

Judicial Committee (Appellate Jurisdiction) Rules 2009 - As Amended

Part 1 - Scope and interpretation and objective

Scope

(1) The rules in Parts 1 to 6 of this Schedule 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 7 and 8 of this Schedule provide the procedure for appeals under two separate enactments:

(a) the rule in Part 7 of this Schedule applies to appeals to the Judicial Committee under section 17 of the Veterinary Surgeons Act 1966;

(b) the rule in Part 8 of this Schedule applies to appeals to the Judicial Committee under section 1 of the Brunei (Appeals) Act 1989.

(3) The rule in Part 9 of this Schedule applies to appeals against draft Pastoral Schemes and the rules in Part 10 of this Schedule 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 Her 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

2. - (1) In the Rules in this Schedule (“these 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(a), in England and Wales;

“certificate of service” means a certificate given under rule 6;

“certificate of value” means a certificate given under rule 7(6);

“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;

(a) 1971 c. 80.

“electronic means” means CD ROMs, memory sticks, email, fax or other means of electronic communication of the contents of documents;

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

”financially assisted person” means an appellant in relation to whom a certificate under rule 38 has effect;

“form” and the “appropriate form” have the meanings given by rule 4;

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

“party” includes an applicant for permission to appeal and an intervener under rule 27;

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

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

“requisite number of copies” means the number of copies which are to be provided under the relevant practice direction or as directed by the Court;

“respondent” means—

- (a) person other than the appellant who was a party to the proceedings in the court below and who is affected by the appeal; and
- (b) a person who is permitted by the Judicial Committee to be a party to the appeal;

“service” and related expressions have the meanings given by rule 6.

(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 17 or rule 25) 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) 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.

Practice Directions

3. 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 counsel, agents and the parties.

Forms

4. - (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

5- (1) The Registrar may extend or shorten any time limit set by these Rules or any relevant practice direction (unless to do so would be contrary to any statutory provision).

(2) The Registrar may exercise these powers either on an application by one or more parties or of his own initiative.

(3) The Registrar will notify the parties when a time limit is varied under this rule.

(4) An application for an extension may be granted after the time limit has expired.

(5) Where the appellant has—

- (a) applied for assistance from public funds in the appellant's jurisdiction; and
- (b) informed the Registrar of that application,

the time limits in rules 11 and 18 shall be extended until 28 days after the final determination of the application for assistance from public funds.

(6) 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.

Service

6. - (1) A document may be served by any of the following methods—

- (a) personal service;
- (b) first class post (or an alternative service which provides for delivery on the next working day);
- (c) (with the consent of the party to be served) through a document exchange;
- (d) (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.

(2) Where the address of the person on whom a document is to be served is unknown, the Registrar may direct that service is effected by an alternative method of service.

(3) A document served by first-class post or through a document exchange will be taken

to have been served on the second day after it was posted or left at the document exchange, as the case may be (not including days which are not business days).

(4) A certificate of service must give details of the persons served, the method of service used and must state the date on which the document was served personally, posted, delivered to the document exchange or sent electronically, as the case may be.

Filing

7. - (1) A document may be filed by any of the following methods—

- (a) personal delivery;
- (b) first class post (or an alternative service which provides for delivery on the next working day);
- (c) through a document exchange;
- (d) (with the consent of the Registrar) by electronic means in accordance with the relevant practice direction.

(2) A document filed by first-class post or through a document exchange will be taken to have been filed on the second day after it was posted or left at the document exchange, as the case may be (not including days which are not business days).

(3) Except with the consent of the Registrar, the contents of documents

- (a) filed in hard copy must also be provided to the Registry by electronic means, and
- (b) filed by electronic means must also be provided to the Registry in hard copy,

in accordance with the relevant practice direction.

(4) A court officer must seal the following documents when they are filed—

- (a) an application for permission to appeal,
- (b) a notice of objection or acknowledgement by the respondent,
- (c) a notice of appeal,
- (d) an application form

and may place the seal on the document by hand or by printing a facsimile of the seal on the document whether electronically or otherwise.

(5) A document purporting to bear the Judicial Committee's seal shall be admissible in evidence without further proof.

(6) An appellant must file with an application for permission to appeal or a notice of appeal a certificate of value in accordance with paragraph (7).

(7) In a certificate of value, the appellant must state –

- (a) the sum of money or the amount of damages he is claiming;
- (b) the sum of money or the amount of damages he has been awarded;
- (c) the value of the land or property which is the subject of the appeal or
- (d) the monetary value of the relief he 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.

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

Non-compliance with these Rules

8. - (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.

Procedural decisions

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

(2) Any procedural question arising at any other time will be considered by the Registrar who may either determine the question or refer it to the Judicial Committee for determination.

(3) The Registrar will normally consider the question on paper but may direct an oral hearing and the Registrar will normally direct an oral hearing when assessing costs.

(4) A party may apply (in the appropriate form to be filed within 14 days) for a decision of the Registrar to be reviewed by the Judicial Committee.

(5) Any question referred to the Judicial Committee will normally be considered on paper but the Judicial Committee may direct an oral hearing.

(6) Any allegation of contempt of court will be considered and determined at an oral hearing before the Judicial Committee.

Part 2 - Application for permission to appeal

Permission to appeal

10. - In cases where permission to appeal is required, 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.

Filing of application for permission to appeal

11. - (1) Every application to the Judicial Committee for permission to appeal shall be made in the appropriate form.

(2) 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).

(3) The Registrar may refuse to accept an application that contains no reasonable ground of appeal or is an abuse of process.

Service of application

12. - Before the application is filed, a copy must be served on every respondent and, when the application is filed, the appellant must file a certificate of service.

Notice of objection by respondent

13. - (1) Each respondent who wishes to object to the application must, within **28** days after service, file notice of objection in the appropriate form together with a certificate of service.

(2) Before the notice is filed, a copy must be served on the appellant and any other respondent.

(3) 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.

Documents in support of application

14. - (1) The requisite number of copies of the application must be filed together with a copy of the order appealed from and (if separate) a copy of any order refusing permission to appeal. If the order appealed from is not immediately available the application should be filed without delay and the order filed as soon as it is available.

(2) The appellant must file the further documents required for the use of the Judicial Committee within 21 days after filing the application.

Consideration of application for permission to appeal on paper

15 - (1) Every admissible application for permission to appeal (and any respondent's notice of objection) shall be considered on paper 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 on paper 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 by the Registrar to record any decision made under this rule.

Oral hearing of application for permission to appeal

16. - (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 13.

(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 by the Registrar to record any decision made under this rule.

Part 3 – Commencement and preparation of appeal

Form and filing of notice where permission granted by Judicial Committee

17. – (1) Where the Judicial Committee grants permission to appeal, rule 18 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 on 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) When notice is filed under rule 17(1)(c), the application for permission to appeal will re-sealed and the appellant must then

(a) serve a copy on each respondent; and

(b) file the requisite number of copies.

(c) In any other case an appellant must file a notice of appeal under rule 18.

Form and filing of notice where permission not required

18. – (1) Every notice of appeal shall be made in the appropriate form.

(2) The notice of appeal together with the requisite number of copies 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.

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

(4) The appellant must—

(a) serve a copy of the notice of appeal on each respondent before it is filed; and

(b) at the same time as the notice of appeal is filed, file a certificate of service.

(5) The appellant must also file a copy of the order appealed from and (if separate) a copy of the order granting permission to appeal. If the order appealed from is not immediately available, the notice of appeal should be filed without delay and the order filed as soon as it is available.

Acknowledgement by respondent

19. - (1) Each respondent who intends to participate in the appeal must, within 21 days after service under rule 17(2)(a) or rule 18(4)(a), give notice in the appropriate form to the Registrar and file a certificate of service.

(2) Before the notice is filed, a copy must be served on the appellant and any other respondent.

(3) 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.

The record

20. - (1) As soon as permission to appeal has been granted or a notice of appeal has been filed, the appellant must without delay arrange for the record to be certified by the

proper officer of the court below and transmitted to the Registrar.

(2) The form and contents of the reproduced record must comply with the relevant practice direction.

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

(4) In this rule, “the 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

21. - (1) Within 42 days after **the receipt by the Registrar of the record** the appellant must prepare and file a statement of the relevant facts and issues.

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

(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.

Hearing date

22. - (1) Within 14 days after the filing of the statement of facts and issues, and in order to enable the Registrar to fix the date for the hearing of the appeal, the parties must in compliance with the relevant practice direction notify the Registrar that the appeal is ready to list, specify the number of hours that their respective counsel estimate to be necessary for their oral submissions and file the other required listing particulars.

(2) The Registrar will inform the parties of the date fixed for the hearing.

Filing of case

23. – (1) At least 5 weeks before the hearing date the appellant must file a written case and serve it on the respondent.

(2) At least 3 weeks before the hearing date the respondent must file a written case and serve it on the other parties.

(3) The form and contents of a case and the number of copies to be filed and served must comply with the relevant practice direction.

Authorities

24. – At least 14 days before the hearing date each party must file (if possible in a single agreed volume or series of volumes) the requisite number of copies of any authorities to be cited at the hearing.

Cross-appeals

25. - (1) 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 respondent's written case (but need not cross-appeal).

(2) 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.

(3) Part 2 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 42 days of the grant by the Judicial Committee of permission to appeal or of the filing of the notice of appeal;

(b) there will be only one record and statement of facts and issues and a single case on each side;

(c) the appellant is primarily responsible for the preparation of all the papers for the appeal and for notifying the Registrar under rule 22(1).

Multiple respondents

26. - 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.

Intervention

27. - (1) After permission to appeal has been granted by the Judicial Committee or a notice of appeal has been filed, a person claiming to have an interest in an appeal may apply in the appropriate form for permission to intervene in the appeal.

(2) The Judicial Committee will consider the application on paper 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.

Oral submissions may be limited to a specified duration.

Part 4 - Hearing and decision of Judicial Committee

Hearing in open court

28. - (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.

(3) Hearings shall be conducted in accordance with

- (a) the relevant practice direction, and
- (b) any directions given by the Judicial Committee

and directions given by the Committee may limit oral submissions to a specified duration.

Judgment

29. - A judgment may be –

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

Form and effect of Order

30. - (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 5 - Miscellaneous

Incidental applications

31 - (1) A copy of any incidental application must be served on every other party before it is filed and, when the application is filed, the applicant must file a certificate of service.

(2) An application must be made in the appropriate form and 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, file notice of objection in the appropriate form and must (before filing) serve a copy 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.

Amendment of documents

32. - 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.

Withdrawal etc of application or appeal

33 - (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

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

Change of interest

35 - 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

36 - (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

37 - (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.

Financially assisted persons

38 - (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 to be treated as a financially assisted person by the Judicial Committee.

