

# **Consultation on the proposed revision of the Judicial Committee of the Privy Council Rules**

This consultation begins on 15 April 2024

This consultation ends on Friday 17 May 2024

**A consultation produced by the Judicial Committee of the Privy Council. It is also available at <https://www.jcpc.uk/>**

# About this consultation

**To:** This document has been provided to practitioners, members of the judiciary, court staff, law societies and bar associations, and Ministries of Justice. The recipients of this document were found after extensive research, which revealed at least one contact for most of the jurisdictions the JCPC serves and, for a number of jurisdictions, many more. This document has also been provided to the Privy Council Office.

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

**Duration:** From 15 April 2024 to Friday 17 May 2024

**Enquiries (including requests for the paper in an alternative format) to:** Laura Angus, Registrar UKSC and JCPC  
Email: [jcpcrulesconsultation@jcpc.uk](mailto:jcpcrulesconsultation@jcpc.uk)

**How to respond:** Please send your response by Friday 17 May 2024 to:  
Email: [jcpcrulesconsultation@jcpc.uk](mailto:jcpcrulesconsultation@jcpc.uk)

**Additional ways to feed in your views:** A series of stakeholder meetings is also taking place, via Teams, at times that we hope will suit the time zones across the jurisdictions served by the JCPC:

22 April 2024, 08:00 BST – 09:30 BST

24 April 2024, 12:00 BST – 13:30 BST

24 April 2024, 19:00 BST – 20:30 BST

29 April 2024, 19:00 BST – 20:30 BST

30 April 2024, 08:00 BST – 09:30 BST

2 May 2024, 12:00 BST – 13:30 BST

If you have not received an email about these meetings and would like to attend, please email Laura Angus, Registrar UKSC and JCPC, at [jpcrulesconsultation@jcpc.uk](mailto:jpcrulesconsultation@jcpc.uk)

**Response paper:**

A response to this consultation exercise is due to be published by mid-August at: <https://www.jcpc.uk/>

# Contents

<b>Consultation on the proposed revision of the Judicial Committee of the Privy Council Rules</b>	<b>1</b>
<b>About this consultation</b>	<b>2</b>
<b>Contents</b>	<b>1</b>
<b>Introduction</b>	<b>2</b>
<b>The draft rules</b>	<b>4</b>
<b>The main changes proposed</b>	<b>35</b>
<b>Questionnaire</b>	<b>50</b>
<b>Complaints or comments</b>	<b>52</b>
<b>Extra copies</b>	<b>53</b>
<b>Publication of response</b>	<b>54</b>
<b>Confidentiality</b>	<b>55</b>

# Introduction

This paper sets out for consultation the proposed revision of the Judicial Committee of the Privy Council Rules.

The Judicial Committee of the Privy Council (the JCPC) is the highest court of appeal for many Commonwealth countries, as well as the United Kingdom's overseas territories, crown dependencies, and military sovereign base areas.

The JCPC has embarked on a three-year Change Programme which is intended to improve users' ability to learn about, interact and file cases with the UKSC and JCPC. The Programme includes the delivery of a new case management system, new websites, upskilling of staff and updating our processes and ways of working.

As part of the Change Programme, the JCPC has developed a case management system known as the portal, designed to deliver an end-to-end service to all JCPC users. The portal will make the submission and management of a case more intuitive, efficient and modern, enhancing access to justice for users. Accessible through newly designed UKSC and JCPC websites, the portal will take the form of a two-way online site, including features such as a case tracker, electronic service, correspondence and e-payment functionality. As of January 2024, the development of the first iteration of the case management system is complete. The portal is now subject to extensive user testing to help to refine and enhance its features. Further functionality to support users will continue to be designed, built and tested in the coming months until roll out, which is expected to be in October 2024.

All language used on the new website and portal and all digital forms has been written and designed to be accessible. The new website and portal meet UK Government Digital Service standard and have been extensively tested by professional users and users who work with litigants in person. The portal has been designed to be easy to use. However, we recognise that there will be a range of ability in those accessing the portal.

It is our intention to ensure that litigants in person will be helped to engage with the JCPC where necessary. In the new system, litigants in person will be welcome to become 'portal parties' (as defined in the revised rules below) but it will not be a requirement, as it will be for professional users. Where they choose to become 'portal parties', our case management team members will offer extra support to fill in digital forms or help

with understanding court processes. Where litigants in person are unable to access the internet, the process will be managed offline for them via the Registry. Wherever possible, if permission to appeal is granted to a litigant in person, we will assist in seeking pro bono representation.

The JCPC rules have remained largely the same since 2009, with an amendment in 2013 to reflect a revised fee structure. The JCPC's ways of working have moved on considerably since then. The purpose of this consultation is to introduce new rules that reflect current ways of working, the introduction of the portal and implementing statutory requirements. The new rules will be made by way of an Order in Council Statutory Instrument pursuant to section 24 of the Judicial Committee Act 1833, which empowers His Majesty in Council to make rules for the purposes of regulating appeals. New practice directions will also be introduced to supplement the rules.

A draft of the revised rules is set out below, and is followed by an explanation of the changes and questions for consultees.

Copies of the consultation paper are being sent to practitioners, members of the judiciary, court staff, law societies and bar associations, and Ministries of Justice. This document is also being provided to the Privy Council Office.

A series of stakeholder meetings is also taking place, via Teams, at times that we hope will suit the time zones across the jurisdictions served by the JCPC:

22 April 2024, 08:00 BST – 09:30 BST

24 April 2024, 12:00 BST – 13:30 BST

24 April 2024, 19:00 BST – 20:30 BST

29 April 2024, 19:00 BST – 20:30 BST

30 April 2024, 08:00 BST – 09:30 BST

2 May 2024, 12:00 BST – 13:30 BST

# The draft rules

Set out below are the draft revised Judicial Committee Rules.

## **Judicial Committee (Appellate Jurisdiction) Rules 2024**

### **PART 1**

#### **Scope and Interpretation**

1. Citation and commencement
2. Scope and objective
3. Interpretation

### **PART 2**

#### **The portal, filing and service of documents**

4. The portal and portal parties
5. Forms
6. Time limits
7. Filing
8. Service
9. Communications with the Judicial Committee
10. Non-compliance with Rules
11. Procedural decisions

### **PART 3**

#### **Application for permission to appeal**

12. Making an application
13. Filing and issue of application
14. Service of application
15. Notice of objection by respondent
16. Interventions in applications
17. Consideration of application for permission to appeal
18. Oral hearing of application for permission to appeal

### **PART 4**

#### **Commencement and preparation of appeal**

19. Notice of intention to proceed where permission granted by Judicial Committee
20. Filing and issue of notice where permission of the Judicial Committee not required
21. Service of notice of appeal
22. Acknowledgement by respondent
23. Review of merits of appeal
24. Cross appeals
25. Intervention

26. Listing of the appeal
27. The record
28. The statement of facts and issues and the reproduced record
29. Filing and service of cases
30. The key documents bundle
31. The main hearing bundle

**PART 5**  
**Hearing and decision of appeal**

32. Hearing in open court
33. Judgment
34. Orders

**PART 6**  
**Miscellaneous**

35. Procedural applications
36. Requests for expedition
37. Withdrawal etc of application or appeal
38. Grouping appeals
39. Change of interest
40. Advocates to the Judicial Committee and Assessors
41. Security for costs
42. Parties receiving help with fees
43. Stay of execution or conservatory order
44. Change of agent
45. Publication and disposal of documents
46. Fees to be taken

**PART 7**  
**Costs**

47. Orders for costs
48. Submissions as to costs
49. Claim for costs
50. Assessment of costs
51. Basis of assessment
52. The standard basis and the indemnity basis
53. Amount of assessed costs to be specified
54. Appeal from assessment
55. Payment out of security for costs

**Part 8**  
**Appeals under section 17 of the Veterinary Surgeons Act 1966**

56. Appeals under section 17 of the Veterinary Surgeons Act 1966

**Part 9**



## **Appeals under section 1 of the Brunei (Appeals) Act 1989**

57. Appeals under section 1 of the Brunei (Appeals) Act 1989

### **Part 10 Appeals against draft Pastoral Schemes**

58. Appeals against draft Pastoral Schemes

### **Part 11 References to the Judicial Committee**

59. References under section 4 of the Judicial Committee Act 1833

60. Making the reference

61. Documents for the hearing of the reference

62. Orders on a reference

### **Part 12 Transitional arrangements**

63. Transitional arrangements

## **Appendix**

### **Part 1 - Scope and interpretation**

#### **Citation and Commencement**

1. These Rules may be cited as the Judicial Committee (Appellate Jurisdiction) Rules 2024 and will come into force on 1<sup>st</sup> October 2024.

#### **Scope and objective**

2.—(1) The rules in Parts 1 to 7 and the practice directions which supplement them provide the procedure for civil and criminal appeals to the Judicial Committee of the Privy Council under its general appellate jurisdiction.

(2) The rules in Parts 8 and 9 provide the procedure for appeals under two separate enactments:

(a) the rule in Part 8 applies to appeals to the Judicial Committee under section 17 of the Veterinary Surgeons Act 1966;

(b) the rule in Part 9 applies to appeals to the Judicial Committee under section 1 of the Brunei (Appeals) Act 1989.

(3) The rule in Part 10 applies to appeals against draft Pastoral Schemes and the rules in Part 11 provide the procedure where matters are referred under section 4 of the Judicial Committee Act

1833 to the Judicial Committee for the Committee to hear or consider and to give advice to His Majesty.

(4) These Rules must be applied and interpreted with a view to securing that the Judicial Committee is accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged.

## **Interpretation**

**3.—(1)** In the Rules—

“agent” means a solicitor or other person qualified to conduct proceedings before the Judicial Committee;

“appellant” includes a party who files an application for permission to appeal;

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971, in England and Wales;

“certificate of service” means a certificate given under rule 8;

“certificate of value” means a certificate in which the appellant states—

- (a) the sum of money or the amount of damages the appellant is claiming;
- (b) the sum of money or the amount of damages the appellant has been awarded;
- (c) the value of the land or property which is the subject of the appeal; or
- (d) whether the monetary value of the relief the appellant is seeking is –
  - (i) not more than GBP£100,000,
  - (ii) more than GBP£100,000 but not more than GBP£500,000, or
  - (iii) more than GBP£500,000. Rule

When calculating the amount or value to be specified in a certificate of value, an appellant must disregard any possibility that interest or costs may be recovered.

