
STATUTORY INSTRUMENTS

2007 No. 1744

The Court of Protection Rules 2007

PART 20

APPEALS

Scope of this Part

169. This Part applies to an appeal against any decision of the court except where, in relation to those cases that are to be dealt with in accordance with Part 22 (transitory and transitional provisions), Part 22 makes different provision.

Interpretation

170.—(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 a party to the appeal.

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

Dealing with appeals

171.—(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 84(3).

(Rule 89 provides for reconsideration of orders made without a hearing or without notice to a person.)

Permission to appeal

172.—(1) Subject to paragraph (8), an appeal against a decision of the court may not be made without permission.

(2) Any person bound by an order of the court by virtue of rule 74 (persons to be bound as if parties) may seek permission to appeal under this Part.

- (3) Permission is to be granted or refused in accordance with this Part.
- (4) An application for permission to appeal may be made to the first instance judge or the appeal judge.
- (5) Where an application for permission is refused by the first instance judge, a further application for permission may be made in accordance with paragraphs (6) and (7).
- (6) Where the decision sought to be appealed is a decision of a district judge, permission may be granted or refused by—
 - (a) the President;
 - (b) the Vice-President;
 - (c) one of the other judges nominated by virtue of section 46(2)(a) to (c) of the Act; or
 - (d) a circuit judge.
- (7) Where the decision sought to be appealed is a decision of a circuit judge, permission may only be granted or refused by one of the judges mentioned in paragraph (6)(a) to (c).
- (8) 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

- 173.**—(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.

Parties to comply with the practice direction

- 174.** All parties to an appeal must comply with any relevant practice direction.

Appellant’s notice

- 175.**—(1) Where the appellant seeks permission from the appeal 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 will 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 he served the appellant’s notice.

Respondent’s notice

- 176.**—(1) A respondent who—
- (a) is seeking permission from the appeal judge to appeal; 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 the appeal 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 to appeal was given by the first instance judge; or
 - (ii) permission to appeal is not required;
- (b) the date on which the respondent is served with notification that the appeal judge has given the appellant permission to appeal; or
- (c) the date on which the respondent is served with the notification that the application for permission to appeal and the appeal itself are to be heard together.

(5) The court will 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 parties 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

177.—(1) An application to vary the time limit for filing an appellant's or respondent's notice must be made to the appeal judge.

(2) 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

178.—(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 may exercise his powers in relation to the whole or part of an order made by the first instance judge.

Determination of appeals

- 179.**—(1) An appeal will 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 he orders otherwise, the appeal judge will not receive—
- (a) oral evidence; or
 - (b) evidence that was not before the first instance judge.
- (3) The appeal judge will 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 he considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely upon a matter not contained in his appellant’s or respondent’s notice unless the appeal judge gives permission.

Allocation

- 180.** Except in accordance with the relevant practice direction—
- (a) an appeal from a first instance decision of a circuit judge shall be heard by a judge of the court nominated by virtue of section 46(2)(a) to (c) of the Act; and
 - (b) an appeal from a decision of a district judge shall be heard by a circuit judge.

Appeals to the Court of Appeal

Appeals against decision of a puisne judge of the High Court, etc

- 181.**—(1) Where the decision sought to be appealed is a decision of a judge nominated by virtue of section 46(2)(a) to (c) of the Act, an appeal will lie only to the Court of Appeal.
- (2) The judge nominated by virtue of section 46(2)(a) to (c) of the Act may grant permission to appeal to the Court of Appeal in accordance with this Part, where the decision sought to be appealed was a decision made by a judge so nominated as a first instance judge.

Second appeals

- 182.**—(1) A decision of a judge of the court which was itself made on appeal from a judge of the court may only be appealed further to the Court of Appeal.
- (2) Permission is required from the Court of Appeal for such an appeal.
- (3) The Court of Appeal will not give permission unless it considers that—
- (a) the appeal would raise an important point of principle or practice; or
 - (b) there is some other compelling reason for the Court of Appeal to hear it.
- (4) Nothing in this rule or in rule 181 applies to a second appeal from a decision of a nominated officer.