STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 20

APPEALS

Contents of this Part

Scope of this Part	Rule 20.1
Interpretation	Rule 20.2
Dealing with appeals	Rule 20.3
Destination of appeals	Rule 20.4
Permission to appeal – appeals to the Court of Appeal	Rule 20.5
Permission to appeal – other cases	Rule 20.6
Appeal against an order for committal to prison	Rule 20.7
Matters to be taken into account when considering an application for permission	Rule 20.8
Power to treat application for permission to appeal as application for reconsideration under rule 13.4	Rule 20.9
Appellant's notice	Rule 20.10
Respondent's notice	Rule 20.11
Variation of time	Rule 20.12
Power of appeal judge on appeal	Rule 20.13
Determination of appeals	Rule 20.14

Scope of this Part

20.1. This Part applies to an appeal against any decision of the court.

Interpretation

20.2.—(1) In the following provisions of this Part—

(a) "appeal judge" means a judge of the court to whom an appeal is made;

(b) "first instance judge" means the judge of the court from whose decision an appeal is brought;

(c) "appellant" means the person who brings or seeks to bring an appeal;

(d) "respondent" means—

(i) a person other than the appellant who was a party to the proceedings before the first instance judge and who is affected by the appeal; or

(ii) a person who is permitted or directed by the first instance judge or the appeal judge to be party to the appeal; and

(e) "a second appeal" means an appeal from a decision of a judge of the court which was itself made on appeal from a judge of the court.

(2) In this Part, where the expression "permission" is used it means "permission to appeal" unless otherwise stated.

Dealing with appeals

20.3.—(1) The court may deal with an appeal or any part of an appeal at a hearing or without a hearing.

(2) In considering whether it is necessary to hold a hearing, the court shall have regard to the matters set out in rule 3.6(5).

(3) Any person bound by an order of the court by virtue of rule 9.14 (persons to be bound as if parties) may seek permission under this Part.

(4) All parties to an appeal must comply with any relevant practice direction.

(5) Where permission is required, it is to be granted or refused in accordance with this Part.

(Rule 13.4 provides for reconsideration of orders made without a hearing or without notice to a person.)

Destination of appeals

20.4.—(1) An appeal from a decision of a judge of the court shall lie to the Court of Appeal in the following cases—

(a) where it is an appeal from a decision of a Tier 3 Judge; or

(b) where it is a second appeal.

(2) Subject to paragraph (1) and to any alternative provision made by the relevant practice direction—

(a) where the first instance judge was a Tier 1 Judge, any appeal shall be heard by a Tier 2 Judge;

(b) where the first instance judge was a Tier 2 Judge, any appeal shall be heard by a Tier 3 Judge.

(3) No appeal may be made against a decision of a court officer authorised under rule 2.3.

(A decision of a court officer authorised under rule 2.3 can be reconsidered by a judge under rule 13.4.)

Permission to appeal – appeals to the Court of Appeal

20.5.—(1) Subject to rule 20.7, an appeal to the Court of Appeal against a decision of a judge of the court may not be made without permission.

(2) Where an appeal to the Court of Appeal is made from a decision of a Tier 3 Judge, permission may be granted by the first instance judge or by the Court of Appeal, unless the appeal is a second appeal.

(3) Where an appeal to the Court of Appeal is a second appeal, permission may only be granted by the Court of Appeal.

(4) No appeal shall lie against—

(a) the granting or refusal of permission under this rule; or

(b) an order allowing an extension of time for appealing from an order.

(The procedure for an appeal from a decision of a judge of the court to the Court of Appeal, including requirements for permission, is governed by the Civil Procedure Rules 1998.)

Permission to appeal – other cases

20.6.—(1) Subject to rules 20.5 and 20.7, an appeal against a decision of the court may not be made without permission.

(2) An application for permission to appeal may be made to—

(a) the first instance judge; or

(b) another judge who satisfies the relevant condition in paragraph (4) or (5).

(3) Where an application for permission is refused by the first instance judge, a further application for permission may be made to a judge who satisfies the relevant condition in paragraph (4) or (5).

(4) Where the decision sought to be appealed is a decision of a Tier 1 Judge, permission may also be granted or refused by—

(a) a Tier 2 Judge; or

(b) a Tier 3 Judge.

(5) Where the decision sought to be appealed is a decision of a Tier 2 Judge, permission may also be granted or refused by a Tier 3 Judge.

(6) Subject to paragraph (7) and except where another rule or a practice direction provides otherwise, where a judge who satisfies the relevant condition in paragraph (4) or (5), without a hearing, refuses permission to appeal against the decision of the first instance judge, the person seeking permission may request the decision to be reconsidered at a hearing.

(7) Where a Tier 3 Judge or the Senior Judge refuses permission to appeal without a hearing and considers that the application is totally without merit, that judge may order that the person seeking permission may not request the decision to be reconsidered at a hearing.