“counsel” includes any person with the right to be heard as an advocate at a full hearing before the Judicial Committee;

“court below” means the court from which an appeal (or application for permission to appeal) is made to the Judicial Committee;

“electronic means” means email or other means of electronic communication of the contents of documents including via the portal;

“filing” means filing in the Registry in accordance with rule 7 and related expressions have corresponding meanings;

“form” and the “appropriate form” have the meanings given by rule 5;

“the Judicial Committee” means the Judicial Committee of the Privy Council;

“member” means a member of the Judicial Committee;

“party” includes an applicant for permission to appeal and an intervener under rule 25;

“portal”, “portal party” and “non-portal party” have the meaning given by rule 4;

“the Registrar” means the Registrar of the Judicial Committee;

“the Registry” means the Registry of the Judicial Committee;

“respondent” includes a respondent to an application for permission to appeal and means—

(a) person other than the appellant who was a party to the proceedings in the court below;  
and

(b) a person who is permitted by the Judicial Committee to be a party to the appeal other than an intervener;

“service” and related expressions have the meanings given by rule 8.

(2) References in these Rules to a notice of appeal or cross-appeal include an application for permission to appeal or cross-appeal which (under rule 19 or rule 24) stands as a notice of appeal or cross-appeal.

(3) References in these Rules or in any form to a party’s signing, filing or serving any document or taking any other procedural step include the signature, filing or service of that document or the taking of such other procedural step by the party’s solicitor.

(4) Any reference in these Rules to a practice direction means a practice direction issued by the Judicial Committee to supplement these Rules, to provide for the forms to be used in proceedings before the Judicial Committee and to provide general guidance and assistance for legal representatives, agents and the parties.

(5) Where any of these Rules or any practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

(6) Where these Rules require or permit the Judicial Committee to perform an act of a formal or administrative character, that act may be performed by the Registry.

## **Part 2**

### **The portal, filing and service of documents**

## **The portal and portal parties**

4.—(1) In these Rules—

(a) the “portal” means the portal for filing and managing cases in the Judicial Committee electronically, and

(b) a “portal party” is a party who has signed up to the portal in relation to a particular appeal or a particular stage of an appeal and a “non-portal party” is a person who has not signed up to the portal in respect of an appeal or stage of an appeal.

(2) A person who wishes to participate in an appeal as a party and who is legally represented by a solicitor or counsel must be a portal party in respect of that appeal.

(3) A party who is not legally represented may be a portal party or a non-portal party.

(4) A party who is or becomes a portal party at any stage of an appeal must remain a portal party until that appeal is finally disposed of, unless permitted to become a non-portal party by the Registrar.

(5) A party who is a non-portal party at the start of an appeal but who becomes a portal party during the course of the appeal must notify the other parties to the appeal of that fact via the portal.

(6) Orders issued in the portal are sealed with an electronic seal.

## **Forms**

5.—(1) In these Rules, a form means a form set out in a practice direction and a reference to the “appropriate form” means the form provided by the relevant practice direction for any particular case.

(2) The forms shall be used in the cases to which they apply, and in the circumstances for which they are provided by the relevant practice direction, but a form may be varied by the Judicial Committee or a party if the variation is required by the circumstances of a particular case.

## **Time limits**

6.—(1) Unless to do so would be contrary to any enactment, the Registrar may extend or shorten any time limit set by these Rules or any relevant practice direction—

(a) of her own motion; or

(b) on the application of one or more parties,

and may do so after the time limit has expired.

(2) Where appropriate, the Registrar shall notify the parties when a time limit is varied under this rule.

(3) Where a party to a proposed appeal has applied for public funding and the Registrar is informed of the application, the Registrar may extend the time limits in rules 13 and 20 until after the final determination of the application for public funding, having regard in particular to the promptness with which the party has made, and the manner in which the party has pursued, that application.

(4) When the period specified—

(a) by these Rules or a practice direction, or

(b) by any judgment or order,

for doing any act at the Registry ends on a day on which the Registry is closed, that act shall be in time if done on the next day on which the Registry is open.

## **Filing**

7.—(1) Documents shall be filed in the Registry by portal and non-portal parties in accordance with this rule.

(2) Save where otherwise expressly provided for by these rules, a portal party must file all documents via the portal in accordance with the relevant practice direction.

(3) A non-portal party may file a document by any of the following methods—

(a) personal delivery;

(b) a service which provides for delivery on the next working day;

(c) by electronic means.

## **Service**

8.—(1) “Portal service” means the service of a document which has been filed by a portal party by—

(a) a notification appearing in the portal containing a statement to the effect that that document has been filed; and

(b) the sending of an email alert from the portal to—

(i) the email address for service of the party to be served; and

(ii) the email address for service of the party who would, apart from this rule, be required to serve the document.

(2) If an email alert relating to a document is sent to a party in accordance with paragraph (1)(b)(i), the document is taken to be served on the party—

(a) on the day the email alert was sent if the email alert was sent during the office hours of the Registry; or

(b) on the next business day after the email alert was sent if the email alert was sent outside those hours.

(3) “Non-portal service” means service by any of the following methods—

(a) personal service;

(b) a service which provides for delivery on the next working day;

(c) (with the consent of the party to be served or at the direction of the Registrar) by electronic means in accordance with the relevant practice direction.

(4) Where the postal address of a non-portal party on whom a document is to be served is unknown, the Registrar may direct that service is effected by an alternative method of service.

(5) A certificate of service by a non-portal party is a certificate giving details of the persons served and the method of service used and must state the date on which the document was served personally, consigned for delivery or sent electronically, as the case may be.

(6) In these Rules, unless expressly otherwise provided, where a party is required to serve a document on another party—

(a) a portal party must serve other portal parties by way of portal service and must serve non-portal parties by way of non-portal service;

(b) a non-portal party must serve all parties by way of non-portal service.

### **Communications with the Judicial Committee**

9.—(1) This rule applies to a person who is a portal party and who has filed—

(a) an application for permission to appeal under rule 13,

(b) a notice of objection under rule 15,

(c) submissions under rule 16,

(d) a notice of appeal under rule 20,

(e) a notice of intention to participate under rule 22, or

(f) an application for permission to intervene under rule 25.

(2) Save as provided for in paragraph (3), after the person has taken the step referred to in paragraph (1), all communications between that party and the Registry must be made via the portal using the public channel which enables all other portal parties participating in the appeal to view the communication via the portal.

(3) Communications from persons who have taken the step referred to in paragraph (1)—

(a) relating to confidential matters including payment of fees, anonymisation of the party, redactions from written cases under rule 29(6), or redactions from material placed on the Judicial Committee’s website under rule 45(4),

(b) relating to matters which are purely routine, uncontentious and administrative,

(c) which are authorised by a rule or practice direction to be sent to the Registry without at the same time being provided to the other party or parties or their representatives

must be made via the portal either using the public channel or by using the confidential channel to which the other portal parties do not have access.

(4) Any communication made via the portal using the confidential channel must state clearly why it is being sent via that channel.

### **Non-compliance with Rules**

**10.**—(1) Any failure by a party to comply with these Rules or any relevant practice direction shall not have the effect of making the proceedings invalid.

(2) Where any provision in these Rules or any relevant practice direction is not complied with, the Registrar may give whatever directions appear appropriate having regard to the seriousness of the non-compliance and generally to the circumstances of the case.

(3) In particular, the Registrar may refuse to accept any document which does not comply with any provision in these Rules or any relevant practice direction and may give whatever directions appear appropriate.

(4) Directions given under this rule may include the summary dismissal of an appeal or debarring a respondent from resisting an appeal.

### **Procedural decisions**

**11.**—(1) Any procedural question arising in the course of a hearing before the Judicial Committee will be determined by the Judicial Committee.

(2) Subject to paragraph (3), the powers of the Judicial Committee under the following rules may be exercised by a single member or by the Registrar without an oral hearing—

(a) rule 6 (time limits),

(b) rule 10 (non-compliance with Rules),

(c) rule 37 (withdrawal etc of application or appeal),

(d) rule 39 (change of interest),

(e) rule 40 (advocates to the Judicial Committee and assessors),

- (f) rule 41 (security for costs),
- (g) rule 43 (stay of execution),
- (h) rules 29(6) and 45(4) (redaction of material from documents).

(3) Any contested application—

- (a) alleging contempt of the Judicial Committee; or
- (b) in respect of a direction under rule 10 dismissing an appeal or debarring a respondent from resisting an appeal; or
- (c) for security for costs,

shall be referred to a panel of three or more members who shall, in a case of alleged contempt, and may, in any other case, hold an oral hearing.

(4) Where under these Rules any matter falls to be decided by a single member, that member may, where it appears appropriate, direct an oral hearing or may refer the matter to a panel of three or more members to be decided with or without an oral hearing.

(5) Where under these Rules any matter falls to be decided by the Registrar, the Registrar may—

- (a) direct an oral hearing;
- (b) refer the matter to a single member (and paragraphs (2) and (4) shall then apply in relation to the member);
- (c) refer the matter to a panel of three or more members to be decided with or without an oral hearing.

(6) A party may apply for any decision of the Registrar under these Rules to be reviewed by a single member (in which case paragraphs (2) and (4) apply in relation to the member) and any application under this rule must be filed within 14 days of the Registrar's decision.

(7) Subject to rule 32, oral hearings on procedural matters must be heard in open court or in a place to which the public are admitted.

### **Part 3 - Application for permission to appeal**

#### **Making an application**

**12.**—(1) In cases where the grant of permission to appeal is in the discretion of the court below or of the Judicial Committee, no appeal will be heard by the Judicial Committee unless permission to appeal has been granted either by the court below or by the Judicial Committee.

(2) Every application to the Judicial Committee for permission to appeal must be made—

- (a) by a portal party by completing the relevant pages in the portal;



(b) by a non-portal party in the appropriate form.

### **Filing and issue of application**

**13.**—(1) An application for permission to appeal must be filed within 56 days from the date of the order or decision of the court below or the date of the court below refusing permission to appeal (if later).

(2) Where an application for permission to appeal is filed by a portal party in accordance with rule 7(2), that party must upload to the portal the documents listed in paragraph (4).

(3) Where an application for permission to appeal is filed by a non-portal party in accordance with rule 7(3) it must be accompanied by the documents listed in paragraph (4).

