

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

C.

APPEALS, COURTS, ETC. (PART IV - SECTIONS 54-73)

Summary

203. Part IV of the Act contains provisions to reform the system of appeals in civil and family cases (including appeals by way of case stated); makes various changes relating to the High Court and the Crown Court; facilitates the secondment of British judges to international courts; enables inquests to be adjourned where a public inquiry has been established that will investigate the deaths; prohibits the publication of information likely to identify a child who is subject to proceedings under the Children Act 1989 in the High Court or a county court; and allows for children under 14 to attend adult criminal trials.
- *Appeal by way of case stated* is a form of appeal where the outcome of proceedings is questioned on the basis that it was wrong in law or outside the jurisdiction of the court. The person questioning the outcome of the proceedings applies to the court to state a case in writing for the opinion of the High Court.
204. In relation to civil appeals, the Act will:
- provide that permission to appeal may be required at all levels in the system;
 - provide that, where a second appeal would lie to the Court of Appeal, it will be allowed to proceed only in limited circumstances;
 - introduce a power for the Lord Chancellor to vary appeal routes by secondary legislation, with a view to ensuring that appeals generally go to the lowest appropriate level of judge;
 - ensure that cases which merit the consideration of the Court of Appeal can reach that court; and
 - give the Civil Division of the Court of Appeal flexibility to exercise its jurisdiction in courts of one, two or more judges.
205. Together, these proposals are intended to ensure that appeals are heard at the right level, and dealt with in a way which is proportionate to their weight and complexity; that the appeals system can adapt quickly to other developments in the civil justice system; and that existing resources are used efficiently, enabling the Court of Appeal (Civil Division) to tackle its workload more expeditiously.
206. The provisions relating to the High Court will:
- place on a statutory footing the powers of the High Court to deal with appeals by way of case stated coming from the Crown Court;

*These notes refer to the Access to Justice Act 1999
(c.22) which received Royal Assent on 27th July 1999*

- allow judicial review applications, appeals by way of case stated and applications for *habeas corpus* which relate to criminal matters, plus appeals from inferior courts and tribunals in contempt of court cases, to be heard by a single judge of the High Court, rather than, as now, by a Divisional Court of two or more judges;
- enable the High Court to impose a different sentence when it finds that a fine defaulter has been committed to prison illegally; and
- create a statutory post of Vice-President of the Queen's Bench Division.

Background

207. In his 1994-95 Annual Report on the Court of Appeal, the then Master of the Rolls, Lord Bingham, stated that: "the delay in hearing certain categories of appeal in the Civil Division of the Court of Appeal has reached a level which is inconsistent with the due administration of justice".
208. In his report *Access to Justice* (July 1996), Lord Woolf set out his proposals for the reform of the civil justice system. At the heart of his proposals was the allocation of civil cases to 'tracks', which would determine the degree of judicial case management. Broadly speaking, cases would be allocated to the small claims track, the fast track or to the multi-track, depending upon the value and complexity of the claim. The principle that underlies this system of tracks is the need to ensure that resources devoted to managing and hearing a case are proportionate to the importance and complexity of that case. So that the benefits of these reforms should not be weakened on appeal, Lord Woolf recommended that the system of appeals should be based on similar principles.
209. In 1996, Sir Jeffery Bowman chaired a Review of the Civil Division of the Court of Appeal (*Review of the Court of Appeal (Civil Division) - Report to the Lord Chancellor*, September 1997).
210. Sir Jeffery identified a number of problems affecting the Court of Appeal. In particular, he noted that the Court was being asked to consider appeals that were not of sufficient weight or complexity to require two or three of the country's most senior judges, and which had sometimes already been through one or more levels of appeal. He also concluded that existing provisions on the constitution of the Court were too inflexible to deal appropriately with its workload. The Bowman report therefore recommended changes to the jurisdiction and constitution of the Court of Appeal. The Lord Chancellor has consulted on proposals to effect some of these changes (*Reform of the Court of Appeal (Civil Division): Proposals for change to Constitution and Jurisdiction*, Lord Chancellor's Department, July 1998).
211. Due to the complex nature of routes of appeal in family matters, Sir Jeffery recommended that a specialist committee should examine this area with a view to rationalising the arrangements for appeals in family cases in line with the principles he had outlined for civil appeals generally. The Family Appeal Review Group, chaired by Lord Justice Thorpe, published recommendations to this effect in July 1998. The Lord Chancellor will be consulting on his proposals in the light of this report during the summer.
212. The provisions in the Act to allow certain matters to be heard by a single High Court judge are also intended to ensure that the most appropriate use can be made of judicial resources. On 22 March 1999, the Lord Chancellor invited Sir Jeffery Bowman to conduct a review of the Crown Office list. Sir Jeffery is due to report by the end of 1999. No changes affecting cases listed for hearing by the Crown Office will be implemented until Sir Jeffery has reported.