(2) The Registrar will certify, if the application is approved, that the appellant is to be treated as a financially assisted person.

(3) Where a certificate under paragraph (2) has effect in relation to an appellant, the appellant will be 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; and 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.

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

Stay of execution or conservatory order

39 - (1) Any appellant who wishes to obtain a stay of execution of the order appealed from or some conservatory order pending an appeal must seek it from the court below in the first instance.

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

Change of agent

40 - (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.

Disposal of documents

41. - (1) All documents filed become the property of the Judicial Committee.

(2) Original documents will be retained in the records of the Registry.

(3) Other documents shall be destroyed unless the Registrar (on a written application made within 21 days of the end of the proceedings) directs otherwise.

Fees to be taken

42. - (1) **Unless and except in so far as the fees are remitted or reduced because of the party's status as a financially assisted person, 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 7(6).**

(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 6 - Costs

Order for costs

43. - (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

44. - (1) If a party wishes to defer making submissions as to costs until after judgment, the Judicial Committee must be informed of this not later than at the close of the oral argument. If the Judicial Committee accedes to the request it will give such directions as appear appropriate and it may, in particular, give directions—

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

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

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

Claim for costs

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

(2) The form and contents of a 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 a copy of a 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 if so must serve a copy 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 if so must serve a copy on the paying party.

46. Assessment of Costs

(1) The Registrar **or a Costs Judge** will assess costs in accordance with these Rules.

(2) The Registrar will give the receiving party and the paying party written notice 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 Registrar may make a provisional assessment of costs without the attendance of the parties.

(4) The Registrar must inform the parties in writing 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 Registrar shall 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 Registrar's decision on the assessment.

Basis of assessment

47. - (1) Subject to rule 49, 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 48.

(2) Where—

(a) an order is made without indicating the basis on which the costs are to be assessed; or

(b) an order is made for costs to be assessed on a basis other than the standard basis or the indemnity basis,

(c) the costs will 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

48 - (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.

49.

Amount of assessed costs to be specified

50. - The amount of any assessed costs will be inserted in the order made under rule 30 but, if that order is drawn up before the assessment has been completed, the amount assessed will be certified by the Registrar.

Appeal from Assessment

51. - A party who is dissatisfied with an assessment of costs may appeal to the Judicial Committee by filing an incidental application within 14 days in accordance with rule 31.

Payment out of security for costs

52. - 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 7 - Appeals under section 17 of the Veterinary Surgeons Act 1966

Appeals under section 17 of the Veterinary Surgeons Act 1966

53. - The rules in Parts 1 to 6 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 and in relation to any such appeal –

- (a) Part 2 (Application for permission to appeal) shall not apply;
- (b) the Council of the Royal College of Veterinary Surgeons (“the Council”) shall be the respondent to the appeal;
- (c) 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;
- (d) the appellant must arrange for the record to be prepared and certified by the Council.

Part 8 - Appeals under section 1 of the Brunei (Appeals) Act 1989

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

54. - The rules in Parts 1 to 6 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 and in relation to any such appeal –

- (a) references to orders and decisions in rules 15(5), 16(3) and 30(1) shall be construed as references to recommendations to His Majesty the Sultan and Yang Di-Pertuan;
- (b) for Rule 50 there shall be substituted the following –

“50.

The amount of any assessed costs will be inserted in the recommendation made under rule 30 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 9 - Appeals against draft Pastoral Schemes

Appeals against draft Pastoral Schemes

55. - The provisions of Parts 1 to 6 of these Rules (except rule 7(6)), 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 (b).

Part 10 - References to the Judicial Committee

(b) The Mission and Pastoral Measure 2011 (2011 No 3) provides for appeals to be made to the Judicial Committee against draft pastoral schemes made by the Church Commissioners.

References under section 4 of the Judicial Committee Act 1833

56. - Subject to the provisions of this Part, where a reference is made to the Judicial Committee, the provisions of Parts 1 to 6 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.

57. - 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.

58.— (1) At least 8 weeks before the hearing, the applicant must file 12 copies of an appendix of the essential documents which are necessary for consideration of the matter referred.

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

(3) The applicant and every respondent must then sequentially exchange their respective written cases and file 12 copies of them.

59. - 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.

Appendix

Rule 42: Fees to be taken

Column 1	Column 2		
Number and description of fee	Amount of fee		
	Appeal value up to £100,000	Appeal value £100,000 – £500,000	Appeal value over £500,000
1 On filing an application for permission to appeal—	£150	£500	£1000
On filing notice under rule 17(1)—	£100	£800	£1600
On filing a notice of appeal—	£100	£800	£1600
2 On filing a notice of objection by a Respondent	£160	£160	£160
On filing an acknowledgement by a Respondent	£160	£160	£160
3 On filing an incidental application	£100		
On filing a notice of objection to an incidental application	£70		
On filing an application to appeal the Registrar's decision	£100		
4 On filing a case	£400	£2500	£5000
5 On request for a copy of a document			
(a) for ten pages or less	£5		
(b) for each subsequent page	50p		
6 On filing a request for an assessment of costs	2.5% of the sum claimed + 2.5% of sum allowed		
7 On an appeal against a decision made on an assessment of costs	£150		
8 Certified documents	£20		

The Judicial Committee of the Privy Council

Practice Direction 1

Section 1: The Judicial Committee

General Notes

1.1 The Judicial Committee of the Privy Council is the court of final appeal for the UK overseas territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee. The Judicial Committee deals with about 55-65 Commonwealth appeals a year.

1.2 It also has other domestic jurisdiction within the United Kingdom. For further details see paragraph 2.6 below.

1.3 The membership of the Judicial Committee is generally made up as follows:

- The Justices of the UK Supreme Court (the former Lords of Appeal in Ordinary¹) who do most of the judicial work of the Privy Council;
- Other Privy Counsellors (including former Justices of the UK Supreme Court) who have held high judicial office.

Five judges normally sit to hear Commonwealth appeals and three for other matters.

Section 2 The Jurisdiction of the Judicial Committee

I. Commonwealth Jurisdiction

A. Appeals to Her Majesty in Council

2.1 An appeal lies from the countries listed at paragraph 2.2 of which The Queen is head of State and from UK overseas territories and Crown Dependencies as follows.

- 1) By leave of the local Court of Appeal. The circumstances in which leave can be granted will depend on the law of the country or territory concerned. Leave can usually be obtained as of right from final judgments in civil disputes where the value of the dispute is more than a stated amount and in cases which involve issues of constitutional interpretation. Most Courts of Appeal also have discretion to grant leave in other civil cases.

¹ Amended April 2013

² Amended April 2013

- 2) By leave of Her Majesty in Council. The Judicial Committee has complete discretion whether to grant leave. It is mostly granted in criminal cases (where leave cannot usually be granted by the Court of Appeal) but it is sometimes granted in civil cases where the local Court of Appeal has for any reason refused leave.

2.2 The countries referred to in paragraph 2.1 -

- Antigua and Barbuda
- ³The Bahamas
- Cook Islands and Niue * (Associated States of New Zealand)
- Grenada
- Jamaica
- St. Christopher and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Tuvalu

* **Note.** Legislation enacted in New Zealand in October 2003 abolished appeals from New Zealand to the Privy Council in respect of all cases heard by the Court of Appeal of New Zealand after the end of 2003. The New Zealand legislation does not affect rights of appeal from the Cook Islands and Niue.

The Sovereign Base Areas of Akrotiri and Dhekelia (in Cyprus)

The United Kingdom Overseas Territories, which include -

- Anguilla
- Ascension⁴
- Bermuda
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat

³ Amended April 2013

⁴ Amended April 2015

- Pitcairn Islands
- St. Helena
- Tristan da Cunha⁵
- Turks and Caicos Islands

The Crown Dependencies of Jersey, Guernsey and the Isle of Man

B. Appeal to Local Head of State

2.3 *Brunei* An appeal lies from the Court of Appeal of Brunei to the Sultan and Yang di-Pertuan, in civil cases only. By agreement between Her Majesty and the Sultan these appeals are heard by the Judicial Committee who report their opinion to the Sultan instead of to Her Majesty.

C. Appeals to the Judicial Committee

2.4 From the following independent republics within the Commonwealth an appeal lies to the Judicial Committee itself.

1. The Republic of Trinidad and Tobago
2. The Commonwealth of Dominica⁶
3. Kiribati
4. Mauritius

2.5 The circumstances in which appeals may be brought are similar to those in which appeals lie to Her Majesty in Council (see A above), except that from Kiribati an appeal lies only in cases where it is alleged that certain constitutional rights of any Banaban or of the Rabi Council have been or are likely to be infringed.

II. Domestic Jurisdiction

2.6 The Board hears appeals to Her Majesty in Council:

- a. from the Disciplinary Committee of the Royal College of Veterinary Surgeons;
- b. against certain Schemes of the Church Commissioners under the Mission and Pastoral Measure 2011⁷.

2.7 The Board also has the following rarely used jurisdictions:

- 1) Appeals from the Arches Court of Canterbury and the Chancery Court of York in non-doctrinal faculty causes.

⁵ Amended April 2015

⁶ With effect from 6 March 2015 appeals from Dominica will lie to the Caribbean Court of Justice

⁷ Amended April 2013

- 2) Appeals from Prize Courts.
- 3) Disputes under the House of Commons Disqualification Act 1975.
- 4) Appeals from the Court of Admiralty of the Cinque Ports.
- 5) Appeals from the Court of Chivalry⁸

2.8 Her Majesty has the power to refer any matter to the Board for "consideration and report" under section 4 of the Judicial Committee Act 1833.

III. United Kingdom Legislation

The following is a list of the principal items of legislation made in the United Kingdom (statutes and Orders in Council) relating to the Judicial Committee and its proceedings. Appeals from outside the United Kingdom are in many cases also governed by laws made in the countries and territories concerned.

1. General Legislation

- Judicial Committee Act 1833
- Judicial Committee Act 1843
- Judicial Committee Act 1844
- Court of Chancery Act 1851, section 16
- Privy Council Registrar Act 1853
- Appellate Jurisdiction Act 1876, sections 6 and 25
- Judicial Committee Act 1881
- Appellate Jurisdiction Act 1887, sections 3 and 5
- Judicial Committee Amendment Act 1895
- Appellate Jurisdiction Act 1908
- Judicial Committee Act 1915
- References of appeals to Judicial Committee Order in Council 1909
- (S.R. & O. 1909 No. 1228)
- Judicial Committee (Appellate Jurisdiction) Rules Order 2009, (S.I. 2009/224)
- Judicial Committee (Appellate Jurisdiction) Rules (Amendment) Order 2013 (SI 2013/246)⁹

⁸ Amended April 2015

⁹ Amended April 2014

2. Legislation governing particular proceedings

a. Appeals from outside the United Kingdom

Note: Those Orders which are wholly or partially revoked and replaced by the Judicial Committee (Appellate Jurisdiction) Rules 2009 are marked with an asterisk.

