

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT ACCESS TO JUSTICE ACT 1999  
(DESTINATION OF APPEALS) ORDER 2016

DRAFT ACCESS TO JUSTICE ACT 1999  
(DESTINATION OF APPEALS) (FAMILY  
PROCEEDINGS) (AMENDMENT) ORDER 2016

*Wednesday 8 June 2016*

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**The Committee consisted of the following Members:**

*Chair:* MR NIGEL EVANS

- |   |  |
|---|--|
| † Anderson, Mr David ( <i>Blaydon</i> ) (Lab)   | † Prentis, Victoria ( <i>Banbury</i> ) (Con)             |
| † Blackman, Bob ( <i>Harrow East</i> ) (Con)  | † Rees, Christina ( <i>Neath</i> ) (Lab)                 |
| † Bridgen, Andrew ( <i>North West Leicestershire</i> ) (Con)  | Reeves, Rachel ( <i>Leeds West</i> ) (Lab)               |
| † Dinéage, Caroline ( <i>Parliamentary Under-Secretary of State for Women and Equalities and Family Justice</i> ) | Sharma, Mr Virendra ( <i>Ealing, Southall</i> ) (Lab)    |
| † Doyle-Price, Jackie ( <i>Thurrock</i> ) (Con)   | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)    |
| † Ghani, Nusrat ( <i>Wealden</i> ) (Con)  | † Spellar, Mr John ( <i>Warley</i> ) (Lab)               |
| † Jenrick, Robert ( <i>Newark</i> ) (Con)   | † Whately, Helen ( <i>Faversham and Mid Kent</i> ) (Con) |
| † Menzies, Mark ( <i>Fylde</i> ) (Con)  | Gail Bartlett, <i>Committee Clerk</i>                    |
| † Milling, Amanda ( <i>Cannock Chase</i> ) (Con)  | † <b>attended the Committee</b>                          |

## Third Delegated Legislation Committee

Wednesday 8 June 2016

[MR NIGEL EVANS *in the Chair*]

### Draft Access to Justice Act 1999 (Destination of Appeals) Order 2016

2.30 pm

**The Parliamentary Under-Secretary of State for Women and Equalities and Family Justice (Caroline Dinenge):** I beg to move,

That the Committee has considered the draft Access to Justice Act 1999 (Destination of Appeals) Order 2016.

**The Chair:** With this it will be convenient to consider the draft Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016.

**Caroline Dinenge:** Thank you, Mr Evans. I will refer to the draft Access to Justice Act 1999 (Destination of Appeals) Order 2016 as the civil order, and to the draft Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 as the family order. I should start by saying that the Ministry of Justice has worked carefully with the senior judiciary to ensure that these amendments will work and have their support, and we are incredibly grateful to them for their assistance.

Although the civil order may appear quite detailed, the basic aim is to clarify and simplify the appeals process, to ensure that the route of appeal in civil proceedings lies to the next level of judge. That should reduce the number of appeals that are lodged in the Court of Appeal and reduce pressure on that Court by making the best use of judicial time, ensuring cases are heard in the most appropriate level of court.

The family order will amend the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014, so that appeals from certain decisions of circuit judges and recorders in the family court will lie to a single specialist and experienced judge in the High Court, rather than in the Court of Appeal.

In conclusion, the orders will ensure that cases and appeals are heard in ways that are proportionate to the grounds of complaint and the subject matter of the dispute, while ensuring effective access to justice. I therefore commend them to the Committee.

2.32 pm

**Christina Rees (Neath) (Lab):** It is a pleasure to serve under your chairmanship, Mr Evans. I thank the Minister for her presentation and explanation. Opposition Members will support these statutory instruments.

That support is strengthened by the fact that the Lord Chief Justice, the Master of the Rolls, the president of the Queen's bench division, the president of the family division and the Chancellor of the High Court have said they are content with the provisions of the

statutory instruments, and their views were key in determining the content. Their views were especially important with regard to the exemptions to the draft Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016, under which appeals against certain other types of order, such as special guardianship orders, will remain with the Court of Appeal. Further to that, appeals against any order made by a circuit judge or recorder in the family court in proceedings listed in paragraph 7.5 of the explanatory memorandum will continue to lie to the Court of Appeal.

I would be grateful if the Minister could clarify a few things. It is stated that implementation of both statutory instruments will reduce confusion in the process and decrease the workload on the Court of Appeal. Why did the appeal route originally go to the Court of Appeal in the parent Act as opposed to the High Court, as is now proposed?

There is huge pressure on the Court of Appeal and a need for action. In May this year, the Master of the Rolls, Lord Dyson, stated that the volume of cases in the Court of Appeal has risen by 59% in the past five years, without any increase in judicial resources, causing a growing backlog and substantial delays. Because of the increase in cases brought to the Court of Appeal, the number of adjourned trials there increased by 75% last year. A freedom of information request made by the *Law Society Gazette* to Her Majesty's Courts and Tribunals Service revealed that of the 640 adjourned cases in the civil division of the Court of Appeal last year, 46% were adjourned due to a lack of judicial resources.

Paragraph 7.5 of the explanatory memorandum to the Access to Justice Act 1999 (Destination of Appeals) Order 2016 states:

"Re-routing certain appeals to the High Court instead of the Court of Appeal may also lead to a reduction in the time taken for these appeals to be heard. By reducing the number of appeals to the Court of Appeal, this change may also benefit the flow of cases in that court, allowing for more effective and expeditious determinations of other appeals."

