

SCHEDULE 1

RSC ORDER 94

APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS: QUEEN'S BENCH DIVISION

Jurisdiction of High Court to quash certain orders, schemes, etc.

Rule 1.—(1) Where by virtue of any enactment the High Court has jurisdiction, on the application of any person, to quash or prohibit any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or government department or any action on the part of a Minister or government department, the jurisdiction shall be exercisable by a single judge of the Queen's Bench Division.

(2) The application must be made by claim form which must state the grounds of the application.

Filing and service of claim form

Rule 2.—(1) A claim form under rule 1 must be filed at the Crown Office, and served, within the time limited by the relevant enactment for making the application.

(2) Subject to paragraph (4) the claim form must be served on the appropriate Minister or government department, and—

- (a) if the application relates to a compulsory purchase order made by an authority other than the appropriate Minister or government department, or to a clearance order under the Housing Act 1985(1), on the authority by whom the order was made;
- (b) if the application relates to a scheme or order to which Schedule 2 to the Highways Act 1980(2), applies made by an authority other than the Secretary of State, on that authority;
- (c) if the application relates to a structure plan, local plan or other development plan within the meaning of the Town and Country Planning Act 1990(3), on the local planning authority who prepared the plan;
- (d) if the application relates to any decision or order, or any action on the part of a Minister of the Crown to which section 21 of the Land Compensation Act 1961(4), or section 288 of the Town and Country Planning Act 1990, applies, on the authority directly concerned with such decision, order or action or, if that authority is the applicant, on every person who would, if he were aggrieved by the decision, order or action, be entitled to apply to the High Court under the said section 21 or the said section 245, as the case may be;
- (e) if the application relates to a scheme to which Schedule 32 to the Local Government, Planning and Land Act 1980(5) applies, on the body which adopted the scheme.

(3) In paragraph (2) “the appropriate Minister or government department” means the Minister of the Crown or government department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was or may be made, authorised, confirmed, approved or given or on whose part the action in question was or may be taken.

(1) 1985 c. 68.
(2) 1980 c. 66.
(3) 1990 c. 8.
(4) 1961 c. 33.
(5) 1980 c. 65.

Status: This is the original version (as it was originally made).

(4) Where the application relates to an order made under the Road Traffic Regulation Act 1984⁽⁶⁾, the claim form must be served—

- (a) if the order was made by a Minister of the Crown, on that Minister;
- (b) if the order was made by a local authority with the consent, or in pursuance of a direction, of a Minister of the Crown, on that authority and also on that Minister;
- (c) in any other case, on the local authority by whom the order was made.

Filing of witness statement or affidavits, etc.

Rule 3.—(1) Evidence at the hearing of an application under rule 1 shall be by witness statement or affidavit.

(2) Any witness statement or affidavit in support of the application must be filed by the applicant in the Crown Office within 14 days after service of the claim form and the applicant must, at the time of filing, serve a copy of the witness statement or affidavit and of any exhibit thereto on the respondent.

(3) Any witness statement or affidavit in opposition to the application must be filed by the respondent in the Crown Office within 21 days after the service on him under paragraph (2) of the applicant’s witness statement or affidavit and the respondent must, at the time of filing, serve a copy of his witness statement or affidavit and of any exhibit thereto on the applicant.

(4) When filing a witness statement or affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Crown Office for the use of the Court.

(5) Unless the Court otherwise orders, an application under rule 1 shall not be heard earlier than 14 days after the time for filing a witness statement or affidavit by the respondent has expired.

Rectification of register of deeds of arrangement

Rule 4.—(1) Every application to the Court under section 7 of the Deeds of Arrangement Act, 1914⁽⁷⁾, for an order—

- (a) that any omission to register a deed of arrangement within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or description of any person be rectified by the insertion in the register of his true name, residence or description,

must be made by witness statement or affidavit without notice being served on any other party to a master of the Queen’s Bench Division.

(2) The witness statement or affidavit must set out particulars of the deed of arrangement and of the omission or mis-statement in question and must state the grounds on which the application is made.

Exercise of jurisdiction under Representation of the People Acts

Rule 5.—(1) Proceedings in the High Court under the Representation of the People Acts shall be assigned to the Queen’s Bench Division.

(2) Subject to paragraphs (3) and (4) the jurisdiction of the High Court under the said Acts in matters relating to parliamentary and local government elections shall be exercised by a Divisional Court.

⁽⁶⁾ 1984 c. 27.

⁽⁷⁾ 1914 c. 47.