(i) Appeals from Independent Commonwealth countries to Her Majesty in Council.

Antigua and Barbuda

Antigua and Barbuda Constitution Order 1981 (S.I.1981 No.1106), Schedule 1, section 122.

Antigua and Barbuda Appeals to Privy Council Order (S.I. 1967 No. 224, as modified and retitled by the Antigua and Barbuda Modification of Enactments Order 1981, S.I. 1981 No. 1105).

Bahamas, Commonwealth of the

Bahamas Independence Order 1973 (S.I. 1973 No.1080), Schedule, Articles 104(2) and 105.

*Bahamas (Procedure in Appeals to Privy Council) Order 1964 (S.I. 1964 No. 2042), (as amended by the *Bahamas (Procedure in Appeals to Privy Council) (Amendment) Order 1973, S.I. 1973 No.1081).

Belize

The Belize Independence Order 1981 (S.I. 1981 No. 1107), Schedule 1, section 104.

Jamaica

Jamaica (Constitution) Order 1962 (S.I. 1962 No. 1550), Schedule 2, section 110.

*Jamaica (Procedure in Appeals to Privy Council) Order 1962 (S.I. 1962 No. 1650).

St. Christopher and Nevis

St. Christopher and Nevis Constitution Order 1983 (S.I. 1983 No. 881), Schedule 1, section 99.

*St. Christopher and Nevis Appeals to Privy Council Order (S.I. 1967 No. 224, as modified and retitled by the St. Christopher and Nevis Modification of Enactments Order 1983, S.I. 1983 No. 882).

St. Lucia

St. Lucia Constitution Order 1978 (S.I. 1978 No. 1901), Schedule 1, section 108.

*St. Lucia Appeals to Privy Council Order (S.I. 1967 No. 224, as modified and retitled by the St. Lucia Modification of Enactments Order 1978, S.I. 1978 No. 1899).

St. Vincent and the Grenadines

The St. Vincent Constitution Order 1979 (S.I. 1979 No. 916), Schedule 1, section 99.

*St. Vincent Appeals to Privy Council Order (S.I. 1967 No. 224, as modified and retitled by the St. Vincent Modification of Enactments Order 1979, S.I. 1979 No. 917).

Tuvalu

The Tuvalu Independence Order 1978, Schedule, section 84.

*The Tuvalu (Appeals to Privy Council) Order 1975 (S.I. 1975 No.1507).

(ii) Appeals from Commonwealth Republics to the Judicial Committee.

Dominica

Commonwealth of Dominica Constitution Order 1978 (S.I. 1978 No. 1027), Schedule 1, section 106 and Schedule 2, paragraphs 9 and 10.

*Dominica Appeals to Judicial Committee Order (S.I. 1967 No. 224, as amended and retitled by the Dominica Modification of Enactments Order 1978 (S.I. 1978 No. 1030), Schedule, paragraph 10).

Kiribati

Kiribati Independence Order 1979 (S.I. 1979 No. 719), Schedule, section 123.

*Kiribati Appeals to Judicial Committee Order 1979 (S.I. 1979 No. 720).

Mauritius

Mauritius Independence Order 1968, Schedule, section 81.

Mauritius (Appeals to Privy Council) Order 1968 (S.I. 1968 No. 294).

Mauritius Appeals to Judicial Committee Order 1992 (S.I. 1992 No. 1716).

Trinidad and Tobago

*Trinidad and Tobago Appeals to Judicial Committee Order 1976 (S.I. 1976 No. 1915).

(iii) Appeals from the Supreme Court of Brunei Darussalam to His Majesty the Sultan and Yang Di-Pertuan.

These appeals are referred to the Judicial Committee by virtue of an agreement made between Her Majesty The Queen and His Majesty The Sultan.

Brunei (Appeals) Act 1989 (1989 c.36).

*Brunei (Appeals) Order 1989 (S.I. 1989 No. 2396, as amended by Brunei (Appeals) (Amendment) Order 1998, S.I. 1998 No. 255).

(iv) Appeals from United Kingdom Overseas Territories.

Anguilla

Anguilla Constitution Order 1982 (S.I. 1982 No. 334), Schedule, section 72.

*Anguilla (Appeals to Privy Council) Order 1983 (S.I. 1983 No.1109).

Bermuda

There is no United Kingdom legislation specifically governing appeals from Bermuda.

British Antarctic Territory

*British Antarctic Territory Court of Appeal (Appeal to Privy Council) Order 1965 (S.I. 1965 No. 592).

British Indian Ocean Territory

*British Indian Ocean Territory (Appeals to Privy Council) Order 1983 (S.I. 1983 No. 1888).

British Virgin Islands

*Virgin Islands (Appeals to Privy Council Order) 1967 (S.I. 1967 No. 234, as amended by the Anguilla, Montserrat, and Virgin Islands (Supreme Court) Order 1983 (S.I. 1983 No. 1108), Article 3).

Cayman Islands

*Cayman Islands (Appeals to Privy Council) Order 1984 (S.I. 1984 No. 1151).

Falkland Islands

*Falkland Islands (Appeals to Privy Council) Order 1985 (S.I. 1985 No. 445).

Gibraltar

Gibraltar Constitution Order 2006, Chapter VI, Section 66.

*Gibraltar (Appeals to Privy Council) Order 1985 (S.I. 1985 No. 1199).

Montserrat

*Montserrat (Appeals to Privy Council) Order 1967 (S.I. 1967 No. 233), as amended by Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983 (S.I. 1983 No. 1108), Article 3.

Pitcairn

Pitcairn Order 1970 (S.I. 1970 No.1434) as amended by S.I. 2000 No. 1340 and S.I. 2002 No. 2638.

St. Helena

*St. Helena Court of Appeal (Appeal to Privy Council) Order 1964 (S.I. 1964 No. 1846), as amended by St. Helena Court of Appeal (Appeal to Privy Council) (Amendment) Order 1990 (S.I. 1990 No. 991).

South Georgia and South Sandwich Islands

*The South Georgia and South Sandwich Islands (Appeals to Privy Council) Order 1985 (S.I.1985 No. 450).

Turks and Caicos Islands

*Turks and Caicos Islands (Appeal to Privy Council) Order 1965 (S.I. 1965 No. 1863), as amended by the *Turks and Caicos Islands (Appeal to Privy Council) (Amendment) Order 1973 (S.I. 1973 No. 1084).

The Sovereign Base Areas of Akrotiri and Dhekelia (Cyprus)

*The Sovereign Base Areas of Akrotiri and Dhekelia (Appeals to Privy Council) Order in Council 1961 (S.I. 1961 No. 59).

(v) Appeals from the Channel Islands and the Isle of Man.

Channel Islands

Order in Council of 19th May 1671 relating to appeals to His Majesty in Council from Jersey (S.R. & O. Rev 1948 XI p 341); Court of Appeal (Jersey) Law 1961, art.14.

Order in Council regulating Appeals to His Majesty in Council from Guernsey (13th May 1823) (S.R. & O. Rev 1948 XI p 344).

Order in Council regulating Appeals to His Majesty in Council from Jersey and Guernsey, 15th July 1835 (S.R. & O. Rev 1948 XI p 347).

Isle of Man

There is no United Kingdom legislation specifically governing appeals from the Isle of Man.

(b) United Kingdom Appeals

(i) Appeals from the Council of the Royal College of Veterinary Surgeons.

Veterinary Surgeons Act 1966, section 17.

(ii) Appeals against Pastoral Schemes.

Mission and Pastoral Measure 2011, section 12, Schedule 2¹⁰.

Section 3 The exercise of the Judicial Committee's Jurisdiction

3.1 Some of the powers of the Judicial Committee may be exercised by the Registrar. Rule 9 makes specific provision for procedural decisions.

3.2 The Registrar will normally make a decision without an oral hearing but may direct an oral hearing. The Registrar may also refer the matter to the Judicial Committee for decision.

3.3 A party who is dissatisfied with a decision of the Registrar may apply for that decision to be reviewed by the Judicial Committee. Any application must be made in Form 2 and must be filed within 14 days of the Registrar's decision: rule 9(4). See paragraph 7.1 of Practice Direction 7 for applications and for the relevant fee see Annex 2 to Practice Direction 7.

¹⁰ Amended April 2013

The Judicial Committee of the Privy Council

Practice Direction 2

The Registry of the Judicial Committee

2.1.1 The Registry of the Judicial Committee of the Privy Council situated on the ground floor of the building in Parliament Square which houses the Supreme Court of the United Kingdom, the former Middlesex Guildhall. The staff of the Registry act under the guidance and supervision of the Registrar of the Privy Council

2.1.2 The postal address of the Judicial Committee is

The Judicial Committee of the Privy Council, Parliament Square, London SW1P 3BD.

The email address is jcpcregistry@jcpc.uk and the telephone numbers are 020 7960 1512, 1513.

The Registry is open from 10.00 a.m. to 4.30 p.m. on Mondays to Thursdays during the law terms¹ and from 10 a.m. to 4.00 p.m. on Fridays and outside the law terms. During August the Registry is open from 10.00 am to 2.00 pm.

2.1.3 The Registry is open on every day of the year except

- a. Saturdays and Sundays,
- b. the Thursday before Good Friday, Good Friday and the day after Easter Monday,
- c. during the Christmas vacation,
- d. Bank Holidays in England and Wales. under the Banking and Financial Dealings Act 1971, and
- e. such other days as the Registrar may direct.

The “Christmas vacation” is the two week period over Christmas Day and New Year’s Eve².

2.1.4 Enquiries about fees and the filing of documents, records and papers should be addressed to Registry. The management of the Judicial Committee’s list is dealt with by the listing officer under the direction of the Registrar and enquiries about the listing of appeals should be addressed to the listing officer in the first instance. Enquiries about the assessment of costs should be addressed to the Registrar or the costs clerk.

2.1.5 Cheques and drafts for fees should be made payable to “The Judicial Committee Fees Account”.

¹ The law terms are the four terms of the year during which the Judicial Committee holds its sittings see Practice Direction 6 paragraph 6.2.1.

² Amended April 2013

2.1.6 Cheques and drafts for security money should be made payable to “The Judicial Committee Security Account”.

Filing documents in the Registry of the Judicial Committee

2.1.7 A document may be filed in the Registry “*by any of the following methods—*”

- a. personal delivery;
- b. first class post (or an alternative service which provides for delivery on the next working day);
- c. through a document exchange;
- d. (with the consent of the Registrar) by electronic means in accordance with [this] practice direction”: rule 7(1).

