Part 52 or section I of this practice direction.

### STATUTORY APPEALS

- 17.1 This part of this section–
  - (1) applies where under any enactment an appeal (other than by way of case stated) lies to the court from a Minister of State, government department, tribunal or other person (“statutory appeals”); and
  - (2) is subject to any provision about a specific category of appeal in any enactment or Section III of this practice direction.

### Part 52

- 17.2 Part 52 applies to statutory appeals with the following amendments:

### Filing of appellant’s notice

- 17.3 The appellant must file the appellant’s notice at the appeal court within 28 days after the date of the decision of the lower court he wishes to appeal.
- 17.4 Where a statement of the reasons for a decision is given later than the notice of that decision, the period for filing the appellant’s notice is calculated from the date on which the statement is received by the appellant.

### Service of appellant’s notice

- 17.5 In addition to the respondents to the appeal, the appellant must serve the appellant’s notice in accordance with rule 52.4(3) on the chairman of the tribunal, Minister of State, government department or other person from whose decision the appeal is brought.

### Right of Minister etc. to be heard on the appeal

- 17.6 Where the appeal is from an order or decision of a Minister of State or government department, the Minister or department, as the case may be, is entitled to attend the hearing and to make representations to the court.

## **APPEALS BY WAY OF CASE STATED**

- 18.1 This part of this section–
- (1) applies where under any enactment–
    - (a) an appeal lies to the court by way of case stated; or
    - (b) a question of law may be referred to the court by way of case stated; and
  - (2) is subject to any provision about to a specific category of appeal in any enactment or Section III of this practice direction.

## **Part 52**

- 18.2 Part 52 applies to appeals by way of case stated subject to the following amendments.

## **Case stated by Crown Court or Magistrates' Court**

### **Application to state a case**

- 18.3 The procedure for applying to the Crown Court or a Magistrates' Court to have a case stated for the opinion of the High Court is set out in the Crown Court Rules 1982 and the Magistrates' Courts Rules 1981 respectively.

### **Filing of appellant's notice**

- 18.4 The appellant must file the appellant's notice at the appeal court within 10 days after he receives the stated case.

### **Documents to be lodged**

- 18.5 The appellant must lodge the following documents with his appellant's notice:
- (1) the stated case;
  - (2) a copy of the judgment, order or decision in respect of which the case has been stated; and
  - (3) where the judgment, order or decision in respect of which the case has been stated was itself given or made on appeal, a copy of the judgment, order or decision appealed from.

### **Service of appellant's notice**

- 18.6 The appellant must serve the appellant's notice and accompanying documents on all respondents within 4 days after they are filed or lodged at the appeal court.

## **Case stated by Minister, government department, tribunal or other person**

### **Application to state a case**

- 18.7 The procedure for applying to a Minister, government department, tribunal or other person (“Minister or tribunal etc.”) to have a case stated for the opinion of the court may be set out in–
- (1) the enactment which provides for the right of appeal; or
  - (2) any rules of procedure relating to the Minister or tribunal etc.

### **Signing of stated case by Minister or tribunal etc.**

- 18.8 A case stated by a tribunal must be signed by the chairman or president of the tribunal. A case stated by any other person must be signed by that person or by a person authorised to do so.

### **Service of stated case by Minister or tribunal etc.**

- 18.9 The Minister or tribunal etc. must serve the stated case on–
- (1) the party who requests the case to be stated; or
  - (2) the party as a result of whose application to the court, the case was stated.
- 18.10 Where an enactment provides that a Minister or tribunal etc. may state a case or refer a question of law to the court by way of case stated without a request being made, the Minister or tribunal etc. must–
- (1) serve the stated case on those parties that the Minister or tribunal etc. considers appropriate; and
  - (2) give notice to every other party to the proceedings that the stated case has been served on the party named and on the date specified in the notice.

### **Filing and service of appellant’s notice**

- 18.11 The party on whom the stated case was served must file the appellant’s notice and the stated case at the appeal court and serve copies of the notice and stated case on–
- (1) the Minister or tribunal etc. who stated the case; and
  - (2) every party to the proceedings to which the stated case relates,
- within 14 days after the stated case was served on him.
- 18.12 Where paragraph 18.10 applies the Minister or tribunal etc. must–
- (1) file an appellant’s notice and the stated case at the appeal court; and

- (2) serve copies of those documents on the persons served under paragraph 18.10

within 14 days after stating the case.

