

Draft Order laid before Parliament under section 56(6) of the Access to Justice Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No. (L.)

**FAMILY PROCEEDINGS
SENIOR COURTS OF ENGLAND AND WALES
FAMILY COURT, ENGLAND AND WALES**

The Access to Justice Act 1999 (Destination of Appeals)
(Family Proceedings) (Amendment) Order 2016

Made - - - -

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 56(1) and (3) of the Access to Justice Act 1999⁽¹⁾.

In accordance with section 56(4) of that Act the Lord Chancellor has consulted as required.

In accordance with section 56(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 and comes into force 28 days after the date on which it is made.

Amendments to the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014

2. After article 2 (appeals to the family court) of the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014⁽²⁾ insert—

(1) [1999 c. 22](#). Section 56(1) was amended by paragraphs 52(1)(b) and (2) of Part 3 of Schedule 9 and paragraphs 78 and 81 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 ([c. 22](#)). Section 56(4) was amended by section 15(1) of and paragraphs 279 and 280(1) and (2) of Part 1 of Schedule 4 to the Constitutional Reform Act 2005 ([c. 4](#)).

(2) [S.I. 2014/602](#).

“Appeals to the High Court

2A.—(1) Paragraph (3) applies to an appeal—

- (a) under section 31K(1) of the 1984 Act⁽³⁾ (appeals from the family court in cases where no other right of appeal exists); or
- (b) under section 13(2A) of the Administration of Justice Act 1960⁽⁴⁾ (appeals in cases of contempt of court) from a decision or order of the family court.

(2) Paragraph (3) does not apply—

- (a) if the appeal is from a decision or order in proceedings under—
 - (i) Part 4 or 5 of, or paragraph 19(1) of Schedule 2 to, the Children Act 1989⁽⁵⁾; or
 - (ii) the Adoption and Children Act 2002⁽⁶⁾;
- (b) if the appeal is from a decision or order in exercise of the family court’s jurisdiction to punish for contempt of court, where that decision or order was made in, or in connection with, proceedings of a type referred to in sub-paragraph (a);
- (c) if the appeal is from a decision or order made on appeal to the family court; or
- (d) if the person who made the decision or order was, when making the decision or order, deployed in the family court otherwise than as the holder of an office referred to in paragraph (3).

(3) The appeal lies to the High Court (instead of to the Court of Appeal) if it is from a decision or order made by—

- (a) a Circuit judge; or
- (b) a Recorder.

(4) Paragraph (3) has effect subject to any requirement to obtain permission to appeal.”

Consequential amendment to the Family Procedure Rules 2010

3. In rule 30.3 (permission) of the Family Procedure Rules 2010⁽⁷⁾, for paragraph (1) substitute—

“(1) Paragraphs (1B) and (2) of this rule set out when permission to appeal is, or is not, required under these rules to appeal against a decision or order of the family court.

(1A) This rule does not apply where the route of appeal from a decision or order of the family court is to the Court of Appeal, namely where the appeal is against a decision or order made by a circuit judge or Recorder—

- (a) in proceedings under—
 - (i) Part 4 of the 1989 Act (care and supervision);
 - (ii) Part 5 of the 1989 Act (protection of children);
 - (iii) paragraph 19(1) of Schedule 2 to the 1989 Act (approval by the court of local authority arrangements to assist children to live abroad); or
 - (iv) the 2002 Act (adoption, placement etc.);

⁽³⁾ Section 31K was inserted by paragraph 1 of Part 1 of Schedule 10 to the Crime and Courts Act 2013.

⁽⁴⁾ 1960 c. 65. Section 13(2A) was inserted by paragraph 15(1) and (2) of Part 2 of Schedule 10 to the Crime and Courts Act 2013.

⁽⁵⁾ 1989 c. 41.

⁽⁶⁾ 2002 c. 38.

⁽⁷⁾ S.I. 2010/2955. Rule 30.3 was amended by S.I. 2013/530 and 2014/667 and 3296.

- (b) in exercise of the family court’s jurisdiction in relation to contempt of court where that decision or order was made in, or in connection with, proceedings referred to in sub-paragraph (a); or
- (c) where that decision or order was itself made on an appeal to the family court.

(Appeals in the cases referred to in this paragraph are outside the scope of these rules. The CPR make provision requiring permission to appeal in those cases.)

(1B) Permission to appeal is required under these rules—

- (a) unless paragraph (2) applies, where the appeal is against a decision made by a circuit judge, Recorder, district judge or costs judge; or
- (b) as provided by Practice Direction 30A.”.

Saving provision

4.—(1) Nothing in this Order applies to an appeal under section 31K of the Matrimonial and Family Proceedings Act 1984(8) or section 13(2A) of the Administration of Justice Act 1960 if the notice of appeal was filed before the date on which this Order comes into force.

(2) In this article, “notice of appeal” includes an application seeking permission to appeal.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order amends the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 (S.I. 2014/602) to provide for the route of appeal from certain decisions or orders of Circuit judges and Recorders sitting in the family court to be to the High Court, rather than the Court of Appeal, as provided by section 31K of the Matrimonial and Family Proceedings Act 1984 (c. 42) or (in so far as appeals against decisions of the family court relating to contempt of court are concerned) section 13(2A) of the Administration of Justice Act 1960 (c. 65).

The effect of the amendments made by article 2 is that appeals from all decisions or orders of a Circuit judge or Recorder sitting in the family court will lie to the High Court, except where:

- the appeal is from a decision or order made in proceedings under Part 4 (care and supervision) or Part 5 (protection of children) of, or paragraph 19 of Schedule 2 (approval of local authority arrangements to assist children to live abroad) to, the Children Act 1989 (c. 41) or proceedings under the Adoption and Children Act 2002 (adoption, placement etc.);
- the appeal is from a decision or order made in relation to contempt of court in, or in connection with, proceedings of a type referred to above;
- the appeal is a second appeal to the family court; or
- the person who made the order was, when the order was made, deployed in the family court other than as a circuit judge or a Recorder.

Article 3 makes a consequential amendment to rule 30.3 of the Family Procedure Rules 2010 (S.I. 2010/2955), which sets out when those Rules do, or do not, require permission to appeal to be granted before an appeal can be applied for.

By virtue of article 4:

- any appeal in which the appeal notice is filed before the date this Order comes into force will lie to the Court of Appeal as it would have lain before that date; and
- the consequential amendment to the Family Procedure Rules 2010 will not apply if the appeal notice is filed before the date this Order comes into force.

An impact assessment for this Order is annexed to the Explanatory Memorandum, which is available alongside this Order at www.legislation.gov.uk.