When an application for permission to appeal, a notice of appeal, a notice of objection, an acknowledgement or an application is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

2.1.8 A document filed by first-class post or through a document exchange will be taken to have been filed on the second day after it was posted or left at the document exchange, as the case may be (not including days which are not business days): rule 7(2). Business days are defined by rule 3(2) and mean 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. Where a document is received on a business day at a time when the Registry is closed, the document will be taken to have been filed in time and the Registrar may give whatever consequential directions appear appropriate.

2.1.9 Except with the consent of the Registrar, “*the contents of documents*

- a. filed in hard copy must also be provided to the Registry by electronic means, and
- b. filed by electronic means must also be provided to the Registry in hard copy”,

in accordance with Practice Directions 5 and 6: rule 7(3). See Practice Direction 9 for filing by electronic means.

2.1.10 The Registrar may refuse to accept any document which is illegible or does not comply with any provision in the Rules or any relevant practice direction. Where the Registrar refuses to accept a document, the Registrar will give whatever directions appear appropriate. (See rule 8.)

2.1.11 The Registry will not issue an application for permission to appeal or other document unless:

- a. it has been properly served on the respondents (see rule 6);
- b. all the required documents are supplied; and
- c. the prescribed fee is paid or a request for fee remission or exemption from fees is made (see paragraphs 2.1.25 -2.1.28).

Time limits

2.1.12 The Rules provide for the following time limits to apply:

- a. 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 (if later) from the date of the court below refusing permission (leave) to appeal: rule 11(2). Where permission (or leave) to appeal is required, it should be sought first from the court below.
- b. A notice of appeal must be filed within 56 days of the date of the order or decision of the court below ³granting permission or final leave to appeal: ⁴rule 18(2).
- c. If an appellant has applied to be treated as a financially assisted person (see rule 38), the above periods are extended to 28 days after the final determination of the application for funding, including any appeals. (See rules 5(5), 11 and 18.)

2.1.13 The Registry may accept applications for permission to appeal or notices of appeal which are out of time if the application or notice sets out the reason(s) why it was not filed within the time limit and it is in order in all other respects. See paragraphs 3.1.4 and ⁵3.1.6 of Practice Direction 3 and paragraph 4.4 of Practice Direction 4. The Registrar may reject an application for permission to appeal solely on the ground that it is out of time.⁶

2.1.14 The Judicial Committee or the Registrar may extend or shorten any time limit set by the Rules unless to do so would be contrary to any statutory provision. They may do so either on an application by one or both parties or without an application being made. An application for an extension may be granted after the time limit has expired. The Registrar will notify the parties when a time limit is varied. (See rule 5.)

2.1.15 A Respondent who has applied for public funding or other party who has difficulty in complying with a relevant time limit should contact the Registry.⁷

Form of application for permission to appeal and notice of appeal

2.1.16 The form of an application for permission to appeal is dealt with in paragraphs 3.1.1 – 3.1.4 of Practice Direction 3. The form of a notice of appeal is dealt with in paragraphs 4.2.1 – 4.2.5 of Practice Direction 4.

Case title

2.1.17 Applications for permission to appeal and appeals carry the same title as in the court below, except that the parties are described as appellant(s) and respondent(s). For reference purposes, the names of parties to the original proceedings who are not parties

³ Amended April 2013

⁴ Amended April 2013

⁵ Amended April 2013

⁶ Amended April 2015

⁷ Amended April 2015

to the appeal should nevertheless be included in the title: their names should be enclosed in square brackets. The names of all parties should be given in the same sequence as in the title used in the court below.

2.1.18 Applications for permission to appeal and appeals in which trustees, executors etc. are parties are titled in the short form, for example *Trustees of John Black's Charity (Respondents) v. White (Appellant)*.

2.1.19 In any application or appeal concerning children or where in the court below the title used has been such as to conceal the identity of one or more parties to the proceedings, this fact should be clearly drawn to the attention of the Registry at the time of filing, so that the title adopted in the Judicial Committee can take account of the need for anonymity. Applications involving children are normally given a title in the form *B (Children)*.

Service

2.1.20 Documents such as applications for permission to appeal and notices of appeal must be served by the party or their agent on the respondents or their agents, in accordance with rule 6, before they are filed. A party or agent will be taken to have consented to a particular method of service if, for example, their writing paper includes a fax number or a numbered box at a document exchange unless they have indicated in writing that they are not willing to accept service by that particular method. Service may be effected on agents abroad or on registered offices of a corporate party where the local law so permits.

2.1.21 A certificate of service which complies with rule 6(4) by giving details of the persons served, the method of service used and the date on which the document was served personally, posted, delivered to the document exchange or sent electronically, must be included either in the original document and signed or a separate certificate of service must be provided.

Supporting documents

2.1.22 See paragraph 3.1.6 of Practice Direction 3 for the documents which must be filed with an application for permission to appeal.

2.1.23 See paragraph 4.3.2 of Practice Direction 4 for the documents which must be filed with a notice of appeal.

2.1.24 See paragraph 7.1.3 of Practice Direction 7 for guidance on the documents which may need to be filed with an application.

Fees

2.1.25 The fees which are payable are prescribed by rule 42 and the Appendix to the Rules. Fees are payable at the time a document is filed or a step is taken, **not** at the conclusion of the proceedings and rule 42 allows the Registrar to refuse to accept a document or to allow a party to take any step unless the relevant fee is paid.

2.1.26 In circumstances where an appellant has applied to be treated as a financially assisted person in accordance with rule 38, the requirement to pay fees may be waived. Any application⁸ should be made to the Registrar supported by sworn or credible evidence as to ⁹ the appellant's means (see paragraphs 7.12.1 – 7.12.3 of Practice Direction 7).

2.1.27 For the fees which are payable, see Annex 2 to Practice Direction 7.

2.1.28 Any fees paid are not refunded, even if it is decided that the application for permission to appeal is inadmissible or if an application is withdrawn.

⁸ Amended April 2013

⁹ Amended April 2013

The Judicial Committee of the Privy Council

Practice Direction 3

Applications for Permission to Appeal

Form of application for permission to appeal

3.1.1 Applications for permission to appeal are considered by an Appeal Panel of the Judicial Committee. Applications are generally decided on paper, without a hearing and it is essential that the application is in the correct form and that the basis on which and the relevant provision(s) under which the Judicial Committee is said to have jurisdiction are set out.

3.1.2 An application for permission to appeal should be produced in Form 1 on A4 paper, securely bound on the left, using both sides of the paper. (See Annex 1 to Practice Direction 7 for Form 1.) The application should set out briefly the facts and points of law; and include a brief summary of the reasons why permission should be granted. The information required by section 5 of Form 1 must be provided but the Board favours brevity and clarity.¹ The grounds of appeal should not normally exceed 10 pages of A4 size, bearing in mind that the judgments of the courts below will be available to the Board. The Board deprecates the practice of annexing to Form 1 a “long, discursive recital of facts and legal argument Grounds of appeal should be succinctly stated. They should not rehearse facts nor should they contain legal argument”: *Lesage v Mauritius Commercial Bank Ltd.* [2012] UKPC 41 at paragraph 20.² The Registrar will reject any application where the grounds appear without adequate explanation from counsel to be excessive in length or where the application fails to identify the relevant issues³.

Applications which are not legible or which are not produced in the required form will not be accepted. Parties may consult the Registry at any stage of preparation of the application, and may submit applications in draft for approval. Amendments to applications are allowed where the Registrar is satisfied that this will assist the Appeal Panel and will not unfairly prejudice the respondents or cause undue delay. Any amendments must be served on the respondents (see paragraph 3.1.5).

3.1.3 If an application for permission to appeal invites the Judicial Committee to depart from one of its own decisions or from one made by the House of Lords or the UK Supreme Court, this should be stated clearly in the application.

(The Supreme Court has not re-issued the House of Lords’ Practice Statement of 26 July 1966 (Practice Statement (Judicial Precedent) [1966] 1 WLR 1234) which stated that the House of Lords would treat former decisions of the House as normally binding but that it would depart from a previous decision when it appeared right to do so. The Practice Statement is “part of the established jurisprudence relating to the conduct of appeals” and “has as much effect in [the Supreme] Court as it did before the Appellate Committee

¹ Amended April 2013

² Amended January 2013

³ Amended April 2015 In the Supreme Court, an Appeal Panel has directed that, irrespective of the outcome of the appeal, the costs of preparing the permission application should not be recoverable in a case where it considered that a very long application did not assist the Panel.

in the House of Lords’’: *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28 at paragraphs 24, 25.)

3.1.4 An application for permission to appeal must be signed by the appellant or his agent. Where an appellant is unable to file his **application** within the time limit prescribed by the rules, an explanation must be provided either in Form 1 or as an attachment to the form. The longer the delay in filing, the more convincing and weighty the explanation will need to be and the Board will need to be satisfied that, having regard to all the circumstances, it is in the interests of justice that the time limit should be extended: see *Carlos Hamilton and Jason Lewis v The Queen* [2012] UKPC 31. In criminal cases, the prosecuting authorities should be notified as soon as a prisoner has indicated an intention to **apply for permission to appeal** to the Judicial Committee and a copy of that notification should be produced to the Registrar of the Privy Council when the **application** is filed.⁴

Service

3.1.5 A copy of the application (and any amendment to it) must be served on the respondents or their agents in accordance with rule 6, before it is filed. A certificate of service (giving the full name and address of the respondents or their agents) must be included in the original application and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.21 of Practice Direction 2. Additional supporting documents other than those set out in paragraphs 3.1.6 and 3.2.1 (additional papers) are not normally accepted.

Supporting documents

3.1.6 **In order to comply with rule 14(1), the original application together with 3 copies** must be filed at the Registry together with the prescribed fee, a copy of the order appealed against and, if separate, a copy of the order of the court below refusing permission to appeal. If the substantive order appealed against is not immediately available, the application should be filed within the required time limit, and the order filed as soon it is available. For the relevant time limits for filing an application for permission to appeal see paragraphs 2.1.12-2.1.15 of Practice Direction 2. The respondent’s views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application for an extension of time will be referred to the Registrar. An appellant must file with his application a certificate of value as required by rule 7(6) and (7).⁵ When an application for permission to appeal is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

Objections by respondents

3.1.7 Each “*respondent who wishes to object to the application must, within 28⁶ days after service, file notice of objection*” in Form 3 together with a certificate of service: rule 13(1). (See Annex 1 to Practice Direction 7 for Form 3.). **The original notice together with 3 copies** must be filed at the Registry together with the prescribed fee. When a notice of objection is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

⁴ Amended January 2013

⁵ Amended April 2013

⁶ Amended April 2013

3.1.8 Before filing, a respondent must serve a copy of the notice on the appellant and any other respondent: rule 13(2). A certificate of service (giving the full name and address of the persons served) must be included in Form 3 and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.21 of Practice Direction 2.