18.13 Where—

- (1) a stated case has been served by the Minister or tribunal etc. in accordance with paragraph 18.9; and
- (2) the party on whom the stated case was served does not file an appellant's notice in accordance with paragraph 18.11,

any other party may file an appellant's notice with the stated case at the appeal court and serve a copy of the notice and the case on the persons listed in paragraph 18.11 within the period of time set out in paragraph 18.14.

- 18.14 The period of time referred to in paragraph 18.13 is 14 days from the last day on which the party on whom the stated case was served may file an appellant's notice in accordance with paragraph 18.11.

### **Amendment of stated case**

- 18.15 The court may amend the stated case or order it to be returned to the Minister or tribunal etc. for amendment and may draw inferences of fact from the facts stated in the case.

### **Right of Minister etc. to be heard on the appeal**

- 18.16 Where the case is stated by a Minister or government department, that Minister or department, as the case may be, is entitled to appear on the appeal and to make representations to the court.

### **Application for order to state a case**

- 18.17 An application to the court for an order requiring a minister or tribunal etc. to state a case for the decision of the court, or to refer a question of law to the court by way of case stated must be made to the court which would be the appeal court if the case were stated.
- 18.18 An application to the court for an order directing a Minister or tribunal etc. to—
  - (1) state a case for determination by the court; or
  - (2) refer a question of law to the court by way of case stated,
 must be made in accordance with CPR Part 23
- 18.19 The application notice must contain—
  - (1) the grounds of the application;
  - (2) the question of law on which it is sought to have the case stated; and

(3) any reasons given by the minister or tribunal etc. for his or its refusal to state a case.

18.20 The application notice must be filed at the appeal court and served on–

(1) the minister, department, secretary of the tribunal or other person as the case may be; and

(2) every party to the proceedings to which the application relates,

within 14 days after the appellant receives notice of the refusal of his request to state a case.

## Extradition

19.1 Paragraphs 18.3 to 18.6 apply to appeals by case stated under–

(1) section 7 of the Criminal Justice Act 1988; and

(2) section 7A of the Fugitive Offenders Act 1967,

and references in those paragraphs to appellant and respondent shall be construed as references to the requesting state and the person whose surrender is sought respectively.

19.2 An application for an order under either of the sections mentioned in paragraph 19.1 or under section 2A of the Backing of Warrants (Republic of Ireland) Act 1965 requiring a court to state a case must be made in accordance with paragraphs 18.17 to 18.20 and the references in those paragraphs to a tribunal and the secretary of a tribunal shall be construed as references to the court and the clerk of the court respectively.

## SECTION III – PROVISIONS ABOUT SPECIFIC APPEALS

20.1 This section of this Practice Direction provides special provisions about the appeals to which the following table refers. This Section is not exhaustive and does not create, amend or remove any right of appeal.

20.2 Part 52 applies to all appeals to which this section applies subject to any special provisions set out in this section.

20.3 Where any of the provisions in this section provide for documents to be filed at the appeal court, these documents are in addition to any documents required under Part 52 or sections I or II of this practice direction.

APPEALS TO THE COURT OF APPEAL	Paragraph
Competition Commission Appeal Tribunals	21.10
Contempt of Court	21.4
Decree nisi of divorce	21.1



