

## **PART 14 : APPEALS ETC.**

### **CHAPTER 1: APPEALS**

#### **14.1 Scope and interpretation (52.1)**

(1) The rules in this Chapter apply to appeals to the Civil Division and the Appeal Division.

(2) This Chapter does not apply to an appeal from the decision of a costs officer under rule 11.39.

(3) In this Chapter —

‘appeal’ includes an appeal by way of case stated;

‘the appeal court’ means the Division to which an appeal is made;

‘appeal notice’ means a notice by which an appeal is brought;

‘appellant’ means a person who brings or seeks to bring an appeal;

‘the lower court’ means the Division, court, tribunal or other person or body from whose decision an appeal is brought;

‘respondent’ means —

(i) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and

(ii) a person who is permitted or directed by the appeal court to be a party to the appeal;

‘respondent’s notice’ means an appeal notice filed by a respondent under rule 14.7.

(4) This Chapter is subject to any rule or other statutory provision with regard to any particular category of appeal.

(5) This Chapter applies to appeals relating to financial restrictions proceedings within the meaning of the Terrorism (Finance) Act 2009 subject to the modifications in paragraph 27 of Schedule 13.2.

[subs (5) added by SD 222/10]

#### **14.2 Appeal notice**

(1) An appeal is brought by filing an appeal notice.

(2) An appeal notice filed by an appellant must state —

(a) the Division to which the appeal is brought;

(b) the Division, court, tribunal or other person or body from whose decision the appeal is brought;

(c) the nature and title (if any) of the proceedings in the lower court;

(d) the decision appealed against (including the date of the decision);

(e) whether the whole or only part of the decision is appealed from, and in the latter case which part;

(f) the name of the appellant, and his status in the proceedings in the lower court;

(g) the grounds of the appeal;

(h) whether the permission of the lower court is required for the appeal, and if so, whether such permission has been granted; and

(i) whether the permission of the appeal court is sought.

(3) A respondent’s notice must —

- (a) identify the appeal proceedings in which it is filed by reference to the appellant's appeal notice;
- (b) state the name of the respondent, and his status in the proceedings in the lower court; and
- (c) specify the matters referred to in paragraph (2)(d), (e), (g), (h) and (i).

#### **14.3 Division to which appeal lies**

(1) This rule is subject to any provision of an Act specifying the Division to which an appeal lies.

(2) Where an appeal to the court (other than an appeal by way of case stated) lies from a decision of any of the following, it shall be heard and determined by the Appeal Division —

- (a) the Civil Division;
- (b) a court of summary jurisdiction;
- (c) the Land Court;
- (d) a Social Security Commissioner;
- (e) the Mental Health Review Tribunal;
- (f) the tribunal established under the Heath Burning Act 2003.

(3) Any other appeal to the court shall be heard and determined by the Civil Division.

#### **14.4 Second appeals to the court (52.13)**

(1) Permission is required from the Appeal Division for any appeal to that Division from a decision of the Civil Division which was itself made on appeal.

- (2) The Appeal Division shall 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 Appeal Division to hear it.

#### **14.5 Security for costs of appeal (25.15)**

- (1) The court may order security for costs of an appeal against —
- (a) an appellant;
  - (b) a respondent who also appeals,

on the same grounds as it may order security for costs against a claimant under Chapter 4 of Part 7.

(2) The court may also make an order under paragraph (1) where the appellant, or the respondent who also appeals, is a limited company or limited liability company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

#### **14.6 Appellant's appeal notice (52.4)**

(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant's appeal notice.

- (2) The appellant must file the appeal notice within —
- (a) such period as may be allowed by a relevant statutory provision;
  - (b) where there is no such provision, such period as may be directed by the lower court; or
  - (c) where the lower court makes no such direction, the following period after the date of the decision of the lower court that the appellant wishes to appeal —
    - (i) 42 days, in the case of a final judgment or order;

(ii) 14 days, in any other case.

(3) Unless the appeal court orders otherwise, an appeal notice must be served on each respondent —

- (a) as soon as practicable; and
- (b) in any event not later than 7 days after it is filed.

#### **14.7 Respondent's appeal notice (52.5)**

(1) A respondent may file and serve an appeal notice.

(2) A respondent who —

- (a) is seeking permission to appeal from the appeal court; or
- (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court,

must file a respondent's notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent's notice.

