

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

C.

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

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

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

- 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.