APPEALS TO THE HIGH COURT	Paragraph
Immigration Appeal Tribunal	21.7
Lands Tribunal	21.9
Nullity of marriage	21.1
Patents Court on appeal from Comptroller	21.3
Revocation of patent	21.2
Social Security Commissioners	21.5
Special Commissioner (where the appeal is direct to the Court of Appeal)	21.8
Value Added Tax and Duties Tribunals (where the appeal is direct to the Court of Appeal)	21.6
Agriculture Land Tribunal	22.7
Architects Act 1997, s. 22	22.3
Clergy Pensions Measure 1961, s. 38(3)	23.2
Commons Registration Act 1965	23.9
Consumer Credit Act 1974	22.4
Friendly Societies Act 1974	23.7
Friendly Societies Act 1992	23.7
Industrial and Provident Societies Act 1965	23.2, 23.7
Industrial Assurance Act 1923	23.2, 23.7
Industrial Assurance Act 1923, s. 17	23.6
Inheritance Tax Act 1984, s. 222	23.3
Inheritance Tax Act 1984, s. 225	23.5
Inheritance Tax Act 1984, ss. 249(3) and 251	23.4
Land Registration Act 1925	23.2
Law of Property Act 1922, para. 16 of Sched. 15	23.2
Medicines Act 1968, ss. 82(3) and 83(2)	22.3
Mental Health Review Tribunal	22.8
Merchant Shipping Act 1995	22.2
Nurses, Midwives and Health Visitors Act 1977, s. 12	22.3
Pension Act 1995, s. 97	23.2
Pension Schemes Act 1993, ss. 151 and 173	23.2

APPEALS TO COUNTY COURT	Paragraph
Pensions Appeal Tribunal Act 1943	22.5
Pharmacy Act 1954	22.3
Social Security Administration Act 1992	22.6
Stamp Duty Reserve Tax Regulations 1986, reg. 10	23.5
Taxes Management Act 1970, ss. 53 and 100C(4)	23.4
Taxes Management Act 1970, s. 56A	23.5
Value Added Tax and Duties Tribunal	23.8
Water Resources Act 1991, s. 205(4)	23.2
Local Government (Miscellaneous Provisions) Act 1976	24.1

## APPEALS TO THE COURT OF APPEAL

### Appeal against decree nisi of divorce or nullity of marriage

- 21.1
- (1) The appellant must file the appellant's notice at the Court of Appeal within 28 days after the date on which the decree was pronounced.
  - (2) The appellant must file the following documents with the appellant's notice—
    - (a) the decree; and
    - (b) a certificate of service of the appellant's notice.
  - (3) The appellant's notice must be served on the appropriate district judge (see sub-paragraph (6)) in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.
  - (4) The lower court may not alter the time limits for filing of the appeal notices.
  - (5) Where an appellant intends to apply to the Court of Appeal for an extension of time for serving or filing the appellant's notice he must give notice of that intention to the appropriate district judge (see sub-paragraph 6) before the application is made.
  - (6) In this paragraph "the appropriate district judge" means, where the lower court is—
    - (a) a county court, the district judge of that court;
    - (b) a district registry, the district judge of that registry;
    - (c) the Principal Registry of the Family Division, the senior district judge of that division.

## Appeal against order for revocation of patent

- 21.2 (1) This paragraph applies where an appeal lies to the Court of Appeal from an order for the revocation of a patent.
- (2) The appellant must serve the appellant's notice on the Comptroller-General of Patents, Designs and Trade Marks (the "Comptroller") in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.
- (3) Where, before the appeal hearing, the respondent decides not to oppose the appeal or not to attend the appeal hearing, he must immediately serve notice of that decision on—
- (a) the Comptroller; and
  - (b) the appellant
- (4) Where the respondent serves a notice in accordance with paragraph (3), he must also serve copies of the following documents on the Comptroller with that notice—
- (a) the petition;
  - (b) any statements of claim;
  - (c) any written evidence filed in the claim.
- (5) Within 14 days after receiving the notice in accordance with paragraph (3), the Comptroller must serve on the appellant a notice stating whether or not he intends to attend the appeal hearing.
- (6) The Comptroller may attend the appeal hearing and oppose the appeal—
- (a) in any case where he has given notice under paragraph (5) of his intention to attend; and
  - (b) in any other case (including, in particular, a case where the respondent withdraws his opposition to the appeal during the hearing) if the Court of Appeal so directs or permits.

## Appeal from Patents Court on appeal from Comptroller

- 21.3 Where the appeal is from a decision of the Patents Court which was itself made on an appeal from a decision of the Comptroller-General of Patents, Designs and Trade Marks, the appellant must serve the appellant's notice on the Comptroller in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.

## Appeals in cases of contempt of court

- 21.4 In an appeal under section 13 of the Administration of Justice Act 1960 (appeals in cases of contempt of court), the appellant must serve the appellant's notice on the court from whose order or decision the appeal is brought in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.