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

- (a) such period as may be directed by the lower court; or
- (b) where the court makes no such direction, 14 days after —
  - (i) the date the respondent is served with the appellant's appeal notice where permission to appeal was given by the lower court, or permission to appeal is not required;
  - (ii) the date the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
  - (iii) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

(5) Unless the appeal court orders otherwise a respondent's notice must be served on the appellant and any other respondent —

- (a) as soon as practicable; and
- (b) in any event not later than 7 days,

after it is filed.

#### **14.8 Directions for hearing (RHC 45.5-7)**

(1) After the filing of a notice of appeal the appeal court shall give directions for the hearing of the appeal.

(2) Directions under this rule shall be given at a hearing, unless the appeal court thinks it unnecessary to hold a hearing.

(3) Directions under this rule may order the appeal to be heard —

- (a) at a sitting of the appeal court commencing on a date specified in the directions, or
- (b) at a sitting of the appeal court commencing on a date to be fixed by that court.

(4) Where a direction is given under paragraph (3)(b), the appeal court shall, as soon as practicable after such a date has been fixed, notify the date to the appellant and every respondent.

(5) The appeal court may direct that a copy of the notice of appeal be served on any other person; and that person shall be a respondent to the appeal.

**14.9 Variation of time (52.6)**

(1) An application to vary the time limit for filing an appeal notice must be made to the appeal court.

(2) The parties may not agree to extend any date or time limit set by —

- (a) this Part, or
- (b) an order of the appeal court or the lower court.

**14.10 Stay (52.7)**

Unless the appeal court or the lower court orders otherwise, an appeal shall not operate as a stay of any order or decision of the lower court.

**14.11 Amendment of appeal notice (52.8)**

An appeal notice may not be amended without the permission of the appeal court where —

- (a) permission has been given for the appeal, or
- (b) the appeal notice has been served.

**14.12 Striking out appeal notices and setting aside or imposing conditions on permission to appeal (52.9)**

- (1) The appeal court may —
  - (a) strike out the whole or part of an appeal notice;
  - (b) set aside permission to appeal in whole or in part;
  - (c) impose or vary conditions upon which an appeal may be brought.

(2) The appeal court shall only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the appeal court exercise its powers under paragraph (1)(b) or (c).

**14.13 Appeal court's powers (52.10)**

- (1) In relation to an appeal the appeal court has all the powers of the lower court.
- (2) The appeal court has power —
  - (a) to affirm, set aside or vary any order or judgment made or given by the lower court;
  - (b) to refer any claim or issue for determination by the lower court;
  - (c) to order a new trial or hearing;
  - (d) to make orders for the payment of interest;
  - (e) to make a costs order.

(3) In an appeal from a claim tried with a jury the Appeal Division may, instead of ordering a new trial —

- (a) make an order for damages; or
- (b) vary an award of damages made by the jury.

(4) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

- (5) If the appeal court —
  - (a) refuses an application for permission to appeal;
  - (b) strikes out an appellant's notice; or
  - (c) dismisses an appeal,

and it considers that the application, the appellant's notice or the appeal is totally without merit —

- (i) the appeal court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
- (ii) the appeal court must at the same time consider whether it is appropriate to make a civil restraint order.

#### **14.14 Hearing of appeals (52.11, PD52.9, RHC 45.1A)**

(1) An appeal to the Appeal Division may be either by way of a review of the decision of the lower court or by way of rehearing.

(2) An appeal to the Civil Division shall be limited to a review of the decision of the lower court unless —

- (a) the statutory provision under which the appeal is brought requires it to be by way of rehearing;
- (b) the appeal is from the decision of, or of a person appointed by, a Minister, Department or Statutory Board —
  - (i) who did not hold a hearing to come to that decision; or
  - (ii) who held a hearing to come to that decision, but the procedure adopted did not provide for the consideration of evidence; or
- (c) the appeal court considers that in the circumstances of the particular appeal it would be in the interests of justice to hold a re-hearing.

(3) Unless it orders otherwise, the appeal court shall not in the course of a review or rehearing receive —

- (a) oral evidence; or
- (b) evidence which was not before the lower court.

(4) The appeal court shall allow an appeal where the decision of the lower court was —

- (a) wrong; or
- (b) unjust because of a serious procedural or other irregularity in its proceedings.