The *Crown Office* is the administrative office in the High Court responsible for the special supervisory and appellate jurisdiction of the Queen's Bench Division (QBD).

Under that jurisdiction, the QBD oversees the legality of decisions by inferior courts and tribunals, ministers, local authorities and other executive bodies.

Commentary

Appeals

213. **Section 54: Permission to appeal.** This section allows rules of court to provide, for all levels of court, that the permission of the court is needed to exercise a right of appeal in a civil case. At present, permission is required for most cases going to the Civil Division of the Court of Appeal, but not elsewhere. In future, it is proposed that, with few exceptions, rules will require permission to appeal to be obtained for all appeals to the county courts, High Court or Civil Division of the Court of Appeal. The exceptions will include orders affecting the liberty of the individual; (appeals against committal to prison, refusal to grant *habeas corpus*, and the making of secure accommodation orders under section 25 of the Children Act 1989 are currently excepted from the requirement to seek permission to appeal to the Court of Appeal). There will be no appeal against a decision of the court to give or refuse permission, but this does not affect any right under rules of court to make a further application for permission to the same or another court.

A *secure accommodation order* enables a local authority to place a child in care in accommodation which is designed to restrict his or her liberty.

214. **Section 55: Second appeals.** This section provides that, where a county court or the High Court has decided a matter brought on appeal, there will be no possibility of a further appeal of that decision, unless the appeal would raise an important point of principle or practice, or there is some other compelling reason it to be heard. All applications for permission to bring a further appeal must be made to the Court of Appeal, regardless of the court which heard the first appeal. If permission is given, the appeal will be heard by the Court of Appeal.
215. **Section 56: Power to prescribe alternative destination of appeals.** This section enables the Lord Chancellor to vary, by order, the routes of appeal for appeals to and within the county courts, the High Court, and the Civil Division of the Court of Appeal. Before making an order, the Lord Chancellor will be required to consult the Heads of Division, and any order will be subject to Parliamentary approval under the affirmative resolution procedure. The intention is that the following appeal routes will be prescribed:
- in fast track cases heard by a district judge, appeals will be to a Circuit judge;
 - in fast track cases heard by a Circuit judge, appeals will be to a High Court judge;
 - in multi-track cases, appeals against interlocutory decisions by a district judge will be to a Circuit judge, by a master or Circuit judge to a High Court judge, and by a High Court judge to the Court of Appeal; and
 - in multi-track cases, appeals of final orders will be to the Court of Appeal, regardless of the court of first instance.

The *Heads of Division* are the Lord Chief Justice, the Master of the Rolls, the President of the Family Division, and the Vice-Chancellor.

A decision is *interlocutory* if it does not determine the final outcome of the case.

Masters are judicial officers of the High Court who decide interlocutory issues.

216. The Lord Chancellor will also use this power to determine routes of appeal in family matters. Whilst his proposals for civil non-family appeals have been subject to widespread consultation, this has not been the case for family appeals. Although the Lord Chancellor proposes that the appeal routes in family cases will be based upon

similar principles, the exact way in which the Lord Chancellor will use this power in family cases will be subject to further consultation.

217. **Section 57: Assignment of appeals to Court of Appeal.** This section provides for the Master of the Rolls, or a lower court, to direct that an appeal that would normally be heard by a county court or the High Court should be heard instead by the Court of Appeal. The power conferred on courts below the Court of Appeal by this section will be subject to rules of court.
218. **Section 58: Criminal appeals: minor amendments.** This section makes minor amendments to existing legislation on criminal appeals. The need for these amendments came to light in the course of preparing a Bill (for a future session of Parliament) to consolidate the law in this area.
219. Subsections (1) and (4)-(6) provide for rights of appeal against an order returning someone to prison to serve the remainder of a sentence from which he or she has been released early (under Part II of the Criminal Justice Act 1991).
220. Subsection (2) makes it clear that, where the Court of Appeal has ordered a retrial that has not begun within two months of that order, the Court can set aside the order for retrial if it decides that a verdict of acquittal should be entered because of the delay. Subsection (3) makes clear that the Court of Appeal can deal with appeals against Crown Court convictions for summary offences that were linked with more serious offences committed to the Crown Court. Subsection (7) ensures that the same right to appeal against a Crown Court decision in a case originally dealt with by a magistrates' court applies to a sentence to detention by a Youth Court as to a sentence of imprisonment.

