
STATUTORY INSTRUMENTS

1964 No. 1755

The Ecclesiastical Jurisdiction (Discipline) Rules 1964

*PROCEDURE ON APPEALS TO ARCHES AND CHANCERY
COURTS (SECTIONS 7 AND 47 OF MEASURE)*

Lodging of Appeal

39.—(1) Where in proceedings for an offence under the Measure the accused wishes to appeal on a question of fact, or either party wishes to appeal on a question of law, from a judgment of the consistory court to the Arches Court of Canterbury or, as the case may be, the Chancery Court of York, the appeal must be lodged, in the manner hereinafter provided, within 28 days after the decision of the consistory court.

(2) The lodging of an appeal shall be effected by—

- (a) lodging six copies of the notice of appeal with the registrar of the appellate court,
- (b) lodging one copy thereof with the registrar (as defined in rule 2),
- (c) serving one copy on the other party.

(3) The notice shall be in the appropriate form set out in the Appendix and shall state the grounds of the appeal and, if the judgment of the consistory court comprised findings in respect of two or more offences, and the appeal is from one or some of the findings only, shall specify the finding or findings appealed from.

(4) Except with the leave of the appellate court, the appellant shall not be entitled on the hearing of the appeal to rely on any grounds not stated in the notice of appeal, whether as originally lodged or, if amended under the next following rule, as so amended.

(5) The registrar of the appellate court shall file one copy of the notice of appeal in the registry of the court.

(6) As soon as he receives his copy of the notice of appeal, the registrar (as defined in rule 2) shall transmit the record of the proceedings, and any documents and exhibits lodged with him or in his custody relating to the proceedings, to the registrar of the appellate court, and shall also request the judge of the consistory court to send his note of the trial to the registrar of the appellate court; and the parties shall be entitled, on reasonable notice, to inspect the said record, documents, exhibits and judge's note and to take extracts therefrom or make copies thereof.

Amendment or withdrawal of appeal

40.—(1) The appellate court may at the hearing, or the Dean of the Arches and Auditor may at any time before the hearing, on an application by the appellant,—

- (a) allow the appeal to be withdrawn,
- (b) allow the notice of appeal to be amended.

(2) The terms on which an order is made allowing amendment of the notice may include the adjournment or postponement of the hearing.

(3) If the appellant proposes to apply to the appellate court at the hearing to exercise its powers under this rule, he shall if practicable give notice in writing to the respondent and the registrar of that court, but without prejudice to the exercise of those powers without notice.

Fixing day of hearing

41.—(1) The appellate court shall fix a time for the hearing of the appeal, which shall be not less than 28 days after the lodging of the appeal.

(2) Either the promoter or the accused may apply to the registrar of the appellate court for a postponement of the hearing and, if the application is granted, the hearing shall be at such later time as the appellate court may fix.

(3) The appellate court may at any time of its own motion postpone the hearing of the appeal.

(4) The registrar of the appellate court shall give not less than 14 days' notice of the sittings of the court to both parties.

Proceedings before Appellate Court

42.—(1) On an appeal brought by the accused on a question of fact, the following provisions shall apply:—

- (a) the note of the judge of the consistory court and all documents and exhibits transmitted under rule 39(6), so far as material to the appeal, shall be available for use at the hearing;
- (b) if a shorthand note of the evidence at the trial has been taken, the appellate court may require or allow it to be used at the hearing, on such terms as it may direct;
- (c) the appellate court may require or allow—
 - (i) any witnesses who gave evidence for the purposes of the trial to give evidence for the purposes of the appeal, either at the hearing or before an examiner;
 - (ii) any documents or exhibits produced at the trial (in addition to those transmitted as aforesaid) to be produced at the hearing;
 - (iii) in exceptional circumstances, new witnesses to give evidence at the hearing or before an examiner, or other new evidence to be produced.

(2) If either party proposes to apply to the court to exercise its powers under sub-paragraph (b) or (c) of the foregoing paragraph, he shall if practicable give notice in writing to the other party and to the registrar of the appellate court, but without prejudice to the exercise of the said powers without notice.

(3) On an appeal brought by either party on a question of law, the provisions of paragraph (1) of this rule shall apply to such extent as the appellate court thinks necessary for the purpose of examining any matters of fact relevant to the determination of the question of law, and paragraph (2) shall apply accordingly.

Powers of determination of Appellate Court

43.—(1) On any appeal the appellate court shall determine the question or questions raised by the appeal, and may thereupon confirm, reverse or vary any finding of the consistory court against which the appeal is brought, or may remit the case with their determination to the consistory court to take such further proceedings therein as they may direct.

(2) The powers of the appellate court shall include power to vary the censure or impose a censure for any offence in respect of which they confirm, vary or make a finding of guilt, but without prejudice to their power to remit the decision as to the censure to the consistory court.

(3) The determination of any matter before the appellate court shall be according to the opinion of the majority of the members thereof.

(4) The registrar of the appellate court shall give notice in writing to the registrar (as defined in rule 2) of any determination or directions made or given by the appellate court, and if the case is remitted to the consistory court for further proceedings therein, the judge of the consistory court shall fix a time and place for such proceedings and rules 14(2) and (3) and 15 to 17 shall apply for the purposes of those further proceedings, with the necessary modifications, in like manner as they apply for the purposes of the original trial.