(5) The appeal court may draw any inference of fact which it considers justified on the evidence.

(6) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.

#### **14.15 Non-disclosure of offers to settle and payments into court (52.12)**

(1) The fact that an offer to settle (within the meaning of Chapter 6 of Part 7) or a payment into court has been made must not be disclosed to any judge of the appeal court who is to hear or determine —

- (a) an application for permission to appeal; or
- (b) an appeal,

until all questions (other than costs) have been determined.

(2) Paragraph (1) does not apply if the offer to settle or payment into court is relevant to the substance of the appeal.

(3) Paragraph (1) does not prevent disclosure in any application in the appeal proceedings if disclosure of the fact that an offer to settle or payment into court has been made is properly relevant to the matter to be decided.

#### **14.16 Appeals by way of case stated (RHC 45B)**

(1) This rule applies where, under any statutory provision, a court or other tribunal ('the tribunal') is required to state a case on a question of law for determination by the court.

(2) If the tribunal has been required to state a case but fails or refuses to do so, the party by whom the requirement was made may —

- (a) within 21 days of being notified of the refusal, or
- (b) if no such notification is given, within 42 days after the requirement was made,

apply to the appeal court for an order requiring the tribunal to state a case.

(3) Unless the appeal court determines to make the order without a hearing, it shall give directions for the hearing of the application.

(4) On an application under paragraph (2) the claim form must state —

- (a) in general terms the grounds of the application,
- (b) the question of law on which it is desired that a case be stated, and
- (c) any reasons given by the tribunal for its refusal.

(5) At least 7 days before the hearing date the applicant must serve a copy of the claim form, with a copy of the directions for a hearing, on —

- (a) the tribunal or its clerk, and
- (b) every other party to the proceedings before the tribunal.

(6) Where a tribunal is ordered to state a case under this rule, the tribunal must state and sign the case and send it to the applicant within the time directed by the order.

(7) Where the tribunal states a case (whether or not pursuant to an order under this rule), the appellant must, within 21 days after receiving the case, file —

- (a) the case, and
- (b) an appeal notice setting out his contentions on the question of law.

(8) When serving the appeal notice under rule 14.6(3), the appellant must also serve a copy of the case.

(9) When giving directions under rule 14.8 or at the hearing, the appeal court may —

- (a) amend the case,
- (b) order it to be sent back to the tribunal for amendment, or
- (c) order it to be sent back to the tribunal for it to hear further evidence.

(10) The appeal court may draw inferences of fact from the facts set out in the case.

(11) The appeal court shall notify —

- (a) the tribunal,
- (b) the appellant, and
- (c) every other person who appeared at the hearing,

of the decision of the appeal court on the case and of any directions given by the appeal court.

#### **14.17 Statutory appeals – court's power to hear any person (52.12A)**

(1) This rule applies to any appeal to the court from the decision of any tribunal, body or person (other than a court) in exercise of a right of appeal conferred by a statutory provision.

- (2) In an appeal to which this rule applies, any person may apply for permission —
- (a) to file evidence; or
  - (b) to make representations at the appeal hearing.
- (3) An application under paragraph (2) must be made promptly.

**14.18 Domestic proceedings (RHC 45.25)**

(1) This rule applies to an appeal referred to in section 104 of the Summary Jurisdiction Act 1989 (appeal against decision of court of summary jurisdiction in domestic proceedings).

(2) The appeal court shall not be bound to allow the appeal on the ground merely of misdirection or improper reception or rejection of evidence, unless in its opinion it has caused a substantial wrong or miscarriage of justice.

(3) Sections 50(2), (3) and (4) and 51(1) and (4) of the Summary Jurisdiction Act 1989 apply to the appeal with the substitution for reference to a court of summary jurisdiction of references to the appeal court.

**14.19 Appeals from Isle of Man Copyright Tribunal (RHC 45D)**

(1) In this rule —

‘appeal’ means an appeal on a point of law from the Tribunal under section 147 of the Copyright Act 1991 (including that section as applied by section 35 of the Design Right Act 1991);

‘the Tribunal’ means the Isle of Man Copyright Tribunal;

‘the Tribunal Rules’ means the Copyright Tribunal Rules 1989, as applied by the Copyright Tribunal Rules 1996 or the Copyright Tribunal (Design Right) Rules 1992, as the case may be.