(8) Subject to paragraph (6), no appeal shall lie against—

(a) the granting or refusal of permission under this rule; or

(b) an order allowing an extension of time for appealing from an order.

Appeal against an order for committal to prison

20.7. Permission is not required to appeal against an order for committal to prison.

Matters to be taken into account when considering an application for permission

20.8.—(1) Permission to appeal shall be granted only where—

(a) the court considers that the appeal would have a real prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.

(2) An order giving permission may—

(a) limit the issues to be heard; and

(b) be made subject to conditions.

(3) Paragraphs (1) and (2) do not apply to second appeals.

Power to treat application for permission to appeal as application for reconsideration under rule 13.4

20.9.—(1) Where a person seeking permission to appeal a decision would be entitled to seek reconsideration of that decision under rule 13.4 (or would have been so entitled had the application been made within 21 days of the date of that decision)—

(a) a practice direction may provide; or

(b) the court may direct,

that an application for permission shall be treated as an application for reconsideration under rule 13.4.

(2) In any case where paragraph (1) applies, the decision in question shall be reconsidered in accordance with the provisions of rule 13.4.

Appellant's notice

20.10.—(1) Where the appellant seeks permission from a judge other than the first instance judge, it must be requested in the appellant's notice.

(2) The appellant must file an appellant's notice at the court within—

(a) such period as may be directed or specified in the order of the first instance judge; or

(b) where that judge makes no such direction or order, 21 days after the date of the decision being appealed.

(3) The court shall issue the appellant's notice and unless it orders otherwise, the appellant must serve the appellant's notice on each respondent and on such other persons as the court may direct, as soon as practicable and in any event within 21 days of the date on which it was issued.

(4) The appellant must file a certificate of service within 7 days beginning with the date on which the appellant served the appellant's notice.

Respondent's notice

20.11.—(1) A respondent who—

(a) is seeking permission from a judge other than the first instance judge; or

(b) wishes to ask the appeal judge to uphold the order of the first instance judge for reasons different from or additional to those given by the first instance judge,

must file a respondent's notice.

(2) Where the respondent seeks permission from a judge other than the first instance judge, permission must be requested in the respondent's notice.

(3) A respondent's notice must be filed within—

(a) such period as may be directed by the first instance judge; or

(b) where the first instance judge makes no such direction, 21 days beginning with the date referred to in paragraph (4).

(4) The date is the soonest of—

(a) the date on which the respondent is served with the appellant's notice where—

(i) permission was given by the first instance judge; or

(ii) permission is not required;

(b) the date on which the respondent is served with notification that a judge other than the first instance judge has given the appellant permission; or

(c) the date on which the respondent is served with the notification that the application for permission and the appeal itself are to be heard together.

(5) The court shall issue a respondent's notice, and unless it orders otherwise, the respondent must serve the respondent's notice on the appellant, any other respondent and on such other persons as the court may direct, as soon as practicable and in any event within 21 days of the date on which it was issued.

(6) The respondent must file a certificate of service within 7 days beginning with the date on which the copy of the respondent's notice was served.

Variation of time

20.12. The parties may not agree to extend any date or time limit for or in respect of an appeal set by—

(a) these Rules;

(b) the relevant practice direction; or

(c) an order of the appeal judge or the first instance judge.

Power of appeal judge on appeal

20.13.—(1) In relation to an appeal, an appeal judge has all the powers of the first instance judge whose decision is being appealed.

(2) In particular, the appeal judge has the power to—

(a) affirm, set aside or vary any order made by the first instance judge;

(b) refer any claim or issue to that judge for determination;

(c) order a new hearing;

(d) make a costs order.

(3) The appeal judge's powers may be exercised in relation to the whole or part of an order made by the first instance judge.

Determination of appeals

20.14.—(1) An appeal shall be limited to a review of the decision of the first instance judge unless—

(a) a practice direction makes different provision for a particular category of appeal; or

(b) the appeal judge considers that in the circumstances of the appeal it would be in the interests of justice to hold a re-hearing.

(2) Unless the appeal judge orders otherwise, the appeal judge shall not receive—

(a) oral evidence; or

(b) evidence that was not before the first instance judge.

(3) The appeal judge shall allow an appeal where the decision of the first instance judge was—

(a) wrong; or

(b) unjust, because of a serious procedural or other irregularity in the proceedings before the first instance judge.

(4) The appeal judge may draw any inference of fact that the appeal judge considers justified on the evidence.

(5) At the hearing of the appeal, a party may not rely on a matter not contained in the appellant's or respondent's notice unless the appeal judge gives permission.

Changes to legislation:
There are currently no known outstanding effects for the The Court of Protection Rules 2017, PART 20.