## Appeals from Social Security Commissioners

- 21.5 (1) This paragraph applies to appeals under section 24 of the Social Security Administration Act 1992 and section 15 of the Social Security Act 1998 (appeals from the decision of a Commissioner on a question of law).
- (2) The appellant must serve the appellant's notice—
- (a) within 6 weeks after the date on which notice of the Commissioner's decision on permission to appeal to the Court of Appeal was given in writing to the appellant; and
  - (b) on—
    - (i) the Secretary of State; and
    - (ii) any person appointed by him to proceed with a claim,
 in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.

## Appeals from Value Added Tax and Duties Tribunals

- 21.6 (1) An application to the Court of Appeal for permission to appeal from a value added tax and duties tribunal direct to that court must be made within 28 days after the date on which the tribunal certifies that its decision involves a point of law relating wholly or mainly to the construction of –
- (a) an enactment or of a statutory instrument; or
  - (b) any of the Community Treaties or any Community Instrument,
- which has been fully argued before and fully considered by it.
- (2) The application must be made by the parties jointly filing at the Court of Appeal an appellant's notice that—
- (a) contains a statement of the grounds for the application; and
  - (b) is accompanied by a copy of the decision to be appealed, endorsed with the certificate of the tribunal.
- (3) The court will notify the appellant of its decision and—
- (a) where permission to appeal to the Court of Appeal is given, the appellant must serve the appellant's notice on the chairman of the tribunal in addition to the persons to be served under rule 52.4(3) within 14 days after that notification.
  - (b) where permission to appeal to the Court of Appeal is refused, the period for appealing to the High Court is to be calculated from the date of the notification of that refusal.

## Appeals from Immigration Appeals Tribunal

- 21.7 (1) This paragraph applies to appeals under section 9 of the Asylum and Immigration Appeals Act 1993 (appeal on a question of law from a final determination of an Immigration Appeals Tribunal).
- (2) The period of time within which the appellant must file the appellant's notice at the Court of Appeal in accordance with rule 52.4(2) begins to run from the date of the tribunal's written decision to give or refuse permission to appeal.
- (3) The appellant must serve the appellant's notice on the chairman of the tribunal in addition to the persons to be served under rule 52.4(3) and in accordance with that rule.

## Appeal from Special Commissioners

- 21.8 (1) An application to the Court of Appeal for permission to appeal from the Special Commissioners direct to that court under section 56A of the Taxes Management Act 1970 must be made within 28 days after the date on which the Special Commissioners certify that their decision involves a point of law relating wholly or mainly to the construction of an enactment which has been fully argued before and fully considered before them.
- (2) The application must be made by the parties jointly filing at the Court of Appeal an appellant's notice that—
- (a) contains a statement of the grounds for the application; and
  - (b) is accompanied by a copy of the decision to be appealed, endorsed with the certificate of the tribunal.
- (3) The court will notify the parties of its decision and—
- (a) where permission to appeal to the Court of Appeal is given, the appellant must serve the appellant's notice on the Clerk to the Special Commissioners in addition to the persons to be served under rule 52.4(3) within 14 days after that notification.
  - (b) where permission to appeal to the Court of Appeal is refused, the period for appealing to the High Court is to be calculated from the date of the notification of that refusal.

## Appeal from Lands Tribunal

- 21.9 The appellant must file the appellant's notice at the Court of Appeal within 28 days after the date of the decision of the tribunal.

## Appeal from Competition Commission Appeal Tribunal

- 21.10 (1) Where the appellant applies for permission to appeal at the hearing at which the decision is delivered by the tribunal and—

- (a) permission is given; or
- (b) permission is refused and the appellant wishes to make an application to the Court of Appeal for permission to appeal,

the appellant's notice must be filed at the Court of Appeal within 14 days after the date of that hearing.

- (2) Where the appellant applies in writing to the Registrar of the tribunal for permission to appeal and–

- (a) permission is given; or
- (b) permission is refused and the appellant wishes to make an application to the Court of Appeal for permission to appeal,

the appellant's notice must be filed at the Court of Appeal within 14 days after the date of receipt of the tribunal's decision on permission.