3.1.9 A respondent who files notice will be permitted to participate in the application and will be given notice of its progress: rule 13(3). An order for costs will not be made in favour of a respondent who has not given notice.

Additional papers

3.2.1 **To comply with rule 14(2), the following additional papers** must be filed by the appellant for use by the Appeal Panel within 21 days after the filing of the application:

- a. **four** copies of the application;
- b. **four** copies of the order appealed against;
- c. if separate from the order at (b) above, **four** copies of the order of the court below refusing permission to appeal to the Judicial Committee;
- d. **four** copies of the official or approved transcript of the judgment of the court below;
- e. **four** copies of the final order(s) of all other courts below;
- f. **four** copies of the official or approved transcript of the final judgment(s) of all other courts below;
- g. **four** copies of any unreported judgment(s) cited in the application or judgment of a court below;
- h. **four** copies of a document which sets out the history of the proceedings. (See rule 14.)

No other papers are required and documents other than those listed above will not be accepted unless requested by the Appeal Panel. An appellant who wishes to provide documents other than those listed above must give a detailed explanation. Documents which are not clearly legible or which are not in the required style or form (see paragraph 3.1.2) will not be accepted.

3.2.2 The additional papers must be presented in the form required by paragraph 5.1.1 of Practice Direction 5.

3.2.3 Where the required papers are not filed within 8 weeks after the filing of the application and no good reason is given for the delay, the Registrar may

- (a) refer the application to an Appeal Panel without the required accompanying papers;
- (b) dismiss the application, or
- (c) give such other directions as appear appropriate under rule 8.

Consideration on paper

3.3.1 The Appeal Panel decides first whether an application for permission to appeal is admissible (that is, whether the Judicial Committee has jurisdiction to entertain an appeal). If the Appeal Panel determines that an application is inadmissible, it will refuse permission on that ground alone and not consider the content of the application. The Appeal Panel gives a reason for deciding that the application is inadmissible.

3.3.2 If the Appeal Panel decides that an application is admissible, rule 15 provides that the Panel may then:

- a. refuse permission (see paragraph 3.3.4);
- b. give permission (see paragraph 3.3.5);
- c. invite the parties to file written submissions as to the grant of permission on terms whether as to costs or otherwise (see paragraphs 3.3.6 - 3.3.11);
- d. direct an oral hearing (see paragraphs 3.3.12 – 3.3.16).

3.3.3 Permission to appeal is granted

- a. in civil cases for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Judicial Committee at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal; an application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground;
- b. in criminal cases for applications where, in the opinion of the Appeal Panel, there is a risk that a serious miscarriage of justice may have occurred;
- c. in cases in which the appellant had an appeal as of right but the court appealed below refused to grant final leave, where in the opinion of the Appeal Panel the appeal has a reasonable prospect of succeeding.

The Appeal Panel gives brief reasons for refusing permission to appeal.

Permission refused

3.3.4 If the Appeal Panel decides that permission should be refused, the parties are notified that the application is refused and they are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Permission given outright

3.3.5 If the Appeal Panel decides that an appeal should be entertained without further proceedings, it grants permission outright and the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Respondents' objections

3.3.6 Respondents may submit written objections giving their reasons why permission to appeal should be refused when they file notice of objection in accordance with rule 13.

Exceptionally a respondent could seek to file more fully reasoned objections or might be asked to do so by the Appeal Panel. In such circumstances further objections should be filed

- a. within 14 days of any invitation by the Appeal Panel to do so; or
- b. within 14 days of an application for permission to appeal being referred for an oral hearing.

3.3.7 Respondents' objections should set out briefly the reasons why the application should be refused or make submissions as to the terms upon which permission should be granted (for example, on costs). **The original and 4 copies** of the respondents' written objections must be filed in the Registry. The objections must be produced on A4 paper, securely fastened, using both sides of the paper.

3.3.8 A copy of the respondents' objections should be sent to the agents for the other parties. In certain circumstances the Appeal Panel may invite further submissions from the appellant in the light of the respondents' objections, but appellants do not have a right to comment on respondents' objections and further submissions are not encouraged⁷. Where the Appeal Panel does not require further submissions to make its decision, the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision. Where the Appeal Panel proposes terms for granting permission, paragraph 3.3.11 applies.

3.3.9 For the costs of respondents' objections, see paragraph 3.5.

3.3.10 Respondents who are unable to meet the deadlines set out in paragraph 3.3.6 must write to the Registrar requesting an extension of time for filing their written objections.

Permission given on terms

3.3.11 If the Appeal Panel is considering granting permission to appeal on terms:

- (a) the Panel proposes the terms and the parties have the right to make submissions on the proposed terms within 14 days of the date of the Panel's proposal;
- (b) the Panel will then decide whether to grant permission (unconditionally or on terms);
- (c) prospective appellants who are granted permission to appeal subject to terms that they are unwilling to accept may decline to pursue the appeal.

Application referred for oral hearing

3.3.12 In all cases where further argument is required, an application for permission to appeal is referred for an oral hearing.

⁷ Amended April 2015

3.3.13 Respondents may seek to file more fully reasoned objections within 14 days of being informed that the application has been referred for a hearing (see paragraph 3.3.6(b)).

3.3.14 When an application is referred for an oral hearing, the appellant and all respondents who have filed notice of objection under rule 13 are notified of the date of the hearing before the Appeal Panel. Parties may be heard before the Appeal Panel by counsel, by agent, or in person. If counsel are briefed, agents should ensure that the Registry is notified of their names.

3.3.15 Oral permission hearings usually last for 30 minutes. The panel will normally give its decision orally at the end of the hearing.

3.3.16 All the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Filing notice to proceed

3.3.17 Where permission to appeal is granted, the application for permission to appeal will stand as the notice of appeal and the grounds of appeal are limited to those on which permission has been granted. The appellant must, within 14 days of the grant of permission to appeal, file notice under rule 17 that he wishes to proceed with his appeal. When the notice is filed, the application for permission to appeal will be re-sealed and, **in order to comply with rule 17(2)**, the appellant must then serve a copy on each respondent and file the 7 copies.

3.3.18 Where an appellant is unable to file notice under rule 17 within the time limit of 14 days, a formal application for an extension of time must be made on Form 2: see paragraph 7.1 of Practice Direction 7 for applications. The respondent's views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application will be referred to the Registrar and, if it is granted, the appellant must then comply with rule 17(2) and paragraph 3.3.17.

Expedition

3.3.19 In cases involving the liberty or life of the subject, urgent medical intervention or the well-being of children, a request for expedition may be made in writing to the Registrar.

Counsel

3.4. Appellants and respondents to an application for permission to appeal may instruct leading or junior counsel.

Costs

3.5.1 Where an application for permission to appeal is referred for an oral hearing and is dismissed, any application for costs must be made by the respondent at the end of the hearing. No order for costs will be made unless a request is made at that time.

3.5.2 Where permission to appeal is granted, costs of the application for permission become costs in the appeal.

3.5.3 The reasonable costs of objecting to an unsuccessful application for permission to appeal will normally be awarded to the respondent, subject to any order for costs made by the Appeal Panel.

- a. If permission to appeal is granted, the costs of respondent's objections become costs in the appeal.
- b. Where an unsuccessful application for permission to appeal is determined without a hearing, those costs necessarily incurred in attending the client, attending the appellant's agents, considering the application for permission to appeal, filing notice of objection under rule 13 and, where applicable, preparing respondent's objections to the application may be awarded to a respondent.

Where costs are sought under (b) above, the application may be made by letter addressed to the Registrar or may be included in a bill of costs filed in the Registry conditional upon the application being granted.

3.5.4 Bills of costs must be filed within 3 months from the date of the decision of the Appeal Panel or from the date on which an application for permission to appeal is withdrawn in accordance with rule 33 (see paragraph 7.16 of Practice Direction 7). If an extension of the three month period is desired, application must be made in writing to the Registrar and copies of all such correspondence sent to all interested parties. In deciding whether to grant an application for an extension of time made after the expiry of the 3 month period, the Registrar takes into account the circumstances set out in paragraph 6 of Practice Direction 8.

3.5.5 For the fees payable on the assessment of a bill of costs, see Annex 2 to Practice Direction 7. For the assessment of costs, see rules 46-51 and Practice Direction 8.

3.5.6 For security for costs see paragraph 7.9.1 of Practice Direction 7.

The Judicial Committee of the Privy Council

Practice Direction 4

Notice of Appeal

General note

4.1.1 The practice is that where permission to appeal is granted by the Judicial Committee, the application for permission to appeal will stand as the notice of appeal and the grounds of appeal are limited to those on which permission has been granted: rule 17(1). The appellant must, within 14 days of the grant by the Judicial Committee of permission to appeal, file notice under rule 17(1)(c) that he wishes to proceed with his appeal. When the notice is filed, the application for permission to appeal will be re-sealed and the appellant must then serve a copy on each respondent and file 7 copies: rule 17(2). In any other case an appellant must file a notice of appeal in the Form 1: rule 17(3). (See Annex 1 to Practice Direction 7 for Form 1).

4.1.2 In those cases in which an appellant had an appeal as of right but the court appealed from has refused to grant conditional and final leave, the appellant must seek special leave from the Judicial Committee: see Practice Direction 3 and, in particular, paragraph 3.3.3(c).

Form of notice of appeal

4.2.1 It is essential that the notice of appeal sets out the basis on which and the relevant provision(s) under which the Judicial Committee is said to have jurisdiction. A notice of appeal should be produced in Form 1 on A4 paper, securely bound on the left, using both sides of the paper. (See Annex 1 to Practice Direction 7 for Form 1). Notices which are not legible or which are not produced in the required form will not be accepted. Parties may consult the Registry at any stage of preparation of the notice, and may submit notices in draft for approval. Amendments to notices are allowed where the Registrar is satisfied that this will assist the Judicial Committee and will not unfairly prejudice the respondents or cause undue delay. Any amendments must be served on the respondents (see paragraph 4.2.6).

4.2.2 If an appellant asks the Judicial Committee to depart from one of its own decisions or from one made by the House of Lords, the UK Supreme Court or the Court of Appeal of England and Wales¹, this should be stated clearly in the notice of appeal and full details of the relevant decision must be given.

(The Supreme Court has not re-issued the House of Lords' Practice Statement of 26 July 1966 (Practice Statement (Judicial Precedent) [1966] 1 WLR 1234) which stated that the House of Lords would treat former decisions of the House as normally binding but that it would depart from a previous decision when it appeared right to do so. The Practice Statement is "part of the established jurisprudence relating to the conduct of appeals"

¹ Amended Oct 2016

and “has as much effect in [the Supreme] Court as it did before the Appellate Committee in the House of Lords”: *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28 at paragraphs 24, 25.)