(3) Paragraph (2) shall not be construed as taking away from a single judge or a master any jurisdiction under the said Acts which, but for that paragraph, would be exercisable by a single judge or, as the case may be, by a Master.

(4) Where the jurisdiction of the High Court under the said Acts is by a provision of any of those Acts made exercisable in matters relating to parliamentary elections by a single judge, that jurisdiction in matters relating to local government elections shall also be exercisable by a single judge.

(5) A claim form by which any application relating to parliamentary or local government elections is made shall be in Form No. 10 in the relevant Practice Direction.

Appeal to High Court where Court’s decision is final

Rule 6.—(1) This rule applies to an appeal to the High Court under any of the following enactments, namely—

- (a) section 22 of the Architects Act 1997(8);
- (b) section 82 (3) and 83 (2) of the Medicines Act 1968(9);
- (d) section 12 of the Nurses, Midwives & Health Visitors Act 1997(10);
- (e) section 10 of the Pharmacy Act 1954(11).

(2) Every appeal to which this rule applies must be supported by witness statement or affidavit and, if the Court so directs, by evidence given orally.

(4) Order 55, rule 4 (2) shall apply in relation to an appeal under the enactments mentioned in paragraph (1)(c) and (h) as if for the period of 28 days therein specified there were substituted a period of 21 days.

(5) In the case of an appeal under an enactment specified in column (1) of the following Table, the persons to be made respondents are the persons specified in relation to that enactment in column (2) of that Table and the person to be served with notice of appeal is the person so specified in column (3) thereof:

| <i>(1)</i> <i>Enactment</i> | <i>(2)</i> <i>Respondents</i> | <i>(3)</i> <i>Person to be served</i> |
|-----------------------------------------------------|------------------------------------------------------------------------------|------------------------------------------|
| Architects Act 1997, s.22 | The Architects' Registration Council of the United Kingdom | The registrar of the Council |
| Medicines Act 1968, s.82 (3) and s.83 (2) | The Pharmaceutical Society of Great Britain | The registrar of the Society |
| Nurses, Midwives and Health Visitors Act, 1997 s.12 | The United Kingdom Central Council for Nursing Midwifery and Health Visiting | The registrar of the Council |
| Pharmacy Act, 1954, s.10 | The Pharmaceutical Society of Great Britain | The registrar of the Society |

(8) 1997 c. 22.

(9) 1968 c. 24.

(10) 1997 c. 24.

(11) 1954 c. 61.

Reference of question of law by Agricultural Land Tribunal

Rule 7.—(1) Any question of law referred to the High Court by an Agricultural Land Tribunal under section 6 of the Agriculture (Miscellaneous Provisions) Act 1954⁽¹²⁾, shall be referred by way of case stated by the Tribunal.

(2) The claim form by which an application is made to the Court for an order under the said section 6 directing such a Tribunal to refer a question of law to the Court, and the claim form by which an application is made to the Court to determine a question of law so referred, must, where the proceedings before the Tribunal arose on an application under section 11 of the Agricultural Holdings Act, 1986⁽¹³⁾, be served on the authority having power to enforce the statutory requirement specified in the application as well as on every other party to those proceedings and on the secretary of the Tribunal.

(3) Where in accordance with the provisions of this rule a claim form is served on the authority mentioned in paragraph (2) that authority shall be entitled to appear and be heard in the proceedings.

Tribunals and Inquiries Act 1992(14): appeal from tribunal

Rule 8.—(1) A person who was a party to proceedings before any such tribunal as is mentioned in section 11 (1) of the Tribunals and Inquiries Act 1992 and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.

(2) Order 55, rule 4 (1)(b) shall apply in relation to such an appeal as if for the reference to the chairman of a tribunal there were substituted—

- (a) in the case of a tribunal which has no chairman or member who acts as a chairman, a reference to the member or members of the tribunal, and
- (b) in the case of any such tribunal as is specified in paragraph 16 of Schedule 1 to the said Act of 1992, a reference to the secretary of the tribunal.

(3) Where such an appeal is against the decision of—

- (a) the tribunal constituted under section 46 of the National Health Service Act 1977⁽¹⁵⁾, or
- (b) a tribunal established under section 1 of the Industrial Tribunals Act 1996⁽¹⁶⁾,

Order 55, rule 4 (2) shall apply in relation to the appeal as if for the period of 28 days therein specified there were substituted, in the case of the tribunal mentioned in sub-paragraph (a) a period of 14 days and, in the case of a tribunal mentioned in sub-paragraph (b) a period of 42 days.