A *summary offence* is one that (unless linked to more serious offences) can only be tried by a magistrates' court.

Civil division of Court of Appeal

221. **Section 59: Composition.** This section makes provision about the number of judges of which a court must be constituted for the Court of Appeal to hear appeals. Currently, section 54 of the Supreme Court Act 1981 provides that the Court of Appeal is constituted to exercise its jurisdiction if it consists of an uneven number of judges not less than three (or two judges in certain limited circumstances). Section 59 of this Act amends section 54 of the 1981 Act to allow the Master of the Rolls, with the concurrence of the Lord Chancellor, to give directions about the minimum number of judges of which a court must consist for specified types of proceedings. Subject to any directions, the Master of the Rolls, or a Lord Justice of Appeal designated by him for the purpose, will be able to determine the number of judges to hear any particular appeal.
222. **Section 60: Calling into question of incidental decisions.** This section takes account of the abolition (by section 70) of the post of registrar of civil appeals, by substituting for section 58 of the Supreme Court Act 1981 a provision that incidental decisions by a single judge or any officer or member of staff of the Court of Appeal may be challenged as prescribed by rules of court. No appeal shall lie to the House of Lords from a decision which may be challenged under such rules.

Under paragraph 2 of Schedule 1 to the Civil Procedure Act 1997, it is possible for rules of court to devolve functions of the court to officers or other staff of the court.

High Court

223. **Section 61: Cases stated by Crown Court.** The Supreme Court Act 1981 gives the High Court specific powers to deal with appeals by way of case stated coming from a magistrates' court. However it does not do the same for cases coming from the Crown Court. This section provides a statutory footing for the powers of the High Court to deal with appeals by way of case stated coming from the Crown Court. It enacts a

recommendation made by the Law Commission in its 1994 Report *Administrative Law: Judicial Review and Statutory Appeals*.

224. **Section 62: Power to vary committal in default.** This section closes a loophole in section 43 of the Supreme Court Act 1981, which came to light in the recent case of *Regina v St Helens Justices ex parte Marlene Ann Jones and others*. Section 43 of the 1981 Act provides that the High Court may, instead of quashing a conviction that has wrongfully been imposed by a lower court, amend it by substituting any sentence which the lower court had power to impose. In the St Helens case, the Court of Appeal found that this power, to substitute a sentence, did not apply when the Court quashed a decision to commit a fine defaulter to prison, because the committal was not the sentence originally imposed on conviction. This had the effect of leaving the original sentences (the fines) outstanding.
225. **Section 62** therefore inserts a new section 43ZA into the 1981 Act to cover this situation. The new section provides that, where the High Court quashes a decision of a lower court to commit a fine defaulter to prison, the High Court may deal with the person in any way that the lower court could have. The effect is that the High Court can quash the incorrect committal and reconsider the case in the light of the present circumstances of the wrongfully committed offender.
226. **Sections 63-65: Criminal causes and matters; contempt of court; habeas corpus.** These sections will allow certain cases to be routinely heard by a single judge of the High Court. The route of appeal for these cases is to the House of Lords, but the Administration of Justice Act 1960 provides that the House of Lords will only hear appeals from a Divisional Court of the High Court. Sections 63-65 amend the 1960 Act, so that the House of Lords can hear appeals from a single High Court judge. It will then be possible to make rules of court to provide for these cases to be heard by a single judge, while enabling the judge to refer particularly complex cases to a Divisional Court.
227. The cases in question are:
- judicial reviews and appeals by way of case stated in criminal causes and matters (section 63);
 - appeals from inferior (civil and criminal) courts and tribunals in contempt of court cases (section 64); and
 - applications for *habeas corpus* in criminal cases (section 65).

A *Divisional Court* is composed of two or more High Court judges.

Crown Court

228. **Section 66/Schedule 9 - Enforcement of community orders.** **Section 66** gives effect to Schedule 9 which changes the way in which breaches of certain community orders imposed by the Crown Court are dealt with. Where the sentencing judge has so directed, the breach will return directly to the Crown Court, rather than going first to a magistrates' court as now. The Schedule also provides that applications to revoke a relevant Crown Court community order will be made to the Crown Court and not to a magistrates' court.
- The relevant *community orders* are the first 4 listed in the second part of Annex B to these Notes.

Breaches and revocations of drugs treatment and testing orders are automatically dealt with by the court that made the order. Schedule 9 does not change this.