- (3) Where the appellant does not make an application to the tribunal for permission to appeal, but wishes to make an application to the Court of Appeal for permission, the appellant's notice must be filed at the Court of Appeal within 14 days after the end of the period within which he may make a written application to the Registrar of the tribunal.

## **APPEALS TO THE HIGH COURT – QUEEN'S BENCH DIVISION**

- 22.1 The following appeals are to be heard in the Queen's Bench Division.

### **Statutory Appeals**

#### **Appeals under the Merchant Shipping Act 1995**

- 22.2 (1) This paragraph applies to appeals under the Merchant Shipping Act 1995 and for this purpose a re-hearing and an application under section 61 of the Merchant Shipping Act 1995 are treated as appeals.
- (2) The appellant must file any report to the Secretary of State containing the decision from which the appeal is brought with the appellant's notice.
- (3) Where a re-hearing by the High Court is ordered under sections 64 or 269 of the Merchant Shipping Act 1995, the Secretary of State must give reasonable notice to the parties whom he considers to be affected by the re-hearing.

#### **Appeal where court's decision is final**

- 22.3 (1) This paragraph applies to an appeal to the High Court under–
  - (a) section 22 of the Architects Act 1997;
  - (b) section 82(3) and 83(2) of the Medicines Act 1968;

- (c) section 12 of the Nurses, Midwives and Health Visitors Act 1997; and
  - (d) section 10 of the Pharmacy Act 1954.
- (2) Every appeal to which this paragraph applies must be supported by written evidence and, if the court so orders, oral evidence.
  - (3) The appellant must file the appellant's notice within 28 days after the decision that the appellant wishes to appeal.
  - (4) In the case of an appeal under an enactment specified in column 1 of the following table, the persons to be made respondents are the persons specified in relation to that enactment in column 2 of the table and the person to be served with the appellant's notice is the person so specified in column 3.

1 Enactment	2 Respondents	3 Person to be served
Architects Act 1997, s. 22	The Architects' Registration Council of the United Kingdom	The registrar of the Council
Medicines Act 1968, s. 82(3) and s. 83(2)	The Pharmaceutical Society of Great Britain	The registrar of the Society
Nurses, Midwives and Health Visitors Act 1997, s. 12	The United Kingdom Central Council for Nursing, Midwifery and Health Visiting	The registrar of the Council
Pharmacy Act 1954, s. 10	The Pharmaceutical Society of Great Britain	The registrar of the Society

### Consumer Credit Act 1974: appeal from Secretary of State

- 22.4 (1) A person dissatisfied in point of law with a decision of the Secretary of State on an appeal under section 41 of the Consumer Credit Act 1974 from a determination of the Director General of Fair Trading who had a right to appeal to the Secretary of State, whether or not he exercised that right, may appeal to the High Court.
- (2) The appellant must serve the appellant's notice on—
  - (a) the Secretary of State;
  - (b) the original applicant, if any, where the appeal is by a licensee under a group licence against compulsory variation, suspension or revocation of that licence; and
  - (c) any other person as directed by the court.
- (3) The appeal court may remit the matter to the Secretary of State to the extent necessary to enable him to provide the court with such further information as the court may direct.

- (4) If the appeal court allows the appeal, it shall not set aside or vary the decision but shall remit the matter to the Secretary of State with the opinion of the court for hearing and determination by him.

## The Pensions Appeal Tribunal Act 1943

- 22.5 (1) In this paragraph “the judge” means the judge nominated by the Lord Chancellor under section 6(2) of the Pensions Appeal Tribunals Act 1943 (“the Act”).
- (2) An application to the judge for permission to appeal against a decision of a Pensions Appeal Tribunal—
- (a) may not be made unless an application was made to the tribunal and was refused; and
  - (b) must be made within 28 days after the date of the tribunal’s refusal.
- (3) The appellant’s notice seeking permission to appeal from the judge must contain—
- (a) the point of law as respects which the appellant alleges that the tribunal’s decision was wrong; and
  - (b) the date of the tribunal’s decision refusing permission to appeal.
- (4) The court officer shall request the chairman of the tribunal to give the judge a written statement of the reasons for the tribunal’s decision to refuse permission to appeal, and within 7 days after receiving the request, the chairman must give the judge such a statement.
- (5) Where permission to appeal was given by—
- (a) the tribunal, the appellant must file and serve the appellant’s notice;
  - (b) the judge, the appellant must serve the appellant’s notice,
- within 28 days after permission to appeal was given.
- (6) Within 28 days after service of the notice of appeal on him, the chairman of the tribunal must—
- (a) state a case setting out the facts on which the decision appealed against was based;
  - (b) file the case stated at the court; and
  - (c) serve a copy of the case stated on the appellant and the respondent.
- (7) A copy of the judge’s order on the appeal must be sent by the court officer to the appellant, the respondent and the chairman of the tribunal.