Case title

4.2.3 Notices of appeal to the Judicial Committee carry the same title as in the court below, except that the parties are described as appellant(s) and respondent(s). For reference purposes, the names of parties to the original proceedings who are not parties to the appeal should nevertheless be included in the title: their names should be enclosed in square brackets. The names of all parties should be given in the same sequence as in the title used in the court below.

4.2.4 Notices of appeal in which trustees, executors, etc. are parties are titled in the short form, for example *Trustees of John Black’s Charity (Respondents) v. White (Appellant)*.

4.2.5 In any notice of appeal concerning children or where in the court below the title used has been such as to conceal the identity of one or more parties to the proceedings, this fact should be clearly drawn to the attention of the Registry at the time the notice of appeal is filed, so that the title adopted in the Judicial Committee can take account of the need for anonymity. Notices of appeal involving children are normally given a title in the form *B (Children)*.

Service

4.2.6 A copy of the notice of appeal must be served on each respondent or their agents in accordance with rule 6, before it is filed. A certificate of service (giving the full name and address of the respondents or their agents) must be included in Form 1 and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.21 of Practice Direction 2.

Filing a notice of appeal

4.3.1 A notice of appeal must be filed in the Registry within 56 days of the date of the order or decision of the court below granting permission or final leave to appeal²: rule 18(2). However, this time limit may be varied by the Judicial Committee under rule 5. For the relevant time limits see paragraphs 2.1.12-2.1.15 of Practice Direction 2. An appellant must file with his notice of appeal a certificate of value as required by rule 7(6) and (7)³When a notice of appeal is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

4.3.2 **In order to comply with rule 18(2), the original notice of appeal together with 3 copies** must be filed at the Registry with the prescribed fee. For the relevant fee see Annex 2 to Practice Direction 7. If permission to appeal was granted by the court below, a copy of the order appealed from must also be filed and, if separate, a copy of the order granting permission to appeal to the Judicial Committee: rule 18(5). If the order

² Amended April 2013

³ Amended April 2013

appealed from is not immediately available, “*the notice of appeal should be filed without delay and the order filed as soon as it is available*”: rule 18(5).

Filing notice to proceed under rule 17

4.3.3 Where under rule 17(1)(a) an application for permission to appeal stands as a notice of appeal, the appellant must, within 14 days of the grant by the Judicial Committee of permission to appeal, file notice that he wishes to proceed with his appeal. See paragraph 3.3.17 of Practice Direction 3 for filing notice to proceed and paragraph 3.3.18 where an appellant is unable to file notice within the prescribed time limit.

Out of time appeals

4.4 Where an appellant is unable to file a notice of appeal⁴ within the relevant time limit, an application⁵ for an extension of time must be made in Section 7 of Form 1. The respondent’s views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application⁶ for an extension of time will be referred to the Registrar and, if it is granted, the appellant must comply with rule 18 and paragraph 4.3.2. The longer the delay in filing, the more convincing and weighty the explanation will need to be and the Board will need to be satisfied that, having regard to all the circumstances, it is in the interests of justice that the time limit should be extended: see *Carlos Hamilton and Jason Lewis v The Queen* [2012] UKPC 31. In criminal cases, the prosecuting authorities should be notified as soon as a prisoner has indicated an intention to appeal to the Judicial Committee and a copy of that notification should be produced to the Registrar of the Privy Council when the appeal is filed.⁷

Fees

4.5 For the fee payable on filing a notice of appeal and on filing notice to proceed under rule 17 see Annex 2 to Practice Direction 7.

Acknowledgement by respondent

4.6.1 Each “respondent who intends to participate in the appeal must, within 21 days after service under rule 17(2)(a) or rule 18(4)(a), give notice” in Form 3: rule 19(1). (See Annex 1 to Practice Direction 7 for Form 3.) (Where under rule 17(1)(a) an application for permission to appeal stands as a notice of appeal, the time limit for a respondent to give notice under rule 19 runs from the date on which he is served with a resealed copy of the application.) Form 3 must be produced on A4 paper, securely fastened, using both sides of the paper.

4.6.2 Before filing, a respondent must serve a copy of Form 3 on the appellant and any other respondent: see rule 19(2). A certificate of service (giving the full name and address of the persons served) must be included in Form 3 and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.21 of Practice Direction 2.

4.6.3 **The original notice together with 3 copies** of Form 3 must be filed at the Registry together with the prescribed fee. For the relevant fee see Annex 2 to Practice

⁴ Amended Jan 2013

⁵ Amended Jan 2013

⁶ Amended Jan 2013

⁷ Amended Jan 2013

Direction 7. When Form 3 is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

4.6.4 A respondent who gives notice must also pay the prescribed fee (see Annex 2 to Practice Direction 7). A respondent who does not give notice under rule 19 will not be permitted to participate in the appeal and will not be given notice of its progress: rule 19(3). An order for costs will not be made in favour of a respondent who has not given notice.

Security for costs

4.7.1 Where the Judicial Committee grants permission to appeal, the Committee or the Registrar may, on the application of a respondent, order an appellant to give security for the costs of the appeal and any order for security will determine

- a. the amount of that security, and
- b. the manner in which, and the time within which, security must be given: rule 37.

An application for security must be made in the general form of application, Form 2, (see paragraph 7.1 of, and Annex 1 to, Practice Direction 7). Orders for security for costs will be sparingly made.

4.7.2 For payment of security see paragraph 7.9.1 of Practice Direction 7.

4.7.3 No security for costs is required in cross-appeals⁸.

4.7.4 Where the court below grants permission to appeal, security for costs is a matter for that court. But see paragraph 7.9.2 of Practice Direction 7.⁹

4.7.5 Failure to provide security as required will result in the appeal being struck out by the Registrar although the appellant may apply to reinstate the appeal. See paragraph 7.1 of Practice Direction 7 for applications.

Expedition

4.8 For requests for expedition see paragraph 6.2.4 of Practice Direction 6.

⁸ Amended April 2013

⁹ Amended April 2013

The Judicial Committee of the Privy Council

Practice Direction 5

Papers for the Appeal Hearing

General note

- 5.1.1 All documents placed before the Judicial Committee must be
- a. reproduced or printed (both as to font size and otherwise) so as to be easily legible - preferably font size 12 and one and a half spacing;
 - b. reproduced on paper of A4 size, printed on both sides;
 - c. (unless this causes great difficulty) presented in bound form, properly labelled and indexed.

Documents must be presented in a form which is robust, manageable and not excessively heavy. Duplication of material must be avoided particularly where two or more appeals are heard together.

See Practice Direction 6 for cases and volumes of authorities.

5.1.2 **Size of volumes.** All volumes of papers for use in hearings should be not more than approximately one inch (2.5 cm) thick and comb-bound. This applies both to reproduced Records and to volumes of authorities. The spines and front covers of all volumes should be clearly marked to indicate their contents.

5.1.3 **Records.** Rule 20 governs the provision of the Record and this practice direction applies to Records reproduced overseas as well to as those reproduced in England. All agents should draw it to the attention of their professional clients overseas as necessary. There is a distinction between the **certified** record i.e. that which is **certified** by the registrar overseas and the **reproduced** record which is produced from the certified record for the purposes of the proceedings before the Judicial Committee. Not all the documents in the certified record will be needed for the proceedings before the Board. It is helpful if the reproduced record accords with the form of the electronic bundle provided by Practice Direction 9¹. Except in cases where the Record is small (100 pages or less), reproduced Records should be “double-sided”, i.e. printed on both sides of the page. Witness statements and affidavits may be included in the record. **The original and 10 copies of the Record** must be filed.

5.1.4 Reproduced Records and volumes of authorities which do not comply with paragraphs 5.1.2 and 5.1.3 will not be accepted. Paragraphs 5.1.2 and 5.1.3 do not apply to certified Records.

5.1.5 Directions should be sought from the Registrar in those cases in which the parties consider that the Judicial Committee will not be assisted by the record and that they are able to provide an agreed bundle of the documents which will be necessary for

¹ April 2015

the determination of the appeal. Any request for directions should provide a detailed explanation of the reasons for the request and be signed by Counsel for the parties. Similarly where the record is extensive and the provision of 102 copies will entail considerable expense, a request for directions should be made to the Registrar. In all cases it is helpful for the Board to have a separate core bundle of the judgments given, and the orders made, below.³

5.1.6 Electronic documents. For electronic documents see Practice Direction 9.

5.1.7 The statement of facts and issues The statement of facts and issues must be a single document, drafted initially by the appellant but submitted to, and agreed by, every respondent before filing (see rule 21). The statement must set out “*the relevant facts and the issues*” and, if the parties cannot agree as to any matter, the statement should make clear what items are disputed. It is usually helpful for it to contain a chronology with a⁴ list of the key dates. This should be set out in an annex and include cross-references to the page numbers of any relevant documents in the record. The statement should contain references to every law report of the proceedings below, and should state the duration of the proceedings below. It should be signed by counsel for both parties. The statement of facts and issues is a neutral document and is not to be used to argue a party’s case. It is the professional duty of the parties’ legal representatives to co-operate to produce the statement⁵.

5.1.8 The précis The statement of facts and issues must be accompanied by a précis of the case. This must be on no more than 1 side of A4 paper (in **Arial point 12**), and should be drafted initially by the appellant but submitted to, and agreed by, every respondent before filing. The précis should be filed with the statement of facts and issues and an electronic copy of the précis should be e-mailed to the Registry.

5.1.9 Translations All documents which are not in English must be accompanied by a translation into English. Every translation must be accompanied by a statement by the person making it that it is a correct translation, and that statement must include

- a. the name of the person making the translation;
- b. his address, and
- c. his qualifications for making a translation.

Time limits

5.2.1 The statement of facts and issues must be filed by the appellant “**within 42 days after the receipt by the Registrar of the record**”⁶: rule 21(1). If the appellant is unable to comply with the relevant time limit, an application for an extension of time must be made. (See rule 5 and paragraph 5.2.2.)

Extensions of time for filing the statement of facts and issues

2 Amended Jan 2012
3 Amended Jan 2012
4 Amended April 2013
5 Amended Oct 2016
6 Amended April 2013

5.2.2 Appellants who are unable to complete preparation of the statement within the time limit may apply to the Registrar for an extension of that time under rule 5. Any application must be made in the general form of application, Form 2, (see Annex 1 to Practice Direction 7) and should explain the reason(s) why an extension is needed.

5.2.3 The Registrar may grant an application for an extension of time, provided that it does not prejudice the preparation for the hearing or its proposed date. The time limits provided by the Rules are, however, generous and applicants for an extension of time must set out in some detail why they are unable to comply with any relevant time limit.