Given the existing build-up in the Court of Appeal and the lack of judicial resources there, will the Minister clarify that moving these cases from the Court of Appeal to the High Court will not result in a build-up of cases in the High Court in future? Paragraph 7.8 states:

"The High Court has the capacity to absorb the extra appeals thus lowering waiting times."

What evidence was that statement based on?

How will these changes fit into the wider review of the civil courts currently being undertaken by Lord Justice Briggs? As the Minister will be aware, Lord Justice Briggs touches on that in chapter 9 of his "Civil Courts Structure Review: Interim Report", in which he says that one way to ease the substantial burden on the Court of Appeal would be to reroute appeals from the Court of Appeal to the High Court. That is what the statutory instruments propose.

Lord Justice Briggs, however, goes further, and states that that cannot be the only solution:

"Viewed at the highest level of generality, there are only four ways in which the overload of a civil court can be addressed, if an ever-increasing lengthening of its waiting times is to be avoided. They may be summarised as (1) increasing the court's resources;

(2) reducing the court's workload; (3) improving the court's efficiency; and (4) deliberately reducing the quantity or quality of the service."

Will the Minister tell me where the changes proposed by today's SIs fit into the wider issues highlighted by Lord Justice Briggs?

Paragraph 7.7 of the explanatory memorandum states:

"The proposed changes under the new Order will provide for better use of judicial resources and court staff time, as well as better justice for litigants, making it much easier for litigants to understand the correct route of appeal in each case, unless the judge orders otherwise."

The changes will be put online, and leaflets will be made to inform the public and court staff, but will the Minister tell me whether any more will be done to ensure that the changes are effectively publicised, so that people are aware of the new route of appeal before they use it? Will court staff and the judiciary receive effective training about the changes, so that the transition to the new appeals procedure runs as smoothly as possible?

Finally, with the closure of court counters and reception desks throughout courts in England and Wales, what arrangements has the Ministry of Justice made to ensure that people are directed to the correct place when they arrive for appeal hearings? Organisations based in courts, such as Citizens Advice and the Personal Support Unit, do valuable work in helping litigants entering an often daunting environment, but that is no substitute for courts carrying out the function of directing people to the correct route of appeal and the correct court room. Will the Minister inform me whether there are any proposals to reintroduce court counters or reception desks? I am grateful to her for presenting the SIs so clearly, and I thank her and her team for all their good work.

2.38 pm

**Caroline Dinenge:** May I say what a pleasure it is to serve under your fine stewardship, Mr Evans? I omitted to say that at the beginning.

I thank the hon. Member for Neath for all her questions. As she has outlined, both orders respond to concerns about the volume of appeals currently being made to the Court of Appeal. The orders will ensure that cases and appeals are heard in a way that is proportionate to the grounds of the complaint and the subject matter of the dispute, while ensuring effective access to justice.

The hon. Lady asked why we are in the position we are in. The default position, historically, has been that appeals lie to the Court of Appeal, as set out in primary legislation. The orders relate certain appeals to different levels of court for the reasons explained. We seek to amend an historical status quo in a way that will be most beneficial for court users and, indeed, court time.

The hon. Lady asked about a build-up of cases in the High Court. It is really important that cases are heard effectively, efficiently and, chiefly, fairly. We are grateful for the ongoing hard work of the judiciary to continue to achieve that, but judicial recruitment is the responsibility of the Lord Chancellor. That, of course, means ensuring

he meets his statutory obligation in respect of appointments and keeping workload under review, as he does, to ensure that enough judges are available to hear appeals within a reasonable timeframe. His decisions are informed by a complement group made up of senior judiciary and HMCTS officials who examine business need at all levels of the judiciary and advise the Lord Chancellor on the optimum complement.

We have spoken to HMCTS, which is fully aware and supportive of the changes. The Ministry of Justice has been working with the senior judiciary, as the hon. Lady said, who are very supportive of the measures and keen for the orders to come into force. The orders will make more efficient use of judicial resources by ensuring cases are heard at the lowest and most appropriate level of court. On their own, they will not necessarily address any backlog of work held by the Court of Appeal, but they will ensure that the backlog does not continue to increase and that cases are dealt with at an appropriate level and as swiftly as possible.

Separate to that, the Civil Procedure Rule Committee has launched a consultation on reforms to the process for appeals to the Court of Appeal. The proposals will raise the threshold for permission to appeal to the Court of Appeal and remove the automatic right of renewal for permission to appeal in civil cases, where permission has been refused on the basis of the documents in the case. That consultation closes on 24 June.

Work is under way to make some changes to the current court procedure, as set out in a practice direction that supplements the family procedure rules. It is anticipated that, for example, changes will limit the number of documents to be filed with an appeal, making court bundles more manageable and focused. That revised procedure will apply to all family appeals heard in the High Court. Any changes will be clearly communicated to all those who use the Court, which I know the hon. Lady was concerned about. The Ministry of Justice is working with HMCTS and the judiciary to ensure their guidance is updated to reflect all the changes. As part of the new, streamlined process being designed for appeals, all forms will clearly state where they must be sent, which is fundamental.

In conclusion, the civil order will clarify and simplify the appeals process to ensure that the route of appeal in civil proceedings lies to the next level of judge, and the family order will mean that certain family appeal hearings take place before a single specialist and experienced High Court judge.

*Question put and agreed to.*

**DRAFT ACCESS TO JUSTICE ACT 1999  
(DESTINATION OF APPEALS) (FAMILY  
PROCEEDINGS) (AMENDMENT) ORDER 2016**

*Resolved,*

That the Committee has considered the draft Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016.—(*Caroline Dinenge.*)

2.43 pm

*Committee rose.*