(4) The documents listed in this paragraph are—

(a) a certificate of value,

(b) the order of the court below against which the appellant seeks permission to appeal,

(b) the judgment of the court below to which the order gives effect,

(c) if available, the order of the court below refusing permission to appeal to the Judicial Committee or granting final permission to appeal as the case may be,

(d) the grounds of appeal for which the appellant seeks permission to appeal,

(e) a precis of the factual background of the case and a chronology of proceedings,

(f) the order of the first instance court (if different) which was challenged in the court below,

(g) the judgment of the first instance court (if different).

(5) The Registrar may refuse to issue an application on the ground that—

(a) the Judicial Committee does not have jurisdiction to issue it,

(b) it contains no reasonable grounds; or

(c) it is an abuse of process

and may give whatever directions appear appropriate.

(6) Before refusing to issue an application, the Registrar may contact a proposed party to the appeal and request submissions on matters raised by paragraph (5). The Registrar must notify the appellant of any such request and provide the appellant with a copy of any submissions received.

(7) Subject to paragraph (5), the Registrar shall issue the application for permission and shall direct the appellant to serve the application.

### **Service of application**

**14.**—(1) Once an application for permission to appeal has been issued by the Registrar and the Registrar has directed the appellant to serve the application, it must be served in accordance with this rule.

(2) All portal and non-portal parties must serve the application by way of non-portal service (regardless of whether the person to be served is a portal party or a non-portal party) in accordance with rule 8(3), (4) and (5).

(3) The persons to be served are—

(a) every respondent, and

(b) any person who was an intervener in the court below.

(4) After the application for permission has been served—

(a) a portal party must give a declaration of service via the portal giving the details required by the portal;

(b) a non-portal party must file a certificate of service in accordance with rule 8(5).

### **Notice of objection by respondent**

**15.**—(1) Each respondent who wishes to object to the application must within 28 days file notice of objection setting out any submissions the respondent wishes to make including any submissions as to the jurisdiction of the Judicial Committee.

(2) The notice of objection shall be issued by the Registry either in the portal or by being approved by the Registry as the case may be.

(3) Within 7 days of notice of objection being issued under paragraph (2), each respondent who has filed such a notice must serve that notice on—

(a) the appellant,

(b) any other respondent, and

(c) any person who was an intervener in the court below

(4) A respondent who does not give notice under this rule will not be permitted to participate in the application and will not be given notice of its progress.

### **Interventions in applications**

**16.**—(1) Any person and in particular—

(a) any official body or non-governmental organization seeking to make submissions in the public interest, or

(b) any person with an interest in proceedings by way of judicial review,

may file submissions asking the Judicial Committee to grant or dismiss an application for permission to appeal (including for lack of jurisdiction) which has been issued by the Registrar and request that the Judicial Committee takes them into account.

(2) Once the submissions are filed, they must be served by the person on—

- (a) the appellant,
- (b) every respondent, and
- (c) any person who was an intervener in the court below

and a person who is not signed up to the portal must file a certificate of service.

(3) Any submissions which are filed and served shall be referred to the Judicial Committee to be considered with the application for permission to appeal.

(4) If permission to appeal is granted—

- (a) a person whose submissions were taken into account shall be notified of the grant, but, in order to become an intervener in that appeal, that person must make an application under rule 25;
- (b) the appellant must notify any person who was an intervener in the court below of the grant, regardless of whether that person made submissions under this rule.

### **Consideration of application for permission to appeal**

**17.—**(1) Every issued application for permission to appeal (together with any submissions made under rule 16 and any respondent's notice of objection) shall be considered without a hearing by the Judicial Committee.

(2) The Judicial Committee may—

- (a) grant or refuse permission to advance all or any of the grounds of appeal;
- (b) invite the parties to file written submissions within 14 days as to the grant of permission on terms (whether as to costs or otherwise); or
- (c) direct an oral hearing.

(3) Where the Judicial Committee has invited the parties' submissions as to terms, the application will be reconsidered without a hearing by the Judicial Committee and the Committee may refuse permission or grant permission (either unconditionally or on terms) to advance all or any of the grounds of appeal.

(4) Where the Judicial Committee grants permission to advance limited grounds of appeal it shall (unless it directs otherwise) be taken to have refused permission to advance the other grounds.

(5) An order shall be prepared and sealed to record any decision made under this rule. The order must be notified via the portal to portal parties and by appropriate means to non-portal parties.

### **Oral hearing of application for permission to appeal**

**18.**—(1) Where the Judicial Committee has directed an oral hearing, the Registrar will fix a date for the hearing of the application for permission to appeal and will notify the date to the appellant and every respondent who has given notice under rule 15.

(2) A party may be heard by one counsel or in person and, where there are several respondents, they should appear by the same counsel unless their different interests justify separate representation.

(3) An order shall be prepared and sealed to record any decision made under this rule. The order must be notified via the portal to portal parties and by appropriate means to non-portal parties.

### **Part 4 – Commencement and preparation of appeal**

#### **Notice of intention to proceed where permission granted by Judicial Committee**

**19.**—(1) Where the Judicial Committee grants permission to appeal, rules 20, 21 and 23 shall not apply and—

(a) the application for permission to appeal shall stand as the notice of appeal,

(b) the grounds of appeal shall be limited to those for which permission has been granted;

(c) the appellant must, within 14 days of the grant by the Judicial Committee of permission to appeal, file notice under this rule of an intention to proceed with the appeal.

(2) An appellant who files a notice of intention to proceed under paragraph (1)(c) must serve that notice on each respondent and on any person who was an intervener in the court below or who made submissions under rule 16.

(3) An appellant who is a non-portal party must file a certificate of service in accordance with rule 8(5).

#### **Filing and issue of notice where permission of the Judicial Committee not required**

**20.**—(1) This rule and rules 21, 22 and 23 apply to appeals where permission to appeal from the Judicial Committee is not required either because the court below has exercised its discretion to grant permission or because the appeal is an appeal as of right for which the court below has granted final leave to appeal.

(2) The notice of appeal must be filed within 56 days of the date of the order or decision of the court below granting permission or final leave to appeal, as the case may be.

(3) The grounds of appeal may not (without the permission of the Registrar or the Judicial Committee) differ materially from those for which discretionary permission to appeal has been granted by the court below.

(4) At the same time as filing the notice of appeal—

(a) a portal party must upload the documents listed in paragraph (5);

(b) a non-portal party must send the Registrar by email (and not by sending hard copies) the documents listed in paragraph (5).

(5) The documents to be uploaded or sent by email to the Registry in accordance with paragraph (4) are as follows—

(a) a certificate of value,

(b) the order of the court below against which the appellant is appealing;

(c) the judgment of the court below to which the order gives effect;

(d) the order of the court below granting discretionary permission to appeal or final leave to appeal;

(e) the grounds of appeal;

(f) a precis of the factual background of the case and a chronology of proceedings;

(g) the order of the first instance court (if different) which was challenged in the court below;

(h) the judgment of the first instance court (if different).

(6) The Judicial Committee shall—

(a) issue the notice of appeal,

(b) direct the appellant to serve the application, and

(c) inform those served with the application that a review of the merits of the application will take place.

### **Service of notice of appeal**

**21.**—(1) Once a notice of appeal has been issued by the Judicial Committee and the appellant has been directed to service the notice, the notice must be served by the appellant in accordance with this rule.

(2) All portal and non-portal parties must serve the notice (but not the documents listed in rule 20(5)) by way of non-portal service, regardless of whether the person to be served is a portal party or a non-portal party, in accordance with rule 8(3), (4) and (5).

(3) The persons to be served are—

(a) every respondent, and

(b) any person who was an intervener in the court below or whose submissions were taken into account under rule 16.

(4) After the notice of appeal has been served—

(a) a portal party must give a declaration of service via the portal giving the details required by the portal;

(b) a non-portal party must file a certificate of service in accordance with rule 8(5).

### **Acknowledgement by respondent**

**22.**—(1) Each respondent who intends to participate in the appeal must file notice of intention to participate.

(2) The notice of intention to participate in the appeal must be filed within 21 days after—

(a) service of the notice of intention to proceed under rule 19(2), or

(b) service of the notice of appeal under rule 21.

(3) A respondent who wishes to argue that the order appealed from should be upheld on grounds different from those relied on by the court below, must state that clearly in the notice of intention to participate (but need not cross-appeal).

(4) Each respondent must within 7 days of filing the notice of intention to participate serve that notice on—

(a) the appellant,

(b) any other respondent,

(c) any person who was an intervener in the court below or whose submissions were taken into account under rule 16.

(5) A respondent who does not give notice under this rule will not be permitted to participate in the appeal and will not be given notice of its progress.

### **Review of merits of appeal**

**23.**—(1) Where a notice of appeal is filed under rule 20 in a case where permission has not been granted by the Judicial Committee, a review of the merits of the appeal shall take place in accordance with this rule.

(2) The notice of appeal with accompanying documents shall be referred to a single member for consideration.

(3) The member of the Judicial Committee shall direct that—

(a) the appeal shall proceed in the same way as an appeal for which permission had been granted by the Judicial Committee; or

(b) the appellant shall file submissions within 21 days as to why the appeal should not be dismissed without a hearing on the grounds that it is devoid of merit.

(4) Where a direction is made under paragraph (3)(b), any submissions filed by the appellant will be considered by three or more members without a hearing and the Judicial Committee shall direct either—

(a) that the appeal shall proceed in the same way as an appeal for which permission had been granted by the Judicial Committee; or

(b) that the appeal is dismissed.

(5) A direction given under paragraph (3)(a) or (4)(a) may specify the number of members before whom the appeal will be heard.

(6) The decision on the review of the merits must be notified to portal parties via the portal and by appropriate means to non-portal parties. An order shall be prepared and sealed to record a decision to dismiss the appeal under this rule.

## **Cross appeals**

**24.**—(1) A respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal either from the court below or from the Judicial Committee.

(2) An application to the Judicial Committee for permission to cross appeal must be filed by the respondent within 21 days after—

(a) the filing by the respondent of the notification of intention to participate in the appeal in a case where permission to appeal was granted by the Judicial Committee under rule 17 or 18; or

(b) the notification of a decision that the appeal will proceed following a review of the merits under rule 23(6).

(3) Part 3 of these Rules will apply (with appropriate modifications) to an application to the Judicial Committee for permission to cross-appeal and (if practicable) applications for permission to appeal and cross-appeal shall be considered together.

