
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART VIII

APPEALS

Appeals from district judges

8.1.—(1) Except where paragraph (2) applies, any party may appeal from an order or decision made or given by the district judge in family proceedings in a county court to a judge on notice; and in such a case—

- (a) CCR Order 13, rule 1(10) (which enables the judge to vary or rescind an order made by the district judge in the course of proceedings), and
- (b) CCR Order 37, rule 6 (which gives a right of appeal to the judge from a judgment or final decision of the district Judge),

shall not apply to the order or decision.

(2) Any order or decision granting or varying an order (or refusing to do so)—

- (a) on an application for ancillary relief, or
- (b) in proceedings to which rules 3.1, 3.2, 3.3, 3.6 or 3.8 apply,

shall be treated as a final order for the purposes of CCR Order 37, rule 6.

(3) On hearing an appeal to which paragraph (2) above applies, the judge may exercise his own discretion in substitution for that of the district judge.

(4) Unless the court otherwise orders, any notice under this rule must be issued within 14 days of the order or decision appealed against and served not less than 14 days before the day fixed for the hearing of the appeal.

(5) Appeals under this rule shall be heard in chambers unless the judge otherwise directs.

(6) Unless the court otherwise orders, an appeal under this rule shall not operate as a stay of proceedings on the order or decision appealed against.

Appeals under Domestic Proceedings and Magistrates' Courts Act 1978)(1)

8.2.—(1) Subject to paragraph (9) below, every appeal to the High Court under the Domestic Proceedings and Magistrates' Courts Act 1978 shall be heard by a Divisional Court of the Family Division and shall be entered by lodging three copies of the notice of motion in the principal registry.

(2) The notice must be served, and the appeal entered, within 6 weeks after the date of the order appealed against.

(3) Notice of the motion may be served in accordance with RSC Order 65, rule 5.

(4) On entering the appeal, or as soon as practicable thereafter, the appellant shall, unless otherwise directed, lodge in the principal registry—

- (a) three certified copies of the summons and of the order appealed against, and of any order staying its execution,
- (b) three copies of the clerk's notes of the evidence,
- (c) three copies of the justices' reasons for their decision,
- (d) a certificate that notice of the motion has been duly served on the clerk and on every party affected by the appeal, and
- (e) where the notice of the motion includes an application to extend the time for bringing the appeal, a certificate (and a copy thereof) by the appellant's solicitor, or the appellant if he is acting in person, setting out the reasons for the delay and the relevant dates.

(5) If the clerk's notes of the evidence are not produced, the court may hear and determine the appeal on any other evidence or statement of what occurred in the proceedings before the magistrates' court as appears to the court to be sufficient.

(6) The court shall not be bound to allow the appeal on the ground merely of misdirection or improper reception or rejection of evidence unless, in the opinion of the court, substantial wrong or miscarriage of justice has been thereby occasioned.

(7) A district judge may dismiss an appeal to which this rule applies for want of prosecution or, with the consent of the parties, may dismiss the appeal or give leave for it to be withdrawn, and may deal with any question of costs arising out of the dismissal or withdrawal.

(8) Any interlocutory application in connection with or for the purpose of any appeal to which this rule applies may be heard and disposed of before a single judge.

(9) Where an appeal to which this rule applies relates only to the amount of any periodical or lump sum payment ordered to be made, it shall, unless the President otherwise directs, be heard and determined by a single judge, and in that case—

- (a) for the references in paragraphs (1) and (4)(a), (b) and (c) to three copies of the documents therein mentioned there shall be substituted references to one copy;
- (b) the parties may agree in writing or the President may direct that the appeal be heard and determined at a divorce town.