Tribunals and Inquiries Act 1992: case stated by tribunal

Rule 9.—(1) Any such tribunal as is mentioned in section 11 (1) of the Tribunals and Inquiries Act 1992 may, of its own initiative or at the request of any party to proceedings before it, state in the course of proceedings before it in the form of a special case for the decision of the High Court any question of law arising in the proceedings.

(2) Any party to proceedings before any such tribunal who is aggrieved by the tribunal's refusal to state such a case may apply to the High Court for an order directing the tribunal to do so.

(3) A case stated by any such tribunal which has no chairman or member who acts as a chairman must be signed by the member or members of the tribunal.

(12) 1954 c. 39.

(13) 1986 c. 5.

(14) 1992 c. 53.

(15) 1977 c. 49.

(16) 1996 c. 17.

Tribunals and Inquiries Act 1971(17): appeal from Minister of Transport

Rule 10.—(1) A person who is dissatisfied on a point of law with a decision of the Secretary of State on such an appeal as is mentioned in section 13 (5) of the Tribunals and Inquiries Act 1971, and had, or if aggrieved would have had, a right to appeal to that Secretary of State, whether or not he exercised that right, may appeal to the High Court.

(2) The persons to be served with the claim form by which such an appeal is brought are the Secretary of State and every person who had, or if aggrieved would have had, a right to appeal to the Secretary of State.

(3) The Court hearing the appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(4) If the Court is of the opinion that the decision appealed against was erroneous on a point of law, it shall not set aside or vary that decision but shall remit the matter to the Minister with the opinion of the Court for rehearing and determination by him.

(5) Order 55, rule 7 (5) shall not apply in relation to the appeal.

Consumer Credit Act 1974(18): appeal from Secretary of State

Rule 10A.—(1) A person who is dissatisfied in point of law with a decision of the Secretary of State on an appeal under section 41 of the Consumer Credit Act 1974 from a determination of the Director General of Fair Trading and had a right to appeal to the Secretary of State, whether or not he exercised that right, may appeal to the High Court.

(2) The persons to be served with the claim form by which such an appeal is brought are the Secretary of State and, where the appeal is by a licensee under a group licence against compulsory variation, suspension or revocation of that licence, the original applicant, if any; but the Court may in any case direct that the claim form be served on any other person.

(3) The Court hearing the appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(4) If the Court is of the opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the Court for hearing and determination by him.

(5) Order 55, rule 7 (5) shall not apply in relation to the appeal.

Case stated by Mental Health Review Tribunal

Rule 11.—(1) In this rule “the Act” means the Mental Health Act 1983(19).

(2) The reference in paragraph (3) to a party to proceedings before a Mental Health Review Tribunal, and the references in Order 56, rules 8 (1), 9 (2) and 10 to a party to proceedings shall be construed as references to—

- (a) the person who initiated the proceedings; and
- (b) any person to whom, in accordance with rules made under section 78 of the Act, the Tribunal sent notice of the application or reference or a request instead of notice of reference.

(17) 1971 c. 62.

(18) 1974 c. 39.

(19) 1983 c. 20.

Status: This is the original version (as it was originally made).

(3) A party to proceedings before a Mental Health Review Tribunal shall not be entitled to apply to the High Court for an order under section 78 (8) of the Act directing the Tribunal to state a case for determination by the Court unless—

- (a) within 21 days after the decision of the Tribunal was communicated to him in accordance with rules made under section 78 of the Act he made a written request to the Tribunal to state a case, and
- (b) either the Tribunal failed to comply with the last-mentioned request within 21 days after it was made or the Tribunal refused to comply with it.

(4) The period for issuing the claim form by which an application to the Court for such an order as is mentioned in paragraph (3) is made, and for service of the claim form shall be—

- (a) where the Tribunal refused the applicant's request to state a case, 14 days after receipt by the applicant of notice of the refusal of his request;
- (b) where the Tribunal failed to comply with that request within the period mentioned in paragraph (3)(b) 14 days after the expiration of that period.

(5) A Mental Health Review Tribunal by whom a case is stated shall be entitled to appear and be heard in the proceedings for the determination of the case.

(6) If the Court is of opinion that any decision of such a Tribunal on the question of law raised by the case was erroneous, the Court may give any direction which the Tribunal ought to have given under Part V of the Act.

Applications for permission under section 289 (6) of the Town and Country Planning Act 1990(20) and section 65 (5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(21)

Rule 12.—(1) An application for permission to appeal to the High Court under section 289 of the Town and Country Planning Act 1990 or section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall be made within 28 days after the date on which notice of the decision was given to the applicant.