Respondents' consent

5.2.4 Respondents are expected not to withhold unreasonably their consent to an application for an extension of time. Appellants are advised to communicate the views of respondents to the Registry since, if they raise no objection, the application may be dealt with on paper without a hearing.

Filing the Statement

5.2.5 When the statement is ready, **the original and 10 copies of the statement**, must be filed at the Registry.

5.2.6 Within 14 days after filing the statement, the parties must comply with rule 22(1) by notifying the Registrar that the appeal is ready to list and providing a time estimate (see paragraph 6.2.1 of Practice Direction 6).

The Judicial Committee of the Privy Council

Practice Direction 6

The Appeal Hearing

General note

6.1.1 Attention is drawn to the provisions of Practice Direction 5 about papers for the appeal hearing. **Duplication of material must be avoided particularly where two or more appeals are heard together.**

Fixing the hearing date

6.2.1 Within 14 days after the filing of the statement of facts and issues (see paragraphs 5.1.7, 5.2.5 and 5.2.6 of Practice Direction 5), the parties must notify the Registrar that the appeal is ready to list and specify the number of hours that their respective counsel estimate to be necessary for their oral submissions (see rule 22(1)). Parties are encouraged to offer agreed dates which are convenient to all Counsel at an early stage and there is no need to wait until after the filing of the statement of facts and issues to fix the hearing date. Time estimates must be as accurate as possible since, subject to the Judicial Committee's discretion, they are used as the basis for arranging the Judicial Committee's list. The sittings of the Judicial Committee (or the 'law terms') are four in each year, that is to say:

- a. the Michaelmas sittings which begin on 1 October and end on 21 December;
- b. the Hilary sittings which begin on 11 January and end on the Wednesday before Easter Sunday;
- c. the Easter sittings which begin on the second Tuesday after Easter Sunday and end on the Friday before the spring holiday; and
- d. the Trinity sittings which begin on the second Tuesday after the spring holiday and end on 31 July.

The 'spring holiday' means the bank holiday falling on the last Monday in May or any day appointed instead of that day under section 1(2) of the Banking and Financial Dealings Act 1971.

6.2.2 Subject to any directions by the Judicial Committee before or at the hearing, counsel are expected to confine their submissions to the time indicated in their estimates. The Registrar **must** be informed at once of any alteration to the original estimate. Not more than one day is normally allowed for the hearing of an appeal and appeals are listed for hearing on this basis. Estimates of more than one day must be fully explained in writing to the Registrar. Counsel should agree an order of speeches and timetable for the

hearing and submit it to the Registry at least 3 working days¹ before the hearing.

6.2.3 The Registrar will subsequently inform the parties of the date fixed for the hearing. The appellant and every respondent must then sequentially exchange their respective written cases and file them (see rule 23 and paragraph 6.3.9).

Requests for expedition

6.2.4 Any request for an expedited hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

Directions hearings

6.2.5 Where it considers it to be appropriate, the Judicial Committee may decide that a directions hearing should be held. A directions hearing will normally be held before three members of the Board. Any request for a directions hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

Appellants' and Respondents' cases

6.3.1 The case is the statement of a party's argument in the appeal. The Judicial Committee does not prescribe any maximum length but the Committee favours brevity and a case should be a concise summary of the submissions to be developed.

6.3.2 The case should be confined to the heads of argument that counsel propose to submit at the hearing and omit material contained in the statement of facts and issues (see paragraph 5.1.7 of Practice Direction 5).

6.3.3 If either party is abandoning any point taken in the courts below, this should be made plain in their case. If they intend to apply in the course of the hearing for permission to introduce a new point not taken below, this should also be indicated in their case and the Registrar informed. If such a point involves the introduction of fresh evidence, application for permission must be made either in the case or by filing an application for permission to adduce the fresh evidence (see paragraph 7.1 of Practice Direction 7 for applications).

6.3.4 If a party intends to invite the Judicial Committee to depart from one of its own decisions or from a decision of the House of Lords or the UK Supreme Court, this intention must be clearly stated in a separate paragraph of their case, to which special attention must be drawn. A respondent who wishes to contend that a decision of the court below should be affirmed on grounds other than those relied on by that court must set out the grounds for that contention in their case.

¹ Amended April 2015

6.3.5 Transcripts of unreported judgments should only be cited when they contain an authoritative statement of a relevant principle of law not to be found in a reported case or when they are necessary for the understanding of some other authority.

6.3.6 All cases must conclude with a numbered summary of the reasons upon which the argument is founded, and must bear the signature of at least one counsel for each party to the appeal who has appeared in the court below or who will be briefed for the hearing before the Judicial Committee.

6.3.7 The filing of a case carries the right to be heard by two counsel and, generally² fees of two counsel only for any party are allowed on assessment.

Separate cases

6.3.8 Parties whose interests in the appeal are passive (for example, stakeholders, trustees, executors, etc.) are not required to file a separate case but should ensure that their position is explained in one of the cases filed.

Filing and exchange of cases

6.3.9 Rule 23 provides the time limits for the parties to file their cases. Cases must be filed in electronic form as well as in hard copy (see Practice Direction 9 for electronic documents). No later than six³ weeks before the proposed date of the hearing, the appellants must file at the Registry **the original and**⁴ **2⁵ copies** of their case and serve it on the respondents.

6.3.10 No later than 4⁶ weeks before the proposed date of the hearing, the respondents must serve on the appellants a copy of their case in response and file at the Registry **the original and 2⁷ copies** of their case, as must any other party filing a case (for example, an intervener).

6.3.11 The number of copies of cases exchanged should be enough to meet the requirements of counsel and agents and should not usually exceed **eight**.

6.3.12 Following the exchange of cases, further arguments by either side may not without permission be submitted in advance of the hearing.

Form of cases

6.3.13 Cases must be produced on A4 paper, securely bound on the left, using both sides of the paper with:

² Amended April 2015
³ Amended Sept 2012
⁴ Amended Jan 2012
⁵ Amended Sept 2012
⁶ Amended Sept 2012
⁷ Amended Sept 2012

- a. numbered paragraphs, and
- b. signatures of counsel at the end, above their printed names.

6.3.14 The appellant must file 10 copies of every case filed by the parties and any intervener at least 14 days before the hearing. These copies of the cases must contain cross-references (in a footnote or in the body of the text) to the authorities volume(s).⁸

Authorities

6.4.1 **A joint set of authorities, jointly produced, should be complied for the appeal. Ten copies of the joint set of authorities** must be filed at least 14 days before the hearing in accordance with rule 24. The appellants have the initial responsibility for producing the authorities volumes and for filing them at the Registry but, to enable the appellants to file the volumes, the respondents must provide the appellants with 10 copies of any authorities which the respondents require but which the appellants do not, or arrange with the appellants for their photocopying. Respondents should arrange with the appellants for the delivery to them of such authorities volumes as the respondents' counsel and agents require. Volumes of authorities which do not comply with paragraph 5.1.2 of Practice Direction 5 will not be accepted. Authorities' volumes must be filed in electronic form (see Practice Direction 9 for electronic documents). The following paragraphs give guidance on the arrangement and order of the volumes but where the parties consider that a different order or arrangement would be of greater assistance to the Board, that order or arrangement should be adopted.⁹

6.4.2 The authorities should be collected together into one or more volumes or folders. Where there are a large number of volumes, all the authorities that are likely to be referred to frequently during the oral argument should be placed together in the first volume. Each volume should have a separate index, and the authorities should appear in alphabetical order. Where there are a large number of volumes, there should be an index of indexes separate from the index contained in the first volume of the authorities. (The indexes must be included in the pagination.)¹⁰The volumes of authorities should

- a. be A4 size reproduced as one page per view (with any authorities smaller than A4 being enlarged);
- b. separate each authority by numbered dividers;
- c. contain an index to that volume; the first volume must also contain an index to all the volumes;
- d. be numbered consecutively on the cover and spine with numerals at least point 72 in size for swift identification of different volumes during the hearing;
- e. have printed clearly on the front cover the title of the appeal and the names of the agents for all parties;
- f. have affixed to the spine a sticker indicating clearly the volume number in Arabic numerals and short title of the appeal.

⁸ Amended Sept 2012

⁹ Amended April 2015

¹⁰ Amended April 2015

Where an authority or other document extends too many pages, only those pages that are relevant to the appeal should be copied.

6.4.3 The Board has on numerous occasions criticised the over-proliferation of authorities. It should be understood that not every authority that is mentioned in the parties' printed cases need be included in the volumes of authorities. They should include only those cases that are likely to be referred to during the oral argument or which are less accessible because they have not been reported in any of the recognised reports.

6.4.4 The cost of preparing the volumes of authorities falls to the appellants, but is ultimately subject to the decision of the Judicial Committee as to the costs of the appeal.

The hearing

6.5.1 The Registrar lists appeals taking into account the convenience of all the parties. Provisional dates are agreed with the parties well in advance of the hearing and every effort is made to keep to these dates. Agents receive formal notification shortly before the hearing.

6.5.2 Parties should inform the Registry as early as possible of the names of counsel they have briefed.

6.5.3 The Judicial Committee usually hears appeals on Mondays from 11am-1pm and from 2-4pm, and on Tuesdays to Thursdays from 10.30am-1pm and 2-4pm.

6.5.4 Only in wholly exceptional circumstances will the Judicial Committee consider sitting in private. Any request for the Judicial Committee to sit in private should be addressed to the Registrar and should be copied to the other parties. The request should set out fully the reasons why it is made and the request together with any objections filed by the respondents will normally be referred to the Judicial Committee.

6.5.5 Generally, no more than two counsel will be heard on behalf of a party (or a single counsel on behalf of an intervener permitted to make oral submissions).¹¹

6.5.6 If a party wishes to have a stenographer present at the hearing or to obtain a full transcript of the hearing, he must notify the Registrar not less than 7 days before the hearing. Any costs of the stenographer or of transcription must be borne by the party making such a request.

6.5.7 The Registrar will on request inform the parties of the intended constitution of the Judicial Committee for the hearing of a forthcoming appeal; this will be subject to possible alteration. Counsel should assume that the Judicial Committee will have read the printed cases and the judgment under appeal but not all the papers which have been filed.

¹¹ Amended December 2015

6.5.8 Provided that all Counsel in the case agree, they may communicate to the Registrar their wish to dispense with part or all of court dress. The Board will normally agree to such a request.¹²

The Hearing

6.5.9 The Judicial Committee has been given permission for video footage of proceedings to be streamed live, and made available afterwards on the JCPC website. Permission has also been given for video footage of proceedings before the Board to be broadcast by media outlets where this does not affect the administration of justice and the recording and broadcasting is conducted in accordance with the protocol which has been agreed with representatives of the relevant UK broadcasting authorities. The Board may additionally impose such conditions as it considers to be appropriate including the obtaining of consent from all the parties involved in the proceedings¹³.