(4) Where there is a cross-appeal, this Part of these Rules shall apply (with appropriate modifications) and in particular—

(a) either the application to the Judicial Committee for permission to cross-appeal shall stand as a notice of cross-appeal or such a notice (in the appropriate form) shall be filed and

served within 30 days of the grant by the Judicial Committee of permission to cross appeal or of the filing of the notice of the cross appeal;

(b) there must be a single record, a single statement of facts and issues, a single key documents bundle (divided if necessary into parts) and a single written case for each party in respect of the appeal and the cross-appeal (and each case should state clearly that it is in respect of both the appeal and the cross-appeal); and

(c) the appellant is primarily responsible for the preparation of all the papers for the appeal and for responding to the notification by the Registrar under rule 26.

### **Intervention**

**25.**—(1) After permission to appeal has been granted by the Judicial Committee or a notice of appeal has been issued, a person claiming to have an interest in an appeal may apply for permission to intervene in the appeal.

(2) An application under this rule must be filed via the portal.

(3) The Judicial Committee will consider the application without a hearing and may refuse permission to intervene or may permit intervention—

(a) by written submissions only; or

(b) by written submissions and oral submissions,

and any written case may be limited to a specified number of pages and oral submissions may be limited to a specified duration.

### **Listing of the appeal**

**26.**—(1) The Registrar will notify the parties—

(a) that the appeal is ready to list,

(b) of the period within which the hearing of the appeal will take place,

(c) of the number of members of the Judicial Committee who will form the Board to hear the appeal

and may in that notification request such further information as is appropriate for the purpose of fixing the hearing of the appeal.

(2) The notification in paragraph (1) shall follow—

(a) the determination of any applications to cross appeal under rule 24; and

(b) either—



(i) the filing by the respondent of the notification of intention to participate in the appeal in a case where permission to appeal was granted by the Judicial Committee under rule 17 or 18; or

(ii) the notification of a decision that the appeal will proceed following a review of the merits under rule 23(6).

(3) Within 14 days after being notified under paragraph (1) the parties must file a document—

(a) providing the dates within the period notified by the Registrar on which all parties are available for the hearing of the appeal,

(b) specifying the number of hours that their respective counsel estimate to be necessary for their oral submissions,

(c) stating whether anyone attending the hearing on their behalf requires reasonable adjustments to be made,

(d) stating whether their representatives will be attending the hearing in person or remotely via video link,

(e) providing any other information requested by the Registrar.

(4) After filing of the document under paragraph (2) the Registrar shall notify the parties of the date fixed for the hearing.

### **The record**

**27.—**(1) The appellant must arrange for the record of the proceedings below to be certified by the proper officer of the court below following either—

(a) the filing by the respondent of the notification of intention to participate in the appeal in a case where permission to appeal was granted by the Judicial Committee under rule 17 or 18; or

(b) the notification of a decision that the appeal will proceed following a review of the merits under rule 23(6).

(2) Once the record has been certified, the appellant must arrange for the court below to send the certified record to the Registry by email.

(3) The appellant must extract from the certified record, the reproduced record.

(4) In this rule, “the reproduced record” means all such documents (including originating process, pleadings, transcripts of evidence, exhibits, judgments and orders) relating to the proceedings in the court below as are necessary for the hearing of the appeal by the Judicial Committee.

### **The statement of facts and issues and the reproduced record**

**28.**—(1) Within 20 weeks from the Registrar notifying the parties under rule 26(1) that the appeal is ready to list, the appellant must—

(a) prepare and file a statement of the relevant facts and issues, and

(b) file the reproduced record referred to in rule 27.

(2) The form and contents of the statement of facts and issues and of the reproduced record must comply with the relevant practice directions.

(3) The parties must endeavour to agree the contents of the statement of facts and issues and in the event of a disagreement the Registrar may give whatever directions appear appropriate.

### **Filing and service of cases**

**29.**—(1) Within 23 weeks from the Registrar notifying the parties under rule 26(1) that the appeal is ready to list, the appellant must file a written case and serve it on the other parties.

(2) Within 3 weeks of receiving the appellant's written case, the respondent and any intervener in the appeal must file a written case and serve it on the other parties.

(3) The form and contents of a case must comply with the relevant practice direction.

(4) Where there is more than one respondent, any respondent claiming to have a separate interest may (at that respondent's own risk as to costs) file and serve a separate case.

(5) An intervener may not include in its written case any submissions on an issue which is not an issue raised in the appeal by either the appellant or the respondent.

(6) Each party, on filing a written case, must indicate whether there is any material in that case which should not be published on the Judicial Committee's website and the Registrar shall make an appropriate direction as to the redactions, if any, from the written case before publication.

### **The key documents bundle**

**30.**—(1) As soon as the parties' cases have been exchanged the appellant must prepare, in accordance with the relevant practice direction, a key documents bundle in hard copy and electronic form, including an index for use at the hearing, taking into account any grouping of appeals pursuant to rule 38.

(2) The key documents bundle must contain at least the following documents—

(a) the agreed statement of facts and issues,

(b) the parties' written cases,

(c) the orders of the court below and the first instance court, and

(d) the judgments of the court below and of the first instance court.

(3) Not later than 42 days before the date of the hearing, the appellant must—

- (a) send enough hard copies of the key documents bundle to the Registry to provide one to each member of the Judicial Committee sitting and an additional copy for the Registry, and
- (b) upload to the portal a single electronic file containing the key documents bundle.

### **The main hearing bundle**

**31.**—(1) As soon as the parties' cases have been exchanged under rule 29 the appellant must prepare, in accordance with the relevant practice direction, a single electronic file containing—

- (a) the documents included in the key documents bundle,
- (b) the reproduced record produced in accordance with rule 27,
- (c) all other documents which any party participating in the appeal wishes to place before the Judicial Committee which are not part of the reproduced record,
- (d) the authorities that may be referred to during the hearing including an index of those authorities,
- (e) an index of the main hearing bundle.

(2) Not later than 21 days before the date of the hearing, the appellant must upload to the portal a single electronic file containing the main hearing bundle.

## **Part 5 - Hearing and decision of Judicial Committee**

### **Hearing in open court**

**32.**—(1) Except where it is necessary in the interests of justice or in the public interest to sit in private for part of an appeal hearing, every contested appeal shall be heard in open court.

(2) Where the Judicial Committee decides it is necessary to sit in private, it shall announce its reasons for so doing publicly in advance of the hearing.

(3) Hearings shall be conducted in accordance with the relevant practice direction and any directions given by the Judicial Committee. Directions given by the Committee may limit oral submissions to a specified duration.

### **Judgment**

**33.** A judgment may be—

- (a) delivered in open court; or
- (b) if the Judicial Committee so directs, promulgated by the Registrar.

### **Orders**

**34.**—(1) Every final order shall be prepared and sealed by the Registrar who may invite written submissions as to the form of the order.

(2) An interlocutory or procedural order made by the Judicial Committee shall take effect from the day when it is given or made or such later date as may be specified.

## **Part 6**

### **Miscellaneous**

#### **Procedural applications**

**35.**—(1) Every procedural application must be filed via the portal by a portal party or in the appropriate form for general procedural applications by a non-portal party unless a particular form is provided for a specific case.

(2) An application must—

(a) set out the reasons for making the application; and

(b) where necessary, be supported by written evidence.

(3) A party who wishes to oppose an application must, within 14 days after service, days file notice of objection and must serve that notice on the applicant and any other parties.

(4) A party who does not give notice under this rule will not be permitted to participate in the application and will not be given notice of its progress.

(5) An application for permission to appeal, a notice of appeal or any other document filed under these Rules may be amended with the permission of the Registrar on such terms as appear appropriate and the Registrar may invite the parties' written submissions on any application to amend.

#### **Requests for expedition**

**36.**—(1) Any request for urgent consideration of an application for permission to appeal or for an expedited hearing must be made to the Registrar.

(2) Wherever possible the views of all parties should be obtained before such a request is made.

#### **Withdrawal etc of application or appeal**

**37.**—(1) An application for permission to appeal or a notice of appeal may be withdrawn with the written consent of all parties or with the permission of the Registrar on such terms as appear appropriate.

(2) The Judicial Committee may set aside or vary the order under appeal by consent and without an oral hearing if satisfied that it is appropriate so to do.

#### **Grouping appeals**

**38.**—The Registrar may direct that appeals raising the same or similar issues shall be heard either together or consecutively by the same Board of the Judicial Committee and may give any consequential directions that appear appropriate.

### **Change of interest**

**39.** The Registrar must be informed promptly of—

- (a) the death or bankruptcy of any individual party;
- (b) the winding up or dissolution of any corporate party;
- (c) any compromise of the subject matter of an appeal; or
- (d) any event which does or may deprive an appeal of practical significance to the parties,

and the Registrar may give any consequential directions that appear appropriate.

### **Advocates to the Judicial Committee and Assessors**

**40.**—(1) The Judicial Committee may request the Attorney General of the jurisdiction from which an appeal is pending to appoint, or may itself appoint, an advocate to assist the Judicial Committee with legal submissions.

(2) The Judicial Committee may appoint nautical assessors or other specialist advisers to assist the Judicial Committee in Admiralty appeals or on other technical questions.

(3) The fees and expenses of any advocate or assessor appointed under this rule shall be costs in the appeal.

### **Security for costs**

**41.**—(1) Where the Judicial Committee grants permission to appeal, an order for security for costs may be made by the Judicial Committee or by the Registrar.

(2) Where permission to appeal has been granted by the court below, security for costs of the appeal shall be a matter for that court.

### **Parties receiving help with fees**

**42.**—(1) An appellant who has been granted, or has applied for, assistance from public funds under arrangements in force in the appellant's jurisdiction may file an application with the Judicial Committee for help with fees.

(2) The Registrar shall certify, if the application is approved, that the appellant shall receive help with fees.

(3) Where a certificate under paragraph (2) has effect in relation to an appellant, the appellant is entitled to remission or reduction of any liability for fees which are payable under these Rules.

(4) A certificate under paragraph (2) has effect in relation to an appellant until it is withdrawn by the Registrar.

(5) The Registrar may withdraw a certificate in relation to an appellant if—

- (a) assistance from public funds is not granted or is withdrawn in the appellant's jurisdiction;
- (b) it is discovered that the appellant's financial position was incorrectly stated; or
- (c) there is a material change in the appellant's financial position.

(6) This rule shall apply to respondents as it applies to appellants with such modifications as may be necessary.