(2) An application shall—

- (a) include, where necessary, any application to extend the time for applying,
- (b) be in writing setting out the reasons why permission should be granted, and if the time for applying has expired, the reasons why the application was not made within that time,
- (c) be made by filing it in the Crown Office together with the decision, a draft claim form, and a witness statement or affidavit verifying any facts relied on,
- (d) before being filed under sub-paragraph (c), be served together with the draft claim form and a copy of the witness statement or affidavit to be filed with the application, upon the persons who are referred to in rule 13 (5), and
- (e) be accompanied by a witness statement or affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the application and, if any person who ought to be served has not been served, the witness statement or affidavit must state that fact and the reason for it.

(3) An application shall be heard—

- (a) by a single judge sitting in public;
- (b) unless the Court otherwise orders, not less than 21 days after it was filed at the Crown Office.

(20) 1990 c. 8.

(21) 1990 c. 9.

Any person served with the application shall be entitled to appear and be heard.

(4) If on the hearing of an application the Court is of opinion that any person who ought to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the application may be served on that person.

(5) If the Court grants permission—

- (a) it may impose such terms as to costs and as to giving security as it thinks fit;
- (b) it may give directions; and
- (c) the claim form by which the appeal is to be brought shall be served and filed within 7 days of the grant.

(6) Any respondent who intends to use a witness statement or affidavit at the hearing shall file it in the Crown Office and serve a copy thereof on the applicant as soon as is practicable and in any event, unless the Court otherwise allows, at least 2 days before the hearing. The Court may allow the applicant to use a further witness statement or affidavit.

Proceedings under sections 289 and 290 of the Town and Country Planning Act 1990 and under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Rule 13.—(1) In this rule a reference to “section 65” is a reference to section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990, but, save as aforesaid, a reference to a section by number is a reference to the section so numbered in the Town and Country Planning Act 1990.

(2) An appeal shall lie to the High Court on a point of law against a decision of the Secretary of State under subsection (1) or (2) of section 289 or under subsection (1) of section 65 at the instance of any person or authority entitled to appeal under any of those subsections respectively.

(3) In the case of a decision to which section 290 applies, the person who made the application to which the decision relates, or the local planning authority, if dissatisfied with the decision in point of law, may appeal against the decision to the High Court.

(4) Any appeal under section 289 (1) or (2), section 65 (1) or section 290, and any case stated under section 289 (3) or section 65 (2), shall be heard and determined by a single judge unless the Court directs that the matter shall be heard and determined by a Divisional Court.

(5) The persons to be served with the claim form by which an appeal to the High Court is brought by virtue of section 289 (1) or (2), section 65 (1) or section 290 are—

- (a) the Secretary of State;
- (b) the local planning authority who served the notice or gave the decision, as the case may be, or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given;
- (c) in the case of an appeal brought by virtue of section 289 (1) or section 65 (1), any other person having an interest in the land to which the notice relates, and;
- (d) in the case of an appeal brought by virtue of section 289 (2), any other person on whom the notice to which those proceedings related was served.

(6) The Court hearing any such appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(7) Where the Court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the Court for re-hearing and determination by him.

(8) Order 55, rule 7 (5) shall not apply in relation to any such appeal.

Status: This is the original version (as it was originally made).

(9) The Court may give directions as to the exercise, until an appeal brought by virtue of section 289 (1) is finally concluded and any re-hearing and determination by the Secretary of State has taken place, of the power to serve, and institute proceedings (including criminal proceedings) concerning—

- (a) a stop notice under section 183, and;
- (b) a breach of condition notice under section 187A.

Applications under section 13 Coroners Act 1988(22)

Rule 14.—(1) Any application under section 13 of the Coroners Act 1988 shall be heard and determined by a Divisional Court.

(2) The application must be made by claim form and the claim form must state the grounds of the application and, unless the application is made by the Attorney General, shall be accompanied by his fiat.

(3) The claim form must be filed in the Crown Office and served upon all persons directly affected by the application within six weeks after the grant of the fiat.

Applications under section 42, Supreme Court Act 1981(23)

Rule 15.—(1) Every application to the High Court by the Attorney General under section 42 of the Supreme Court Act 1981 shall be heard and determined by a Divisional Court.

(2) The application must be made by claim form which, together with a witness statement or affidavit in support, shall be filed in the Crown Office and served on the person against whom the order is sought.

(22) 1988 c. 13.

(23) 1981 c. 54.