## The Social Security Administration Act 1992

- 22.6 (1) Any person who by virtue of section 18 or 58(8) of the Social Security Administration Act 1992 (“the Act”) is entitled and wishes to appeal



against a decision of the Secretary of State on a question of law must, within the prescribed period, or within such further time as the Secretary of State may allow, serve on the Secretary of State a notice requiring him to state a case setting out–

- (a) his decision; and
  - (b) the facts on which his decision was based.
- (2) Unless paragraph (3) applies the prescribed period is 28 days after receipt of the notice of the decision.
  - (3) Where, within 28 days after receipt of notice of the decision, a request is made to the Secretary of State in accordance with regulations made under the Act to furnish a statement of the grounds of the decision, the prescribed period is 28 days after receipt of that statement.
  - (4) Where under section 18 or section 58(8) of the Act, the Secretary of State refers a question of law to the court, he must state that question together with the relevant facts in a case.
  - (5) The appellant's notice and the case stated must be filed at the appeal court and a copy of the notice and the case stated served on–
    - (a) the Secretary of State; and
    - (b) every person as between whom and the Secretary of State the question has arisen,

within 28 days after the case stated was served on the party at whose request, or as a result of whose application to the court, the case was stated.
  - (6) Unless the appeal court otherwise orders, the appeal or reference shall not be heard sooner than 28 days after service of the appellant's notice.
  - (7) The appeal court may order the case stated by the Secretary of State to be returned to the Secretary of State for him to hear further evidence.

## **Appeals by way of case stated**

### **Reference of question of law by Agriculture Land Tribunal**

- 22.7
- (1) A question of law referred to the High Court by an Agricultural Land Tribunal under section 6 of the Agriculture (Miscellaneous Provisions) Act 1954 shall be referred by way of case stated by the Tribunal.
  - (2) Where the proceedings before the tribunal arose on an application under section 11 of the Agricultural Holdings Act 1986, an–
    - (a) application notice for an order under section 6 that the tribunal refers a question of law to the court; and
    - (b) appellant's notice by which an appellant seeks the court's determination on a question of law,

must be served on the authority having power to enforce the statutory requirement specified in the notice in addition to every other party to those proceedings and on the secretary of the tribunal.

- (3) Where, in accordance with paragraph (2), a notice is served on the authority mentioned in that paragraph, that authority may attend the appeal hearing and make representations to the court.

### Case stated by Mental Health Review Tribunal

- 22.8 (1) In this paragraph “the Act” means the Mental Health Act 1983 and “party to proceedings” means—
- (a) the person who initiated the proceedings; and
  - (b) any person to whom, in accordance with rules made under section 78 of the Act, the tribunal sent notice of the application or reference or a request instead notice of reference.
- (2) A party to proceedings shall not be entitled to apply to the High Court for an order under section 78(8) of the Act directing the tribunal to state a case for determination by court unless—
- (a) within 21 days after the decision of the tribunal was communicated to him in accordance with rules made under section 78 of the Act he made a written request to the tribunal to state a case; and
  - (b) either the tribunal
    - (i) failed to comply with that request within 21 days after it was made; or
    - (ii) refused to comply with it.
- (3) The period for filing the application notice for an order under section 78(8) of the Act is—
- (a) where the tribunal failed to comply with the applicant’s request to state a case within the period mentioned in paragraph (3)(b)(i), 14 days after the expiration of that period;
  - (b) where the tribunal refused that request, 14 days after receipt by the applicant of notice of the refusal of his request.
- (4) A Mental Health Review Tribunal by whom a case is stated shall be entitled to attend the proceedings for the determination of the case and make representations to the court.
- (5) If the court allows the appeal, it may give any direction which the tribunal ought to have given under Part V of the Act.