### **Stay of execution or conservatory order**

**43.**—(1) Any appellant who wishes to obtain a stay of execution of the order appealed from or some conservatory order pending an appeal must first seek it from the court below before applying to the Judicial Committee.

(2) In exceptional circumstances the Judicial Committee may grant a stay of execution or make a conservatory order.

### **Change of agent**

**44.**—(1) If a party for whom an agent is acting wishes to change that agent, the party or the new agent must give the Registrar and the former agent written notice of the change.

(2) Until such notices are given the former agent will continue to be treated as the party's agent.

### **Publication and disposal of documents**

**45.**—(1) All documents filed become the property of the Judicial Committee.

(2) Hard copy documents may be destroyed following the disposal of the appeal unless the Registrar (on a written application made within 21 days of the end of the proceedings) directs otherwise.

(3) The following documents uploaded to the portal or filed electronically are made available to the public via the Judicial Committee's website—

- (a) the statement of facts and issues, and
- (b) the parties' cases exchanged under rule 29,

unless the Registrar determines that they should not be so published for reasons of commercial confidentiality, national security or in the public interest.

(4) The Registrar may accept for publication on the Judicial Committee's website a document in which material has been redacted by the parties, where this is necessary in the interests of justice or in the public interest.

### **Fees to be taken**

46.—(1) Unless and except in so far as the fees are remitted or reduced because the party is receiving help with fees, every party in civil proceedings taking a step described in column 1 of the table in the Appendix to these Rules must pay fees in the amounts set out in column 2, according to the value of the appeal as stated in the certificate of value provided under rule 13(4) or 20(5).

(2) The Registrar may refuse to accept a document or refuse to allow a party to take any step unless the relevant fee is paid.

## **Part 7 - Costs**

### **Order for costs**

47.—(1) The Judicial Committee may make such orders as it considers just in respect of the costs of any appeal, application for permission to appeal or other application to or proceeding before the Judicial Committee.

(2) The power to make orders for costs may be exercised either at the final determination of an appeal or application for permission to appeal or in the course of the proceedings.

(3) Orders for costs will not normally be made either in favour of or against interveners but such orders may be made if the Judicial Committee considers it just to do so (in particular if an intervener has in substance acted as the sole or principal appellant or respondent).

### **Submissions as to costs**

48.— (1) A party who wishes to make submissions as to costs must notify the Judicial Committee of this either before or after judgment.

(2) Following such a notification, the Judicial Committee shall give such directions as appear appropriate and it may, in particular, give directions—

(a) for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment;

(b) for the hearing of oral submissions as to costs after judgment;

(c) for the hearing of oral submissions after the filing of written submissions.

### **Claim for costs**

49.—(1) Where the Judicial Committee has made an order for costs, the claim for costs must be submitted to the Registry within three months beginning with the date on which the costs order was made.

- (2) The claim for costs must comply with the relevant practice direction and the receiving party must supply such further particulars, information and documents as the Registrar may direct.
- (3) The receiving party must serve the claim for costs on the paying party.
- (4) Within 21 days beginning with the day on which a claim for costs is served, the paying party may (or, in the circumstances specified in the relevant practice direction, must) file points of dispute and the paying party must serve any points of dispute filed on the receiving party.
- (5) Within 14 days beginning with the day on which points of dispute are served, the receiving party may file a response and must serve any response filed on the paying party.

### **Assessment of Costs**

- 50.**—(1) Every detailed assessment of costs shall be carried out by one or more costs assessors.
- (2) The receiving party and the paying party will, where appropriate, be notified by the costs assessor of the date of the assessment.
  - (3) Where one of the parties so requests or in the circumstances specified in the relevant practice direction, the costs assessor may make a provisional assessment of costs without the attendance of the parties.
  - (4) The costs assessor must notify the parties of the outcome of a provisional assessment and, if a party is dissatisfied with the outcome and points of disagreement cannot be resolved in correspondence, the costs officer must appoint a date for an oral hearing.
  - (5) Any request for an oral hearing following a provisional assessment of costs must be made within 14 days of the receipt of the decision on the assessment.
  - (6) In this rule a “costs assessor” means a costs officer, a Costs Judge (a Taxing Master of the Senior Courts) who has been appointed as a costs officer and the Registrar.

### **Basis of assessment**

**51.**—(1) Where the costs are to be assessed they will be assessed—

- (a) on the standard basis, or
- (b) on the indemnity basis,

in the manner specified by rule 52.

- (2) Where an order is made without indicating the basis on which the costs are to be assessed, the costs shall be assessed on the standard basis.
- (3) This rule applies subject to any order or direction to the contrary.

### **The standard basis and the indemnity basis**



**52.**—(1) Costs assessed on the standard basis are allowed only if they are proportionate to the matters in issue and are reasonably incurred and reasonable in amount.

(2) Any doubt as to whether costs assessed on the standard basis are reasonably incurred and are reasonable and proportionate in amount will be resolved in favour of the paying party.

(3) Costs assessed on the indemnity basis are allowed only if they are reasonably incurred and reasonable in amount.

(4) Any doubt as to whether costs assessed on the indemnity basis are reasonably incurred and are reasonable in amount will be resolved in favour of the receiving party.

### **Amount of assessed costs to be specified**

**53.** The amount of any assessed costs must be inserted in the order made under rule 34 but, if that order is drawn up before the assessment has been completed, the amount assessed will be certified by the Registry.

### **Appeal from Assessment**

**54.** A party who is dissatisfied with an assessment of costs may appeal to the Judicial Committee by filing a procedural application within 14 days in accordance with rule 35.

### **Payment out of security for costs**

**55.** Any security for costs lodged by an appellant will be dealt with by the Registrar in accordance with the directions of the Judicial Committee.

## **Part 8**

### **Appeals under section 17 of the Veterinary Surgeons Act 1966**

#### **Appeals under section 17 of the Veterinary Surgeons Act 1966**

**56.**—(1) The rules in Parts 1 to 7 of this Schedule shall apply (subject to the following and any other necessary modifications) to appeals to the Judicial Committee under section 17 of the Veterinary Surgeons Act 1966.

(2) Part 3 (Application for permission to appeal) shall not apply in relation to such an appeal.

(3) The Council of the Royal College of Veterinary Surgeons (“the Council”) shall be the respondent to the appeal.

(4) The time for filing a notice of appeal shall be 28 days from the date of service on the appellant of a direction under section 16 of the Veterinary Surgeons Act 1966.

(5) The appellant must arrange for the record to be prepared and certified by the Council.

## **Part 9**

### **Appeals under section 1 of the Brunei (Appeals) Act 1989**

#### **Appeals under section 1 of the Brunei (Appeals) Act 1989**

**57.**—(1) The rules in Parts 1 to 7 of this Schedule shall apply (subject to the following and any other necessary modifications) to appeals to the Judicial Committee under section 1 of the Brunei (Appeals) Act 1989.

(2) In such appeals, references to orders and decisions in rules 17(5), 18(3), 23(6) and 34(1) shall be construed as references to recommendations to His Majesty the Sultan and Yang Di-Pertuan;

(2) For Rule 53 there shall be substituted the following –

“The amount of any assessed costs will be inserted in the recommendation made under rule 34 but, if that recommendation is made before the assessment has been completed, the amount assessed will be certified by the Registrar [for the Judicial Committee] to recommend to His Majesty the Sultan and Yang Di-Pertuan.”

## **Part 10**

### **Appeals against draft Pastoral Schemes**

#### **Appeals against draft Pastoral Schemes**

**58.**—(1) The provisions of Parts 1 to 7 of these Rules (except for the requirement to file a certificate of value), and the Practice Directions which supplement them, shall be applied with such modifications and variations as may be required to applications for leave to appeal and appeals against draft pastoral schemes.

(2) In this rule “draft pastoral schemes” refers to schemes made by the Church Commissioners which may be the subject of an appeal under the Mission and Pastoral Measure 2011 (2011 No.3).

## **Part 11**

### **References to the Judicial Committee**

#### **References under section 4 of the Judicial Committee Act 1833**

**59.** Subject to the provisions of this Part, where a reference is made to the Judicial Committee, the provisions of Parts 1 to 7 of these Rules, and the Practice Directions which supplement them, shall be applied with such variations or modifications as may be required by the particular circumstances of the reference.

#### **Making the reference**

**60.** The person at whose request the reference was made (in this Part referred to as “the applicant”) must, within 21 days after the making of the reference—

(a) provide the Registrar with the name and address of any person who is affected by the reference (in this Part referred to as “the respondent”); and

(b) supply the Registrar with the names, addresses and contact details of the applicant’s legal representatives and (if known) of the respondent’s legal representatives.

### **Documents for the hearing of the reference**

**61.—**(1) At least 8 weeks before the hearing, the applicant must file an index of the documents which are necessary for consideration of the matter referred.

(2) The index must be submitted to, and agreed with, every respondent before being filed.

(3) The applicant and every respondent must then file their respective written cases and serve them.

### **Orders on a reference**

**62.—**The Judicial Committee may make such orders as it considers just in respect of the reference or other proceeding on the reference before the Judicial Committee and it may, during the course of the proceedings, order the applicant to make a payment on account of the respondent’s costs in such sum as it considers fit.

## **Part 12**

### **Transitional arrangements**

#### **Transitional arrangements**

**63.** Unless the Judicial Committee or the Registrar directs otherwise, the Judicial Committee (Appellate Jurisdiction) Rules 2009 (“the 2009 Rules”) shall continue to apply to—

(a) appeals which were proceeding before these Rules came into effect,

(b) applications for permission to appeal and notices of appeal filed under rules 11 and 19 of the 2009 Rules before these Rules came into effect.