229. **Section 67: Time limits where accused sent for trial.** **Section 67** makes various amendments to earlier Acts to facilitate the implementation of section 51 of the Crime and Disorder Act 1998, which provides for indictable-only cases to be sent directly to

the Crown Court for trial, without formal committal proceedings in a magistrates' court. The new arrangements are currently being piloted in several parts of the country.

Indictable-only cases can only be tried by the Crown Court, i.e. not by a magistrates' court.

230. Schedule 3 of the 1998 Act provides for regulations to be made about the service of evidence in cases sent to the Crown Court under section 51 of the 1998 Act. The intention was to set a fixed timetable to ensure these cases proceeded speedily. But the regulations can only set a single period for serving evidence which applies to all cases. Some cases are more complex than others, and require more preparation time. So the regulations made for the pilots had to prescribe a time limit of one year, to ensure the requirement could be met in more complex cases. This length of time is not necessary in the vast majority of cases. Section 67(1) therefore amends the 1998 Act to give the judge discretion to extend the period set by the regulations. This will allow a shorter period to be set in the regulations.
231. **Section 67(2)** amends section 13 of the Criminal Procedure Investigations Act 1996 to provide for the time by when the prosecutor must disclose unused material in cases sent for trial without committal proceedings.
232. **Section 67(3)** amends section 22 of the Prosecution of Offences Act 1985 to allow the Crown Court to extend time limits in the preliminary stages of cases sent for trial under section 51 of the 1998 Act.

Judges etc.

233. **Section 68: Judges holding office in European or international courts.** This section makes it possible to appoint British judges to international courts, without those judges having to resign judicial office in the United Kingdom. This will guarantee that seconded judges can resume office in the UK when their secondment ends, making such appointments more attractive and so ensuring that this country can play its full part in these courts.
234. **Section 68** applies to any court of the European Union and any other international court (e.g. the International Court of Justice in the Hague) designated by the Lord Chancellor or the Secretary of State for Scotland. (The European Court of Human Rights is excluded by the second paragraph (b) in subsection (2) because similar provisions for that court already exist in the Human Rights Act 1998.)
235. Subsection (3)(a) & (b) ensures that seconded judges will not be paid their UK salaries, or receive pension benefits under a UK judicial pensions scheme, while working for an international court. Subsection (3)(c) provides that a seconded judge should not count towards any statutory maximum complement of a UK court while working abroad; and subsection (5) allows the relevant minister to deal with any problems (including the temporary breach of a maximum complement) that may arise when a judge returns to office here.
236. **Section 69: Vice-president of the Queen's Bench Division.** This section puts on a statutory footing the existing practice of the Lord Chancellor appointing, at the request of the Lord Chief Justice, a senior member of the Court of Appeal to assist the Lord Chief Justice in his administrative duties as president of the Queen's Bench Division of the High Court.
237. **Section 70: Registrar of civil appeals.** This section abolishes the post of registrar of civil appeals. The registrar of civil appeals is a judicial officer provided for by Schedule 2 to the Supreme Court Act 1981. The post has both judicial and administrative functions. The administrative functions have now been taken over by a civil servant appointed to manage the Civil Appeals Office.

Court proceedings

238. **Section 71: Adjournment of inquest in event of judicial inquiry.** This section provides for the indefinite adjournment of an inquest when a judicial inquiry is established that would constitute adequate investigation into the death or deaths concerned. The intention is to prevent duplication of proceedings which can cause unnecessary distress to the bereaved and other witnesses. Subsection (4) allows for the coroner to resume the inquest after the completion of the inquiry in exceptional circumstances, for example if there was a doubt whether the death had in fact been caused by the incident subject to the inquiry.
239. **Section 72: Reporting of proceedings relating to children.** This section amends section 97 of the Children Act 1989 to prohibit the publication of information identifying a child who is (or has been) the subject of proceedings under that Act in the High Court or a county court. Section 97(4) of the 1989 Act allows the court to authorise publication where that is in the interests of the child. Section 72 unifies the law on the reporting of Children Act cases in all levels of court, by extending the existing prohibition which applies only to magistrates' courts.
- For this purpose, a *child* means any person under 18 years of age.
240. **Section 73: Power to allow children to attend criminal proceedings.** Section 73(1) permits children under 14 to attend criminal trials in England and Wales, with the consent of the court. It does so by amending section 36 of the Children and Young Persons Act 1933, which prohibits children (that is, young people under the age of 14) from attending criminal trials unless they are a defendant, a witness, an infant in arms, or their presence is required for the purposes of justice. Section 73(2) makes a comparable change for Scotland. The purpose of this section is to allow children to visit courts for educational purposes.