### APPEALS TO THE HIGH COURT – CHANCERY DIVISION

- 23.1 The following appeals are to be heard in the Chancery Division

## Determination of appeal or case stated under various Acts

- 23.2 Any appeal to the High Court, and any case stated or question referred for the opinion of that court under any of the following enactments shall be heard in the Chancery Division–
- (1) paragraph 16 of Schedule 15 to the Law of Property Act 1922;
  - (2) the Industrial Assurance Act 1923;
  - (3) the Land Registration Act 1925;
  - (4) section 205(4) of the Water Resources Act 1991;
  - (5) section 38(3) of the Clergy Pensions Measure 1961;
  - (6) the Industrial and Provident Societies Act 1965;
  - (7) section 151 of the Pension Schemes Act 1993;
  - (8) section 173 of the Pension Schemes Act 1993; and
  - (9) section 97 of the Pensions Act 1995.
- (This list is not exhaustive)

## Statutory appeals

### Appeal under section 222 of the Inheritance Tax Act 1984

- 23.3
- (1) This paragraph applies to appeals to the High Court under section 222(3) of the Inheritance Tax Act 1984 (the “1984 Act”) and regulation 8(3) of the Stamp Duty Reserve Tax Regulations 1986 (the “1986 Regulations”).
  - (2) The appellant’s notice must–
    - (a) state the date on which the Commissioners of Inland Revenue (the “Board”) gave notice to the appellant under section 221 of the 1984 Act or regulation 6 of the 1986 Regulations of the determination that is the subject of the appeal;
    - (b) state the date on which the appellant gave to the Board notice of appeal under section 222(1) of the 1984 Act or regulation 8(1) of the 1986 Regulations and, if notice was not given within the time permitted, whether the Board or the Special Commissioners have given their consent to the appeal being brought out of time, and, if they have, the date they gave their consent; and
    - (c) either state that the appellant and the Board have agreed that the appeal may be to the High Court or contain an application for permission to appeal to the High Court.
  - (3) The appellant must file the following documents with the appellant’s notice–
    - (a) 2 copies of the notice referred to in paragraph 2(a);

- (b) 2 copies of the notice of appeal (under section 222(1) of the 1984 Act or regulation 8(1) of the 1986 Regulations) referred to in paragraph 2(b); and
  - (c) where the appellant's notice contains an application for permission to appeal, written evidence setting out the grounds on which it is alleged that the matters to be decided on the appeal are likely to be substantially confined to questions of law.
- (4) The appellant must—
- (a) file the appellant's notice at the court; and
  - (b) serve the appellant's notice on the Board,
- within 30 days of the date on which the appellant gave to the Board notice of appeal under section 222(1) of the 1984 Act or regulation 8(1) of the 1986 Regulations or, if the Board or the Special Commissioners have given consent to the appeal being brought out of time, within 30 days of the date on which such consent was given.
- (5) The court will set a date for the hearing of not less than 40 days from the date that the appellant's notice was filed.
- (6) Where the appellant's notice contains an application for permission to appeal—
- (a) a copy of the written evidence filed in accordance with paragraph (3)(c) must be served on the Board with the appellant's notice; and
  - (b) the Board—
    - (i) may file written evidence; and
    - (ii) if it does so, must serve a copy of that evidence on the appellant, within 30 days after service of the written evidence under paragraph (6)(a).
- (7) The appellant may not rely on any grounds of appeal not specified in the notice referred to in paragraph (2)(b) on the hearing of the appeal without the permission of the court.