## **Appendix**

Rule 46: Fees to be taken

<b>Number and description of fee</b>	<b>Amount of Fee Appeal value up to £100,000</b>	<b>Amount of fee Appeal value £100,000 –£500,000</b>	<b>Amount of fee Appeal value over £500,000</b>
<b>1 On filing an application for permission to appeal—</b>	£150	£500	£1000
On filing a notice under rule 17(1) – notice of intention to proceed	£100	£800	£1600
On filing notice of appeal	£100	£800	£1600
<b>2 On filing a notice of objection by a Respondent</b>	£160	£160	£160
On filing an acknowledgement by a Respondent	£160	£160	£160
<b>3 On filing an incidental application</b>	£100	£100	£100
On filing a notice of objection to an incidental application	£70	£70	£70
On filing an application to appeal the Registrar’s decision	£100	£100	£100
<b>4 On filing a case</b>	£400	£2500	£5000
<b>5 On request for a copy of a document</b>			
a) For ten pages of less	£5	£5	£5
b) For each subsequent page	50p	50p	50p

6 On filing a request for an assessment of costs	2.5% of the sum claimed + 2.5% of the sum allowed	2.5% of the sum claimed + 2.5% of the sum allowed	2.5% of the sum claimed + 2.5% of the sum allowed
7 On an appeal against a decision made on an assessment of costs	£150	£150	£150
8 Certified documents	£20	£20	£20

# The main changes proposed

## The main changes proposed

1. In this section we highlight the main changes that have been made to the Judicial Committee (Appellate Jurisdiction) Rules 2009 (“the 2009 Rules”).
2. The revisions have two main aims. First, they reflect the introduction later in 2024 of the case management portal through which parties to an appeal will interact with the Judicial Committee Registry and with each other. Secondly, the new Rules reflect the current practice of the Judicial Committee as set out in the Judicial Committee’s Practice Directions. In particular, they incorporate changes which were prompted by Covid-19 restrictions but which have led to permanent changes in practice. These include greater use of electronic documents rather than documents being produced and exchanged in hard copy. Some revisions have also been made to ensure that these Rules are consistent with the new Supreme Court Rules 2024 coming into force at the same time as these rules.
3. In due course the Judicial Committee’s Practice Directions will be reissued. These will be available on the Judicial Committee’s website.

## **PART 1 Interpretation and scope**

Part 1 of the Rules:

- Provides for the commencement, scope and objective of the Rules (rules 1 and 2)
- Defines the various terms that are used throughout the Rules (rule 3)

### Rule 2 (**Scope and objective**) and Rule 3 (**Interpretation**)

Rules 2 and 3 are broadly the same as in the 2009 Rules. The amendments are mainly consequential on changes to the later rules (detailed below) subject to the following points:

The definition of a “certificate of value” has been moved to this Rule. The values stated have not changed from the values under the 2009 Rules, as amended in 2013. The Judicial Committee intends to consult on changes to the fees in due course.

The definition of “electronic means” has been amended to remove technology which is outdated and to include a reference to the portal.

The definition of “respondent” has been changed so that it now applies to any person other than the appellant who was a party to the proceedings in the court below. The current requirement that a party be “affected by the appeal” has been omitted. If a respondent is served and does not consider that it is affected by the appeal, it can

simply refrain from acknowledging service and will then play no further part in the appeal.

Rule (6) provides that actions of a formal or administrative character may be performed by the Registry. This reflects the corresponding rule in the Supreme Court rules. It is not expected that this new rule will lead to any change in the current practice of the Judicial Committee.

## **PART 2 The portal, filing and service**

Part 2 of the Rules:

- Introduces the concept of the portal and defines portal parties and non-portal parties (rule 4).
- Specifies the forms to be used, particularly for non-portal parties (rule 5).
- Provides for the Registrar to extend or shorten time limits prescribed by the Rules (rule 6).
- Describes how documents are filed with the Registry and served on the parties to the appeal and how the parties communicate with the Registry (rules 7, 8 and 9).
- Provides for the consequences of non-compliance with the Rules and for the review of the Registrar's decisions on procedural matters (rules 10 and 11).

### **Rule 4 (The portal and portal parties)**

Rule 4 is a new rule which introduces the concept of a 'portal party'. This refers to a party who is signed up to the portal in relation to a particular appeal or part of an appeal. A party who is legally represented must sign up to the portal in order to participate in an appeal. Litigants in person can choose whether to sign up to the portal or not but if they obtain legal representation they must become a portal party. Any litigant in person who signs up to the portal must then remain a portal party for the remainder of the appeal.

### **Rule 5 (Forms)**

Forms will no longer be relevant to those participating in the appeal as portal parties. However, this rule is retained (formerly rule 4 of the 2009 Rules) for non-portal parties. The rule reflects current practice which is that all the relevant forms are available for download from the Judicial Committee's website. Parties may either use the form by completing an electronic copy of the form or by printing out the form, filling it in on the hard copy and then scanning the completed form to produce an electronic version which can then be emailed to the Registry or the other parties.

### **Rule 6 (Time Limits)**

The Registrar will continue to have power to extend or shorten any time limit set by the Rules or by the relevant practice direction.

Rule 6(3) This paragraph has been amended to replace the current automatic extension of time where a party is seeking public funding. Instead, the Registrar has a discretion to extend time in those circumstances. In exercising her discretion whether to extend time and for how long, the Registrar will have regard in particular to how promptly the appellant has applied for public funding and how diligently the application has been pursued. The change is aimed at ensuring that the appellant is incentivised to avoid delay; the previous rule resulted in some instances in very long delays occurring before the appeal was lodged by the appellant.

### Rule 7 (**Filing**)

In the 2009 Rules, rule 6 (service) came before rule 7 (filing). This was because, according to rule 12 of the 2009 Rules, a copy of the application was served on the respondent before it was filed. Under the new rules, the steps for commencing an appeal are taken in the following order:

- The application for permission to appeal is filed with the Registry (rule 13(1)).
- The Registrar considers whether the Judicial Committee has jurisdiction to consider the application for permission (rule 13(5)).
- The Registrar issues the permission to appeal application and directs the appellant to serve the application (rule 13(7)).
- The appellant then serves the issued application on the other parties (rule 14).

If the Registrar considers that the Judicial Committee does not have jurisdiction and the matter is straightforward, then the application is rejected without being issued. In those circumstances the respondent will not be served with the application. However, sometimes jurisdiction questions are less clear cut. In those circumstances, the application will be issued and the question as to the Judicial Committee's jurisdiction will be resolved at a later time. The issue of the application for permission does not therefore signify that the Judicial Committee accepts that it has jurisdiction to consider the appeal.

Rule 7(2): Filing by portal parties will always be via the portal. A new Practice Direction will specify how parties can file documents via the portal.

Rule 7(3): For non-portal filing, the methods of filing in rule 7 of the 2009 Rules have been limited by the omission of filing by first class post, through the document exchange, or via electronic means other than those now included in the definition of "electronic means" in Rule 3. This reflects the decline of the use of those former methods of service.



The Judicial Committee's website and the Practice Direction will make clear that a litigant who is not legally represented, who does not have access to electronic means of sending documents and is not able to deliver documents personally to the Registry or to send them using a courier service can contact the Registry by telephone. The Registry will discuss with the litigant the best method of communication. The Registry expects such occasions will be rare, bearing in mind that the litigant will already have been involved in the earlier stages of the proceedings.

The provision in existing rule 7(2) which deems filing to have taken place the day after posting will be deleted. This reflects the provision to the sender of tracking information by delivery services. This provides the sender with evidence as to when and to whom the document was delivered.

**Question 1: Do you foresee any practical difficulties with reducing the methods for filing of documents with the Registry as proposed?**

**Question 2: Do you foresee any practical difficulties with removing a deemed date of filing with the Registry for the remaining methods of filing?**

#### Rule 8 (Service)

This rule has been extensively revised from rule 6 of the 2009 Rules to accommodate the portal.

Rule 8(1): In addition to the filing of documents with the Registry, the portal will also be used for the service of documents on other portal parties. Notification that a document has been filed through the portal will be automatically emailed to all relevant parties. Paragraph (2) then specifies when portal service is deemed to have taken place for these purposes.

Rule 8(3): Non-portal service methods have been reduced in line with the non-portal filing methods. They are now limited to personal service, a next day delivery service and email if the party to be served has agreed to email. Again, a deemed date of service is no longer considered appropriate.

**Question 3: Do you foresee any practical difficulties with reducing the methods for service of documents on other parties as proposed?**

**Question 4: Do you foresee any practical difficulties with removing a deemed date of serving documents on other parties for the retained methods of service?**

#### Rule 9 (Communications with the Judicial Committee)

The portal will have two channels by which parties can communicate with the Judicial Committee. The public channel will give all the parties access to the correspondence sent by a party to the Registry and allow those parties to respond in a communication which all parties will be able to see, even if the communication was primarily aimed at the Registrar. A private channel can be used for confidential matters (some examples are listed in Rule 9(3)(a)), for purely administrative matters and for communications

which are covered by a rule or Practice Direction which specifies that they are not to be sent to the other parties.

Rule 10 (**Non compliance with these Rules**) is carried forward from rule 8 of the 2009 Rules.

Rule 11 (**Procedural decisions**) (formerly rule 9 of the 2009 Rules) has been revised to bring it into line with current practice which is that reviews of most of the Registrar's decisions on procedural matters are carried out by a single member of the Judicial Committee. However, some contested applications, for example, where an appeal is dismissed because the appellant has failed to comply with the Rules, will always be considered by a panel of at least three members of the Judicial Committee.

The wording of Rule 11(6) clarifies that the right to apply for a review of a decision of the Registrar applies to all procedural decisions taken by the Registrar under the Rules, and not only those listed in Rule 11(2). The single member of the Judicial Committee may refer the matter to a panel of members and may direct that an oral hearing is appropriate. It is expected that such hearings will occur only in exceptional circumstances.

## **PART 3**

### **Application for permission to appeal**

Part 3 of the Rules:

- Explains how an application for permission to appeal is made, filed with the Judicial Committee, issued by the Judicial Committee and served on the other parties (Rules 12, 13 and 14).
- Provides for the respondent to serve a notice objecting to the grant of permission and for other persons to make submissions as to whether permission should be granted (Rules 15 and 16).
- Explains how the application for permission will be considered by the Judicial Committee and how a decision will be made and recorded (Rules 17 and 18).

A "road map" of the course of proceedings set out in the new Rules is provided in the Annex to this Commentary.

### **Rule 12 (Making an application)**

This rule specifies how an application for permission to appeal is made via the portal or by a non-portal party. When the application is made via the portal, there is no application form to complete; the application is made by completing the relevant pages on the portal and uploading the relevant documents. The portal, read together with the new Practice Direction, will guide the litigant through the process.

Where the appellant is a non-portal party, the appropriate form can be downloaded from the Judicial Committee's website and completed in accordance with the current practice of the Registry.

### Rule 13 (**Filing and issue of application**)

Rule 13 is an expanded version of rule 11 of the 2009 Rules. It now specifies in more detail how an application must be made. The Rule accommodates the current practice that in exceptional circumstances, the Judicial Committee can consider an application for permission even if the appellant failed first to apply to the court below for permission.

