

WORKING PAPER

APPEALS ON QUESTIONS OF LAW BY WAY OF CASE STATED FROM ADMINISTRATIVE TRIBUNALS

Introduction

1. Appeals on questions of law by way of case stated from the Magistrate's Court are covered in section 107 of the Summary Proceedings Act 1957. This procedure has been incorporated in many statutes creating administrative tribunals. Perhaps the two best known examples are section 162 of the Town and Country Planning Act 1977 and section 226 of the Sale of Liquor Act 1962 providing for appeals on questions of law from the decisions of the Planning Tribunal and the Licensing Control Commission respectively.

2. The procedure under the Summary Proceedings Act is outside the province of the Public and Administrative Law Reform Committee. However, the Committee is concerned with the operation of the case stated procedure in respect of administrative tribunals and is examining the procedure in that context. This working paper is restricted to the case stated procedure in statutes creating administrative tribunals. The Committee wishes to know what support there is for the reform of this procedure.

Criticisms

3. Within the legal profession criticisms have been levelled at the case stated procedure. The principal criticisms are:

- (i) The procedure is unduly cumbersome and time-wasting. Delays are commonly encountered in settling the statement of the case.
- (ii) The inclusion of the relevant facts in the decision, the subject of an appeal, (which is more often than not the case), and the grounds of the determination is unnecessary.
- (iii) The appellant does not have final responsibility for settling the questions of law included in the appeal. Tribunals have endeavoured to

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influence and, on occasions, have overruled the appellant's counsel in respect of the questions of law which are to be submitted to the Supreme Court.

- (iv) The case stated procedure perpetuates the fiction that the tribunal concerned is seeking the guidance of the Supreme Court on a question of law. The proceedings is in reality an appeal initiated by the appellant against the tribunal's findings.

4. The Committee believes that there is some substance in these criticisms. It would therefore be pleased to receive comments on the case stated procedure. The Committee wishes to be fully informed on the points which favour the existing procedure.

An alternative procedure

5. The Committee puts forwards for consideration an alternative appeal procedure for determining questions of law. In effect, the present procedure would be replaced by an appeal restricted to questions of law.

6. (i) The appeal would be commenced by the appellant filing within one month of the date of the determination appealed from a notice of appeal in the Supreme Court. The appellant would be required forthwith to serve a copy of the notice on every other party in the proceedings.

(ii) The notice of appeal would specify the respects in which it was alleged that the decision was erroneous in law. (query - or the questions of law to be determined?) The notice would also record whether or not the appellant wanted any facts or supplementary facts not contained in the tribunal's decision settled by the tribunal.

(iii) On receipt of the notice the respondent or any other party would have seven days within which to advise the appellant that he wanted any facts or supplementary facts not contained in the

decision settled by the tribunal. (The facts sought would need to be relevant to the questions of law in issue, a requirement which could be enforced by an appropriate award of costs in the Supreme Court).

(iv) Where either party wanted facts or supplementary facts settled by the tribunal the procedure would be as follows:

(a) The party wishing to have the facts or supplementary facts settled would be required to send a draft statement of those facts to the tribunal within one month of giving notice to that effect.

(b) The tribunal would be required to settle the statement of facts as soon as practicable after consulting the parties. It would duly notify the parties and furnish a signed statement of the facts.

(v) The appellant would be responsible for filing the statement of facts in the Supreme Court.

(vi) If neither party requested that facts or supplementary facts be settled, the appellant would be obliged to file in the Supreme Court within one month of the filing of the notice of appeal copies of the decision appealed from and any other documents forming part of the record. If either party requested that facts or supplementary facts be settled, the appellant would be obliged to file in the Supreme Court within one month of the date on which the tribunal settled the facts the decision and other documents forming part of the record as well as the statement of facts as settled by the tribunal.

7. The appeal will then be deemed to be ready for the allocation of a fixture in the Supreme Court.

8. The Committee will be pleased to receive any criticisms of this suggested form of procedure or to receive an outline of any alternative procedure which is thought appropriate. Needless to say, the Committee will be seeking to devise a procedure which will be effective and simple and cause the minimum of delay. It

is intended that it replace the case stated provisions in existing administrative and public law statutes.