### **Appeals under section 53 and 100C(4) of the Taxes Management Act 1970 and section 249(3) or 251 of the Inheritance Tax Act 1984**

- 23.4 (1) The appellant must serve the appellant's notice on—
- (a) the General or Special Commissioners against whose decision, award or determination the appeal is brought; and
  - (b) (i) in the case of an appeal brought under section 100C(4) of the Taxes Management Act 1970 or section 249(3) of the Inheritance Tax Act 1984 by any party other than the defendant in the proceedings before the Commissioners, that defendant; or

- (ii) in any other case, the Commissioners of Inland Revenue.
- (2) The appellant must file the appellant's notice at the court within 30 days after the date of the decision, award or determination against which the appeal is brought.
- (3) Within 30 days of the service on them of the appellant's notice, the General or Special Commissioners, as the case may be, must–
  - (a) file 2 copies of a note of their findings and of the reasons for their decision, award or determination at the court; and
  - (b) serve a copy of the note on every other party to the appeal.
- (4) Any document to be served on the General or Special Commissioners may be served by delivering or sending it to their clerk.
- (5) RSC Order 57 does not apply to appeals to which this paragraph applies.

### **Appeals under section 56A of the Taxes Management Act 1970, section 225 of the Inheritance Tax Act 1984 and regulation 10 of the Stamp Duty Reserve Tax Regulations 1986**

- 23.5 (1) The appellant must file the appellant's notice–
- (a) where the appeal is made following the refusal of the Special Commissioners to issue a certificate under section 56A(2)(b) of the Taxes Management Act 1970, within 28 days from the date of the release of the decision of the Special Commissioners containing the refusal;
  - (b) where the appeal is made following the refusal of permission to appeal to the Court of Appeal under section 56A(2)(c) of that Act, within 28 days from the date when permission is refused; or
  - (c) in all other cases within 56 days after the date of the decision or determination that the appellant wishes to appeal.
- (2) RSC Order 57 does not apply to appeals to which this paragraph applies.

### **Appeal under section 17 of the Industrial Assurance Act 1923**

- 23.6 The appellant must file the appellant's notice within 21 days after the date of the Commissioner's refusal or direction under section 17(3) of the Industrial Assurance Act 1923.

### **Appeals affecting industrial and provident societies etc.**

- 23.7 (1) This paragraph applies to all appeals under–
- (a) the Friendly Societies Act 1974;
  - (b) the Friendly Societies Act 1992;

- (c) the Industrial Assurance Act 1923; and
  - (d) the Industrial and Provident Societies Act 1965
  - (2) At any stage on an appeal, the court may–
    - (a) direct that the appellant’s notice be served on any person;
    - (b) direct that notice be given by advertisement or otherwise of–
      - (i) the bringing of the appeal;
      - (ii) the nature of the appeal; and
      - (iii) the time when the appeal will or is likely to be heard; or
    - (c) give such other directions as it thinks proper to enable any person interested in–
      - (i) the society, trade union, alleged trade union or industrial assurance company; or
      - (ii) the subject matter of the appeal,
- to appear and be heard at the appeal hearing.

## **Appeal from Value Added Tax and Duties Tribunal**

- 23.8 (1) A party to proceedings before a Value Added Tax and Duties Tribunal who is dissatisfied in point of law with a decision of the tribunal may appeal under section 11(1) of the Tribunals and Inquiries Act 1992 to the High Court.
- (2) The appellant must file the appellant’s notice–
- (a) where the appeal is made following the refusal of the Value Added Tax and Duties Tribunal to grant a certificate under article 2(b) of the Value Added Tax and Duties Tribunal Appeals Order 1986, within 28 days from the date of the release of the decision containing the refusal;
  - (b) in all other cases within 56 days after the date of the decision or determination that the appellant wishes to appeal.

## **Appeals by way of case stated**

### **Proceedings under the Commons Registration Act 1965**

- 23.9 A person aggrieved by the decision of a Commons Commissioner who requires the Commissioner to state a case for the opinion of the High Court under section 18 of the Commons Registration Act 1965 must file the appellant’s notice within 42 days from the date on which notice of the decision was sent to the aggrieved person.

## **APPEALS TO A COUNTY COURT**

### **Local Government (Miscellaneous Provisions) Act 1976**

24.1 Where one of the grounds upon which an appeal against a notice under sections 21, 23 or 35 of the Local Government (Miscellaneous Provisions) Act 1976 is brought is that–

- (a) it would have been fairer to serve the notice on another person; or
- (b) that it would be reasonable for the whole or part of the expenses to which the appeal relates to be paid by some other person,

that person must be made a respondent to the appeal, unless the court, on application of the appellant made without notice, otherwise directs.