Rule 13(1): This paragraph specifies the deadline for filing an application for permission to appeal.

Rule 13(2): When a party files a document via the portal, the process no longer involves a party sending a form with a number of documents attached (either physically or electronically). Instead, the party completes the relevant pages on the portal and can upload documents directly onto the portal. The aim is that each document (such as the judgment of the court below which the appellant wishes to challenge) will be uploaded into the portal once at the start of the proceedings. It will then remain available on the portal throughout those proceedings. Other portal parties, the Registry and the members of the Judicial Committee hearing the appeal will access the documents via the portal. There is no need for the portal party also to file an application form or any accompanying documents either by hard copy or by emailing them to the Registry.

Rule 13(3): Non-portal parties will need to send electronic versions of the documents required to accompany the completed application form. The Registrar expects that she will arrange for the documents sent this way to be uploaded to the portal on the non-portal party's behalf so that they can be accessed by portal parties involved in the appeal.

Rule 13(4) lists the documents that must be uploaded to the portal or provided by a non-portal party. This list reflects the current practice.

Rule 13(5): This paragraph explains how the Registrar will consider issues of jurisdiction. The Registrar will reject applications where it is clear that the Judicial Committee does not have jurisdiction and will take this step before the putative respondent is served or otherwise notified about the appeal. However, in some cases the jurisdiction question is more complicated or comes to light only once the other party responds to the application. The fact that the Registry issues the application for permission is not, therefore, confirmation that the Judicial Committee has jurisdiction over the appeal.

Rule 13(6): Given that under the new rules, the respondent will not be served with the application before it is issued, Rule 13(6) provides that the Registry may ask the respondent for submissions on the question of jurisdiction before the appeal is issued by the Registry and served on the respondent by the appellant. The Registry expects this power will only be used in exceptional cases.

### Rule 14 (**Service of application**)

The initial application for permission to appeal must be served by way of non-portal service even if the appellant and the respondent are both portal parties. The portal will enable the appellant to download an electronic copy of the application. The appellant can then print that document and serve the physical copy on, or email a copy to, the respondent together with the grounds of appeal if the respondent has agreed to accept email service.

However, the documents that were filed with the Registry (such as the judgments and orders of the courts below) when the application for permission was lodged do not need to be served on the other parties. Those accompanying documents (specified in the list in Rule 13(4)) will have been uploaded into the portal by the appellant if the appellant is a portal party or by the Registry if the appellant is a non-portal party. They will therefore be available to be consulted and downloaded by the portal parties.

In the event that both the appellant and the respondent are non-portal parties, the Registry will assist the parties by giving bespoke directions as to how the documents accompanying the application are to be served.

#### **Rule 15 (Notice of Objection by respondent)**

This Rule deals with the filing and service of a notice of objection by the respondent asking the Judicial Committee to refuse permission to appeal.

In line with the changes to the Rules, we are changing the order in which steps are taken and introducing an intermediate stage which is not included in the 2009 Rules. A notice of objection will now first be filed with the Registry, then it will be issued by the Registry and then it will be served either via the portal or by non-portal service.

#### **Rule 16 (Interventions in applications)**

This is a new Rule which allows other people to intervene in the application for permission to appeal stage, making submissions either in favour of or against the grant of permission. In the 2009 Rules, intervention was only provided for once permission to appeal had been granted (former rule 27). This new Rule brings the practice in the Judicial Committee in line with that of the Supreme Court of the United Kingdom.

#### **Rule 17 (Consideration of the application)**

This Rule is broadly carried forward from rule 15 of the 2009 Rules except that the references to consideration “on paper” are no longer appropriate. The application for permission to appeal will be considered by the Judicial Committee without an oral hearing in most cases as is the current practice.

#### **Rule 18 (Oral hearing of application)**

This Rule remains the same as rule 16 of the 2009 Rules. The Judicial Committee expects that, as currently, oral hearings for permission will be ordered only in exceptional circumstances.

## **PART 4**

## Commencement and preparation of appeal

Part 4 of the Rules:

- Provides for an appellant whose application for permission to appeal is granted by the Judicial Committee to notify the Judicial Committee and the other parties that it intends to pursue the appeal (rule 19).
- Sets out the procedure for the commencement of the appeal where the grant of permission from the Judicial Committee is not required (rule 20).
- Provides for service of an appeal on the other parties (rule 21)
- Provides for the merits of the appeal to be reviewed by the Judicial Committee where permission to appeal has not been granted by the Judicial Committee (rule 23).
- Provides for the respondents and interveners to establish the scope of their participation in the appeal (rules 22, 24 and 25).
- Sets out the steps to be taken leading up to the hearing of the appeal (rules 26 to 31).

Rule 19 (**Notice of intention to proceed**) applies where the Judicial Committee has granted permission to appeal. The rule provides for the appellant to file and serve notice of intention to proceed with the appeal. This can be served via the portal as the respondent will be aware of the appeal from the application for permission stage.

Rules 20 and 21 describe the steps which appellants must take to commence the appeal where they do not need permission from the Judicial Committee to bring their appeal. This is either because they have applied for and been granted permission by the court below or because they have a right to appeal to the Judicial Committee under the constitution of their home jurisdiction. These Rules have been carried forward from rules 17 and 18 of the 2009 Rules but adapted to reflect the changes that have been described in relation to the application for permission to appeal in Part 3. Where appellants have a right of appeal to the Judicial Committee, the local court will have granted what is usually referred to as “final leave to appeal”. This confirms that it is the view of that court that any conditions that must be met, such as a payment into court, have been satisfied. The notice of appeal is issued and served on the respondents using non-portal methods of service. This is because this process is the first step in bringing the existing of the appeal to the attention of the respondent who is unlikely to be a portal party at this early stage. The respondent will usually then become a portal party for the remainder of the appeal.

Rule 22 (**Review of merits of appeal**) incorporates into the Rules the procedure introduced in 2023 (see Practice Direction 4 paras 4.7.1 to 4.7.4). Where permission to appeal has been granted by the court below or where the appellant has a right of appeal to the Judicial Committee under the constitution of the jurisdiction from where the appeal comes, a single member of the Judicial Committee will review the appeal. If

the member considers that the appeal is not devoid of merit, that member will direct that the appeal proceeds in the same way as if permission had been granted by the Judicial Committee. If the member considers that the appeal appears to be devoid of merit, the member will invite the appellant to file submissions to show that the appeal has merit.

Those submissions will then be considered without a hearing by a panel of three members of the Judicial Committee. If the panel determine that the appeal is devoid of merit, they can dismiss the appeal summarily. If the appeal is not devoid of merit, the panel will direct that it continues though they may direct that the full hearing should be before a panel of three rather than five members of the Judicial Committee.

This procedure was introduced to ensure that respondents are not required to spend time and costs on responding to such appeals and on preparing for hearings at which submissions on the substantive issues raised in the notice of appeal are not in the event required. Respondents will be informed by the Registry when the notice of appeal is issued that a review of the merits will be conducted: see Rule 20(6).

Under the Rules, respondents are still required to acknowledge service of the notice of appeal if they would like to participate in the appeal if the appeal goes ahead. But if they are notified under rule 20(6) that a merits review is going to be carried out, they are not required or expected to take any further steps in the appeal unless or until they are notified of the decision recording the result of the review under Rule 23(6). Therefore, the time limit for the respondent to cross appeal and for the other steps in the appeal start to run only once the respondent is informed that the appeal is progressing to the next stage: see for example rule 24(2) or 26(2).

Rules 22, 24 and 25 describe the steps to be taken by the respondents to the appeal and interveners. Rule 22(3) was formerly rule 25(1) of the 2009 Rules and aims to ensure that the Judicial Committee and the other parties have early notice of the issues that the respondent wishes to raise in the appeal.

Rules 26 to 31 describe the steps that are taken in preparation for the hearing. They reflect the following changes to the Judicial Committee's practice:

**Rule 26 (Listing of the appeal)** The discussions between the Registry and the parties about the listing of the date for the hearing of the appeal now start as soon as the scope of the appeal has become clear and the number and identity of the parties is established. The first step is for the Registrar to notify the parties that the appeal is ready for listing. The parties must then provide the information needed for listing to take place.

**Rule 27 (The record)** This rule was formerly rule 20 of the 2009 Rules. The wording has been clarified to distinguish between the full record which is certified by the court below and the "reproduced record" which is the documents from that certified record which are relevant to the appeal.

Rule 27 is also different from rule 20 because the former rule required the reproduced record to be transmitted to the Registry as soon as permission to appeal had been granted.

Under these Rules therefore the certified record can be produced by the local jurisdiction and sent by email to the Registry at any time after it becomes clear that the appeal is going to proceed. It is not expected that the local jurisdiction registry will need to become a portal party for this purpose. The parties then liaise with each other to create the reproduced record.

Rules 28 (**the statement of facts and issues and reproduced record**). The statement of facts and issues must be agreed by the parties and filed by the appellant. The deadline for this has been changed. Under rule 21 of the 2009 Rules, the SFI had to be filed shortly after the reproduced record was transmitted to the Registry. The deadline for filing the SFI is now 20 weeks from the Registry notifying the parties that the appeal is ready to be listed. This ensures that the parties know the date of the hearing before they start work preparing the documents for the hearing of the hearing. The same deadline now applies to filing of the reproduced record by the appellant.

Rule 29 (**Filing and service of cases**) This rule changes the deadline for the sequential exchange of cases so that it runs counting forward from the notification of the appeal being ready to be listed rather than counting backwards from the date of the hearing as currently in rule 23 of the 2009 Rules. The revision will ensure that the written cases are available to the Registry promptly so that preparation for the hearing can take place. Rule 29(5) makes clear that interveners cannot expand the scope of the topics covered by the appeal beyond those issues raised by the main parties to the appeal. Rule 29(6) provides for possible redaction of material from the written cases which will be published on the Judicial Committee's website.

Rule 30 (**Key documents bundle**) This rule expands on the current rules 20 and 24 of the 2009 rules to reflect the current practice of the Judicial Committee. The bundles prepared for the hearing now comprise "key documents" and "main hearing bundle". The main hearing bundle is now a single electronic file including both the record of the proceedings and the authorities.