(2) There shall be filed with the notice of appeal —

- (a) a copy of the decision of the Tribunal;
- (b) a copy of the notice of appeal under rule 42(2) of the Tribunal Rules.

(3) The respondents to the appeal shall be all other parties to the proceedings before the Tribunal in which the decision was given.

(4) The bringing of the appeal shall not suspend the operation of any order of the Tribunal unless —

- (a) the Tribunal has refused an application under rule 43 of the Tribunal Rules, and
- (b) the appeal court, on an application made after the decision of the Tribunal on the application, orders that it shall be suspended.

(5) The appeal court on determining an appeal may —

- (a) make any order which might have been made by the Tribunal;
- (b) make such further or other order as the case may require; or
- (c) remit the matter with the opinion of the appeal court for rehearing and determination by the Tribunal.

(6) The court office shall send a copy of —

- (a) any order under paragraph (4)(b), and
- (b) any decision of the appeal court,

to the Secretary of the Tribunal.

#### **14.20 Reopening of final appeals (52.17)**

- (1) In this rule 'appeal' includes an application for permission to appeal.
- (2) The appeal court shall not reopen a final determination of any appeal unless —
  - (a) it is necessary to do so in order to avoid real injustice,
  - (b) the circumstances are exceptional and make it appropriate to reopen the appeal, and
  - (c) there is no alternative effective remedy.
- (3) Permission is needed to make an application under this rule to reopen a final determination of an appeal even in cases where permission was not needed for the original appeal; and permission under this paragraph may not be granted except by a Deemster.
- (4) There is no right to an oral hearing of an application for permission unless, exceptionally, the Deemster so directs.
- (5) A Deemster shall not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.
- (6) There is no right of appeal or review from the decision of a Deemster on the application for permission, which is final.

### **CHAPTER 2: REVIEW OF DECISIONS**

#### **14.21 Scope and interpretation (54.1)**

- (1) Subject to paragraph (2), this Chapter applies to a claim to review the lawfulness of a decision, action or failure to act in relation to the exercise of a public function.
- (2) This Chapter does not apply to a claim —
  - (a) to require a court or tribunal to state a case for the opinion of the court (to which rule 14.16 applies); or
  - (b) to review the lawfulness of a person's detention (to which Chapter 9 of Part 13 applies).
- (3) In this Chapter —

'doleance claim' means a claim to which this Chapter applies;

'the doleance procedure' means the chancery procedure as modified by this Chapter;

'interested party' means any person (other than the claimant and defendant) who is directly affected by the claim.

#### **14.22 Use of doleance procedure (54.2, 3)**

- (1) The doleance procedure must be used in a doleance claim where the claimant is seeking —
  - (a) an order directing an authority to take, or not to take, a decision or action; or
  - (b) an order quashing a decision of an authority.
- (2) The doleance procedure may be used in a doleance claim where the claimant is seeking —
  - (a) a declaration; or
  - (b) an injunction.
- (3) A doleance claim may include a claim for damages, restitution or the recovery of a sum due but may not seek such a remedy alone.
- (4) A doleance claim shall be allocated to the chancery procedure.

**14.23 Time limit for filing claim form (54.5)**

- (1) The claim form must be filed —
  - (a) promptly; and
  - (b) in any event not later than 3 months after the grounds to make the claim first arose.
- (2) The time limit in this rule may not be extended by agreement between the parties.
- (3) This rule does not apply when any other enactment specifies a shorter time limit for making the doleance claim.

**14.24 Claim form (54.6, PD54)**

- (1) In addition to the matters set out in rule 6.9 (contents of the claim form) the claimant must also state —
  - (a) the name and address of any person he considers to be an interested party;
  - (b) that the claim is a claim to which this Chapter applies; and
  - (c) any remedy (including any interim remedy) he is claiming.
- (2) The claim form must include or be accompanied by —
  - (a) a detailed statement of the claimant's grounds for bringing the claim;
  - (b) a statement of the facts relied on;
  - (c) any application to extend the time limit for filing the claim form;
  - (d) any application for directions.
- (3) The claim form must be accompanied by —
  - (a) any written evidence in support of the claim or application to extend time;
  - (b) a copy of any order that the claimant seeks to have quashed;
  - (c) where the claim relates to a decision of a court or tribunal, a copy of the decision and an approved copy of the reasons for reaching that decision;
  - (d) copies of any documents on which the claimant proposes to rely;
  - (e) copies of any relevant statutory material; and
  - (f) a list of essential documents for advance reading by the court (with page references to the passages relied on).
- (4) Where it is not possible to file all the above documents, the claimant must indicate which documents have not been filed and the reasons why they are not available.

