

PART 35

APPEAL TO THE HIGH COURT BY CASE STATED

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When this Part applies

35.1. This Part applies where a person wants to appeal to the High Court by case stated—

- (a) under section 111 of the Magistrates' Courts Act 1980(a), against a decision of a magistrates' court; or
- (b) under section 28 of the Senior Courts Act 1981(b), against a decision of the Crown Court.

[Note. Under section 111 of the Magistrates' Courts Act 1980, 'any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved'.

Under section 28 of the Senior Courts Act 1981, 'any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.'

Under section 28A of the 1981 Act(c), the High Court may 'reverse, affirm or amend the determination in respect of which the case has been stated; or remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court, and may make such other order ... as it thinks fit.' Under that section, the High Court also may send the case back for amendment, if it thinks fit.]

Application to state a case

35.2.—(1) A party who wants the court to state a case for the opinion of the High Court must—

- (a) apply in writing, not more than 21 days after the decision against which the applicant wants to appeal; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party.

(a) 1980 c. 43.

(b) 1981 c. 54; section 28 was amended by section 2 of, and paragraph 27 of Schedule 3 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 24 of, and paragraphs 21 and 22 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 199 of, and Schedule 7 to, the Licensing Act 2003 (c. 17) and section 356 of, and Schedule 17 to, the Gambling Act 2005 (c. 19). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(c) 1981 c. 54; section 28A was inserted by section 1 of, and paragraph 9 of Schedule 2 to, the Statute Law (Repeals) Act 1993 (c. 50), and amended by section 61 of the Access to Justice Act 1999 (c. 22) and section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

- (2) The application must—
- (a) specify the decision in issue;
 - (b) specify the proposed question or questions of law or jurisdiction on which the opinion of the High Court will be asked;
 - (c) indicate the proposed grounds of appeal; and
 - (d) include or attach any application for the following, with reasons—
 - (i) if the application is to the Crown Court, an extension of time within which to apply to state a case,
 - (ii) bail pending appeal,
 - (iii) the suspension of any disqualification imposed in the case, where the court can order such a suspension pending appeal.
- (3) A party who wants to make representations about the application must—
- (a) serve the representations on—
 - (i) the court officer, and
 - (ii) each other party; and
 - (b) do so not more than 14 days after service of the application.
- (4) The court may determine the application without a hearing.
- (5) If the court decides not to state a case, the court officer must serve on each party—
- (a) notice of that decision; and
 - (b) the court’s written reasons for that decision, if not more than 21 days later the applicant asks for those reasons.

[Note. The time limit for applying to a magistrates’ court to state a case is prescribed by section 111(2) of the Magistrates’ Courts Act 1980. It may be neither extended nor shortened.

Under section 113 of the Magistrates’ Courts Act 1980(a), the magistrates’ court may grant an appellant bail pending appeal. Under section 81(1)(d) of the Senior Courts Act 1981(b), the Crown Court may do so. See also rule 14.7.

Where Part 34 (Appeal to the Crown Court) applies, an application to which this rule applies may be determined by a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate without justices of the peace: see rule 34.11 (Constitution of the Crown Court).

Under section 39 of the Road Traffic Offenders Act 1988(c), a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. See also rule 29.2.

The Practice Direction sets out a form of application for use in connection with this rule.]

Preparation of case stated

35.3.—(1) This rule applies where the court decides to state a case for the opinion of the High Court.

- (2) The court officer must serve on each party notice of—
- (a) the decision to state a case, and
 - (b) any recognizance ordered by the court.

(a) 1980 c. 43; section 113 was amended by section 168 of, and paragraph 44 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 165 of, and paragraph 72 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(b) 1981 c.54.

(c) 1988 c. 53.

(3) Unless the court otherwise directs, not more than 21 days after the court's decision to state a case—

- (a) in a magistrates' court, the court officer must serve a draft case on each party;
- (b) in the Crown Court, the applicant must serve a draft case on the court officer and each other party.

(4) The draft case must—

- (a) specify the decision in issue;
- (b) specify the question(s) of law or jurisdiction on which the opinion of the High Court will be asked;
- (c) include a succinct summary of—
 - (i) the nature and history of the proceedings,
 - (ii) the court's relevant findings of fact, and
 - (iii) the relevant contentions of the parties;
- (d) if a question is whether there was sufficient evidence on which the court reasonably could reach a finding of fact—
 - (i) specify that finding, and
 - (ii) include a summary of the evidence on which the court reached that finding.

(5) Except to the extent that paragraph (4)(d) requires, the draft case must not include an account of the evidence received by the court.

(6) A party who wants to make representations about the content of the draft case, or to propose a revised draft, must—

- (a) serve the representations, or revised draft, on—
 - (i) the court officer, and
 - (ii) each other party; and
- (b) do so not more than 21 days after service of the draft case.

(7) The court must state the case not more than 21 days after the time for service of representations under paragraph (6) has expired.

(8) A case stated for the opinion of the High Court must—

- (a) comply with paragraphs (4) and (5); and
- (b) identify—
 - (i) the court that stated it, and
 - (ii) the court office for that court.

(9) The court officer must serve the case stated on each party.

[Note. Under section 114 of the Magistrates' Courts Act 1980(a), a magistrates' court need not state a case until the person who applied for it has entered into a recognizance to appeal promptly to the High Court. The Crown Court has a corresponding inherent power.

Under section 121(6) of the 1980 Act, the magistrates' court which states a case need not include all the members of the court which took the decision questioned.

For the procedure on appeal to the High Court, see Part 52 of the Civil Procedure Rules 1998(b) and the associated Practice Direction.]

(a) 1980 c. 43; section 114 was amended by section 90 of, and paragraphs 95 and 113 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 235 of Schedule 8 to, the Courts Act 2003 (c. 39).
(b) S.I. 1998/3132; Part 52 was inserted by S.I. 2000/221 and amended by paragraph 1 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2003/2113, 2003/3361, 2006/3435, 2007/2204 and 2009/2092.

Duty of justices' legal adviser

35.4.—(1) This rule applies—

- (a) only in a magistrates' court; and
- (b) unless the court—
 - (i) includes a District Judge (Magistrates' Courts), and
 - (ii) otherwise directs.

(2) A justices' legal adviser must—

- (a) give the court legal advice; and
- (b) if the court so requires, assist it by—
 - (i) preparing and amending the draft case, and
 - (ii) completing the case stated.

Court's power to vary requirements under this Part

35.5.—(1) The court may shorten or extend (even after it has expired) a time limit under this Part.

(2) A person who wants an extension of time must—

- (a) apply when serving the application, representations or draft case for which it is needed; and
- (b) explain the delay.

[Note. See also rule 35.2(2)(d)(i) and the note to rule 35.2.]