The key documents bundle is provided by the appellant to the Registry in both electronic and hard copy form but to the other parties only in electronic form. The relevant Practice Direction provides guidance about the content and format of the key documents bundle. Rule 30(3) brings forward the date for delivery of the key documents bundle to six weeks before the hearing (rather than the 14 days specified in existing rule 24 for the authorities volumes). The Judicial Committee considers that since the hard copies which now need to be produced are very limited, it is reasonable to expect this to be done in good time before the appeal is heard.

Rule 31 (**The main hearing bundle**) The main hearing bundle is prepared and supplied by the appellant to the Judicial Committee and to the other parties only in electronic form, not in hard copy. An updated version of the relevant Practice Direction will give guidance about the content and format of electronic documents. Rule 31(2) also brings

forward the date for delivery of the main hearing bundle to 21 days before the hearing rather than the current 14 days. Given that the main hearing bundle is only provided in electronic form, the Court considers it is reasonable to accelerate this date.

- The Court will publish the statement of facts and issues and the parties' written cases on its website. Rule 29(6) therefore provides for the parties to contact the Registry with any requests for redaction of material from those documents.

**Question 5: Do you foresee any practical difficulties with the proposed time limits for these steps in preparation for the hearing including the filing and serving of the key documents bundle and main hearing bundle?**

### **Parts 5 (Hearing and decision of Judicial Committee) and 6 (Miscellaneous)**

Part 5 of the Rules deals with the hearing of the appeal in open court: (Rule 32); the delivery of the judgment (Rule 33); and the making of orders (Rule 34). These have been carried forward from rules 28, 29 and 30 of the 2009 Rules.

Part 6 of the Rules:

- Explains how a procedural application is made by a party to the appeal (rule 35).
- Provides for a party to request that the appeal be expedited (rule 36).
- Provides for the Registrar to group appeals raising similar issues so that they can be heard at the same time or consecutively before the same panel (rule 38).
- Explains what happens when the status of a party changes, or when the parties agree a compromise of the appeal or when the appellant wishes to withdraw the application for permission or the appeal itself (rules 37 and 39).
- Provides for the Judicial Committee to request or to appoint an advocate to the Court or a specially qualified assessor or advisor (rule 40).
- Provides for a party to obtain help with fees (rule 42).
- Provides for applications by a party relating to security for costs, a request for a stay of execution of the order made by the court below, a conservatory order or an application to change agents acting for that party (rules 41, 43 and 44).
- Explains how the Court will deal with documents sent to it by the parties (rule 45).
- Explains the fees to be taken for proceedings, as set out in the Appendix to the Rules (rule 47).

These Rules largely bring forward the rules 31 to 42 of the 2009 Rules with little major revision. The Appendix to the Rules will set the fees to be paid as currently. It is not expected that the fees will change from those set out in the Appendix to the 2009 Rules, although the Judicial Committee will consult on changes to fees in due course.

Rule 32 of the 2009 Rules (**Amendment of documents**) is now found in Rule 35(5).



## Rule 42 (**Publication and disposal of documents**)

It is now very rare that the Registry will be provided with original documents. Where a litigant provides hard copy versions of original or copy documents, the Registry will return them after copying. Physical documents will no longer be kept as part of the Court's records nor provided to the National Archives at Kew. Electronic versions of some documents will be made available to the public on the Court's website and will be stored at the National Archives.

## **Part 7**

### **Costs**

Part 7 of the Rules provides for the Judicial Committee to determine applications for costs of proceedings (rules 47 to 55). These rules are brought forward from rules 43 to 52 of the 2009 Rules with only minor consequential revision to bring them into line with current practice.

## **Parts 8, 9, 10 and 11**

### **Special jurisdictions**

Parts 8, 9, 10 and 11 provide for special jurisdictions conferred by statute on the Judicial Committee in relation to:

- Appeals under the Veterinary Surgeons Act 1966 (rule 56).
- Appeals from the Sultanate of Brunei (rule 57).
- Appeals against draft Pastoral Schemes proposed by the Church Commissioners (rule 58).
- References to the Judicial Committee by His Majesty the King under section 4 of the Judicial Committee Act 1833 (rules 59 to 62).

These provisions are brought forward from Parts 7, 8, 9 and 10 of the 2009 Rules without substantial amendment.

## **Part 12**

### **Transitional provisions**

Rule 63 (**transitional arrangements**) provides that the new Rules apply to appeals commenced after the new Rules come into effect.

**Question 6: Do you foresee any practical issues in complying with the transitional provisions in Rule 63?**

**Question 7: Do you wish to add any other comments?**

## **Road map of proceedings under the proposed new Rules**

The procedure set out by the Rules is as follows.

Appellants who need permission from the Judicial Committee to bring an appeal:

- Appellant must apply for permission by filing an application with the Registry, either via the portal or using the appropriate form and filing by a non-portal method (rule 13(1) read in conjunction with rule 7 and rule 12).
- The application must be made within 56 days of the date of the order of the court below or of the date of refusal by that court of permission to appeal if later (rule 13(1)).
- Appellants must upload the accompanying documents (including the certificate of value) to the portal or file them along with the application if non-portal filing is used (rule 13(2), (3) and (4)).
- The Registrar will then consider whether the application should be issued. If not, the application will be dismissed (rule 13(5)).
- If the application is not dismissed at that stage, the Registrar will issue the application and direct the appellant to serve it (rule 13(7)).
- The application is then served on the respondent always using a non-portal method of service (rule 14 read together with rule 8).
- The respondent may then object to the grant of permission and others may intervene either to support or oppose the grant of permission (rules 15 and 16).
- The application is then considered by the Judicial Committee either with or (more usually) without an oral hearing (rules 17 and 18).
- If permission is granted, the application stands as the notice of appeal and the appellant must file and serve a notice of intention to proceed with the appeal (rule 19).
- A respondent who wishes to participate in the appeal must file and serve notice of that intention within 21 days of being served with the appellant's notice of intention to proceed with the appeal (rule 22).

Appellants who have been granted permission to appeal by the court below or who have an appeal to the Judicial Committee as of right.

- Appellant must file a notice of appeal within 56 days of the order of the court below granting permission to appeal or granting final leave to appeal where there is an appeal as of right (rule 20(2) read in conjunction with rule 7).
- The appellant must at the same time upload the relevant documents (including the certificate of value) to the portal or file those documents using non-portal methods of filing (rule 20(4) and (5)).

- The Judicial Committee will then issue the notice of appeal and direct the appellant to serve it on the respondent (rule 20(6)).
- The appellant will then serve the notice of appeal always using non-portal methods of service (rule 21 read together with rule 8).
- A respondent who wishes to participate in the appeal must file and serve notice of that intention within 21 days of being served with the notice of appeal (rule 22).
- The appeal will be reviewed to determine whether it is devoid of merit. The appeal will either be dismissed at that point or the Judicial Committee will direct that it should proceed in the same way as an appeal for which the Judicial Committee has granted permission (rule 23(1) – (5)).
- The decision on the merits review will be notified to the respondent by the Registrar (rule 23(6)).
- All appellants who are granted permission to appeal by the Judicial Committee or whose appeal is not dismissed following the review on the merits:
  - A respondent who wishes to cross appeal must apply for permission to cross appeal from the Judicial Committee (rule 24).
  - An intervener who wishes to intervene in the appeal may apply for permission to intervene (rule 25).
  - Once it becomes clear that the appeal will proceed, the appellant must arrange for the record of the proceedings below to be certified by the local court and for that court to send the certified record to the Judicial Committee Registry. The appellant must also extract from the certified record the documents which form the reproduced record for use in the appeal but need not file the reproduced record at this stage (rule 27).
  - The Registry will notify the parties that the appeal is ready to list and will specify a window of dates within which the appeal will be heard (rule 26(1)).
  - The parties must then provide agreed dates of availability within that window together with other information to enable the appeal to be listed (rule 26(3)).
  - The Registrar will then notify the parties of the hearing date.
  - Within 20 weeks of the Registrar notifying the parties that the appeal is ready for listing, the parties must produce an agreed statement of facts and issues which the appellant must file with the Registry. The appellant also files the reproduced record by the same deadline (rule 28).
  - Within 23 weeks of the Registrar notifying the parties that the appeal is ready for listing, the appellant must file and serve its written case (rule 29(1)).
  - The respondents and interveners then have three weeks to serve their written cases (rule 29(2)).
  - The parties then prepare the key documents bundle in electronic and hard copy format and, not later than 7 weeks before the hearing, must:

- send hard copies of the key documents bundle to the Registry, and
  - upload the key documents bundle to the portal (rule 30).
- The parties then prepare the main hearing bundle (including the reproduced record) in electronic format only and upload that to the portal not later than 3 weeks before the hearing.

# Questionnaire

We would welcome responses to any of the following questions set out in this consultation paper.

1. **Do you foresee any practical difficulties with reducing the methods for filing of documents with the Registry as proposed?**
2. **Do you foresee any practical difficulties with removing a deemed date of filing with the Registry for the remaining methods of filing?**
3. **Do you foresee any practical difficulties with reducing the methods for service of documents on other parties as proposed?**
4. **Do you foresee any practical difficulties with removing a deemed date of serving documents on other parties for the retained methods of service?**
5. **Do you foresee any practical difficulties with the proposed time limits for these steps in preparation for the hearing including the filing and serving of the key documents bundle and main hearing bundle?**
6. **Question 7: Do you foresee any practical issues in complying with the transitional provisions in Rule 63?**
7. **Question 8: Do you wish to add any other comments?**

Should you choose to respond to the consultation please include the following information.

<b>Full name</b>
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)
<b>Company name/organisation</b> (if applicable):
<b>If you are a representative of a group</b> , please tell us the name of the group and give a summary of the people or organisations that you represent

**The number of the question(s) you are responding to.**

# Complaints or comments

If you have any complaints or comments about the consultation process you should contact the JCPC by emailing [jcpcrulesconsultation@jcpc.uk](mailto:jcpcrulesconsultation@jcpc.uk) or by writing to Registrar, JCPC rules consultation, The Judicial Committee of the Privy Council, Parliament Square, London, SW1P 3BD.

# Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available at <https://www.jcpc.uk/>

Alternative format versions of this publication can be requested from [jpcrulesconsultation@jcpc.uk](mailto:jpcrulesconsultation@jcpc.uk)



# Publication of response

A paper summarising the responses to this consultation will be published by mid-August. The response paper will be available on-line at <https://www.jcpc.uk/>

# Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the JCPC.

The JCPC will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

**Thank you for participating in this consultation exercise.**