**14.25 Service of claim form (54.7)**

The claim form must be served on —

- (a) the defendant; and
- (b) unless the court otherwise directs, any person the claimant considers to be an interested party,

within 7 days after the date of issue.

**14.26 Acknowledgment of service (54.8)**

- (1) Any person served with the claim form who wishes to take part in the proceedings must file an acknowledgment of service in accordance with this rule.
- (2) Any acknowledgment of service must be —
  - (a) filed not more than 21 days after service of the claim form; and
  - (b) served on —

- (i) the claimant; and
- (ii) subject to any direction under rule 14.25(b), any other person named in the claim form,

as soon as practicable and, in any event, not later than 7 days after it is filed.

(3) The time limits under this rule may not be extended by agreement between the parties.

(4) The acknowledgment of service —

(a) must —

(i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and

(ii) state the name and address of any person the person filing it considers to be an interested party; and

(b) may include or be accompanied by an application for directions.

#### **14.27 Failure to file acknowledgment of service (54.9)**

(1) Where a person served with the claim form has failed to file an acknowledgment of service in accordance with rule 14.26, he may take part in the hearing of the claim, provided that he complies with rule 14.28 or any other direction of the court regarding the filing and service of —

(a) detailed grounds for contesting the claim or supporting it on additional grounds; and

(b) any written evidence.

(2) Where that person takes part in the hearing of the claim, the court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.

(3) Rule 4.14(2) does not apply.

#### **14.28 Response (54.14)**

(1) A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve —

(a) detailed grounds for contesting the claim or supporting it on additional grounds; and

(b) any written evidence,

within 28 days after service of the claim form.

(2) Rule 8.22(3) to (6) (filing and serving of evidence) does not apply.

#### **14.29 Where claimant seeks to rely on additional grounds (54.15)**

The court's permission is required if a claimant seeks to rely on grounds other than those specified in the claim form.

#### **14.30 Evidence (54.16, PD54)**

(1) Rule 8.21(1) does not apply.

(2) No written evidence may be relied on unless —

(a) it has been served in accordance with any rule in this Chapter or a direction of the court; or

(b) the court gives permission.

(3) Disclosure is not required unless the court orders otherwise.

**14.31 Court may hear any person (54.17)**

Any person may apply for permission —

- (a) to file evidence; or
- (b) make representations at the hearing of the claim.

**14.32 Claim may be decided without a hearing (54.18)**

The court may decide a dolence claim without a hearing where all the parties agree.

**14.33 Court's power when quashing decision (54.19)**

(1) This rule applies where the court makes a quashing order in respect of the decision to which the claim relates.

(2) The court may —

- (a) remit the matter to the decision-maker; and
- (b) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court.

(3) Where the court considers that there is no purpose to be served in remitting the matter to the decision-maker it may, subject to any statutory provision, take the decision itself.

**14.34 Transfer (54.20)**

The court may —

- (a) order a claim to continue as if it had not been started under this Chapter; and
- (b) where it does so, give directions about the future management of the claim.

**CHAPTER 3: REFERENCES TO THE EUROPEAN COURT**

**14.35 References to the European Court (68.1-4)**

(1) In this rule —

‘the European Court’ means the Court of Justice of the European Communities;

‘order’ means an order referring a question to the European Court for a preliminary ruling under article 234 of the Treaty establishing the European Community.

(2) An order may be made at any stage of the proceedings —

- (a) by the court on its own initiative; or
- (b) on an application by a party.

(3) An order may not be made by a judicial officer.

(4) The request to the European Court for a preliminary ruling must be set out in a schedule to the order, and the court may give directions on the preparation of the schedule.

(5) The Chief Registrar shall send a copy of the order to the Registrar of the European Court, but, unless the court orders otherwise, shall not do so until —

- (a) the time for appealing against the order has expired; or
- (b) any appeal against the order has been determined.

(6) Where an order is made, unless the court orders otherwise the proceedings shall be stayed until the European Court has given a preliminary ruling on the question referred to it.