Costs

6.6.1 Rule 43 deals with orders for costs. If counsel seek an order other than that costs should be awarded to the successful party, they may make written submissions in accordance with rule 44 if the Judicial Committee so directs. .

The original and 3 copies of any written submissions must be filed at the Registry. Copies should also be sent to the other parties to the appeal. Costs submissions are considered on paper.

Judgment

Place and time of judgment

6.7.1 Judgments are given on a day notified in advance. One week's notice is normally given.

Attendance of counsel

6.7.2 One junior counsel or an agent for each party or group of parties who have filed a case may attend when judgment is delivered.

6.7.3 The judgment of the Board may be made available to certain persons before judgment is given. In releasing the judgment, the Board gives permission for the contents to be disclosed to counsel, agents and solicitors (including solicitors outside London who have appointed London agents) and in-house legal advisers in a client company, Government department or other body. The contents of the judgment and the result of the appeal may be disclosed to the client parties themselves 24 hours before the judgment is to be given unless the Board or the Registrar directs otherwise. A

¹² Amended Jan 2012

¹³ Amended April 2015. The protocol ensures that certain types of proceedings and some aspects of proceedings such as private discussion between parties and their advisers are not recorded, televised or filmed. It also regulates the use of extracts of proceedings and prevents their use in certain types of programmes (such as party political broadcasts) and in any form of advertising or publicity.

direction will be given where there is reason to suppose that disclosure to the parties would not be in the public interest.¹⁴

6.7.4 It is the duty of counsel to check the judgment for typographical errors and minor inaccuracies. In the case of apparent error or ambiguity in the judgment, counsel are requested to inform the Judicial Support section as soon as possible. This should be done by e-mail to judicialsupport@supremecourt.uk, no later than two working days before the date judgment is to be given. The purpose of disclosing the judgment is not to allow counsel to re-argue the case and attention is drawn to the opinions of Lord Hoffmann and Lord Hope in *R (Edwards) v Environment Agency* [2008] UKHL 22, [2008] 1 WLR 1587.¹⁵

6.7.5 Accredited members of the media may, with the express permission of the Board, be given a copy of the judgment in advance. The contents of this document are subject to a strict embargo, and are not for publication, broadcast or use on club tapes before judgment has been delivered. The documents are issued in advance on the strict understanding that no approach is made to any person or organisation about their contents before judgment is given.¹⁶

6.7.6 The Registrar will prepare a draft of the order which is to be made in advance of the day on which judgment is given and, when the draft has been approved by the Board, counsel may be invited to comment on the draft. If parties have been able to agree the order for costs, the Registry should be informed. If the parties wish to make written submissions on costs to the Board, the Registrar should be informed by 4.30pm on the day before judgment is to be given.¹⁷

Intervention

6.8.1 A person who is not a party to an appeal may apply in accordance with rule 27 for permission to intervene.

6.8.2 An application should be made in the general form of application, Form 2, (see paragraph 7.1 of Practice Direction 7) and should state whether permission is sought for both oral and written interventions or for written intervention only. The application should be filed with the prescribed fee and confirmation of the consent of the appellants and respondents in the appeal. If their consent is refused, the application must be endorsed with a certificate of service on them, with a brief explanation of the reasons for the refusal.

6.8.3 Applications for permission to intervene should be filed at least 6 weeks before the date of hearing of the appeal. Failure to meet this deadline may increase the burden on the parties in preparing their cases, and may delay the hearing of the appeal. If permission is given, written submissions must be filed and also given to the appellants and respondents. They should avoid repeating material that is in the parties' written cases. They should concentrate on the particular points that the intervener wishes to raise and should normally not exceed 20 pages of A4 size.

¹⁴ Amended April 2015

¹⁵ Amended April 2015

¹⁶ Amended April 2015

¹⁷ Amended April 2015

6.8.4 Subject to the discretion of the Judicial Committee, interveners bear their own costs and any additional costs to the appellants and respondents resulting from an intervention are costs in the appeal.

The Judicial Committee of the Privy Council

Practice Direction 7

Miscellaneous Matters Including Applications, Documents, Forms and Orders

Applications

7.1.1 Applications are governed by rule 31. An application should be made as soon as it becomes apparent that an application is necessary or expedient.

7.1.2 An application must be made in Form 2 (see Annex 1 to this Practice Direction) and should be served on all the other parties before it is filed: rule 31(1)(3).

7.1.3 An application must state what order the applicant is seeking and, briefly, why the applicant is seeking the order: rule 31(2). Certain applications (e.g. for security) should be supported by written evidence. Although there may be no requirement to provide evidence in support, it should be borne in mind that, as a practical matter, the Judicial Committee will often need to be satisfied by evidence of the facts that are relied on in support of or for opposing the application. Evidence must be filed as well as served on the respondents.

7.1.4 A party “*who wishes to oppose an application must, within 14 days after service, file notice of objection*” in Form 3 and “*must (before filing) serve a copy on the applicant and any other parties*”: rule 30(3). (For Form 3 see Annex 1 to this Practice Direction.)

7.1.5 The parties to an application for a consent order must ensure that they provide any material needed to satisfy the Judicial Committee that it is appropriate to make the order.

7.1.6 Applications will be dealt with without a hearing wherever possible. Unless the Registrar directs otherwise, opposed incidental applications are referred to a Panel and may be decided with or without an oral hearing.

7.1.7 **The original and 3 copies** of the application must be filed, with the prescribed fee. The original application must bear a certificate of service on the other parties and must clearly indicate whether the other parties consent or refuse to consent to the application. **The original and 3 copies** of the notice of objection must be filed, with the prescribed fee. The original notice must bear a certificate of service on the other parties.

7.1.8 If the Panel orders an oral hearing, the parties may seek permission to adduce affidavits, witness statements and such other documents as they may wish. Eight copies are required. Copies of such documents must be served on the other parties before the oral hearing. Authorities are not normally cited before the Panel.

Documents

Preparation

7.2.1 All formal documents for the Judicial Committee must be produced on A4 paper, securely bound on the left, using both sides of the paper.

7.2.2 Documents which are not legible or which are not produced in the authorised form or which are unsatisfactory for some other similar reason will not be accepted.

Number of documents required

7.2.3 The following table shows the numbers of documents usually required for the hearing of an appeal. Actual requirements must be subject to agreement and depend on the number of parties, counsel and agents concerned, and on the special circumstances of each appeal. Copies for the use of the party originating the documents are not included in the numbers indicated.

The appellants must provide:

Document	For Registry	For other side
Notice of appeal	Original and 3 copies on filing	One on service
Statement of facts and issues	Original and 10 copies	Three copies unless otherwise arranged
Case	Original and 2 ¹ copies no later than six ² weeks before the hearing; 10 copies two weeks before the hearing ³	Three copies unless otherwise arranged
The Record	Original and 10 copies	Three copies unless otherwise arranged
Authorities	10 no later than two weeks before the hearing	Three copies unless otherwise arranged
Documents held in readiness at hearing (if any)	10	At least three

The respondents (and any interveners) must provide:

Document	For Registry	For other side
Case	Original and 2 ⁴ copies no later than four ⁵ weeks	As arranged on exchange

¹ Amended Sept 2012

² Amended Sept 2012

³ Amended Sept 2012

⁴ Amended Sept 2012

⁵ Amended Sept 2012

	before the hearing; 10 copies two weeks before the hearing ⁶ to Appellant for filing (see PD6) ⁷	
Respondents' additional documents (if any)	10	As arranged

Form of documents

7.2.4 Reference should be made to the following Practice Directions for the form of documents –

For Statement of facts and issues: see Practice Direction 5 paragraph 5.1.7

For the Record: see Practice Direction 5 paragraphs 5.1.3

For Cases: see Practice Direction 6 paragraph 6.3.1

For volumes of authorities: see Practice Direction 6 paragraph 6.4.1.

Disposal of Documents

7.2.5 All forms and supporting documents which are filed become the property of the Judicial Committee. No documents submitted in connection with an application for permission to appeal can be returned. Certain documents submitted in connection with an appeal may be returned, on application to the Registrar within 14 days of judgment in the appeal. Original documents are retained.

Forms

7.3.1 Rule 4 provides for the forms which are to be used in the Judicial Committee.

7.3.2 The following forms are set out in Annex 1 to this Practice Direction.

- Form 1 Application for permission/notice of appeal
- Form 2 Application form
- Form 3 Notice of objection/acknowledgement by respondent

⁶ Amended Sept 2012

⁷ Amended April 2013

Orders

Draft order

7.4.1 After the Judicial Committee has given judgment, the Registrar will send a draft order to all parties who filed a case. The drafts must be returned to the Registrar within 14 days of the date of receipt (unless otherwise directed), either approved or with suggested amendments. If amendments are proposed, they must be submitted to the agents for the other parties, who should indicate their approval or disagreement both to the agents submitting the proposals and to the Registrar.

Final order

7.4.2 A copy of the final order is sent to the agents for the successful parties and copies of the final order are sent to the agents for all parties who have filed notice in Form 3 under rule 19. The original order will be sent to the Registrar or office of the court below.

Cross-appeals

7.5.1 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 his written case but need not cross-appeal: rule 25(1). A respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal except in cases where an appeal lies as of right: rule 25(2). Except in those cases, applications for permission to cross-appeal should be made by the respondents directly to the Judicial Committee.

7.5.2 Where permission to cross-appeal is required, an application for permission may only be filed after permission to appeal has been granted to the original applicant for permission to appeal. **The original and 3 copies** of the application for permission to cross-appeal must be filed within 42 days of the grant by the Board of permission to appeal⁸. Where permission to cross-appeal is granted by the Judicial Committee, the application for permission to cross-appeal will stand as the notice of appeal and the appellant must then comply with rule 17 and paragraph 3.3.17 of Practice Direction 3.

7.5.3 If permission to cross-appeal is not required, the notice of cross-appeal must be filed with the prescribed fee within 42 days of the filing of the original appeal. **The original and 3 copies** of the notice of cross-appeal must be filed. In a notice of cross-appeal, the original appellant is designated as original-appellant/cross-respondent and the original respondent is designated as original-respondent/cross-appellant.

7.5.4 A cross-appeal may be presented out of time in accordance with paragraph 4.4 of Practice Direction 4.

⁸ Amended 2015

7.5.5 Argument in respect of a cross-appeal must be included by each party in their case in the original appeal. Such an inclusive case must clearly state that it is filed in respect of both the original and cross-appeals.

7.5.6 In a cross-appeal, the cases on the original appeal must be filed 6⁹ weeks before the hearing. The cross-appellants' case for the cross-appeal must be filed 4¹⁰ weeks before the hearing as part of their reply to the original appellants' case. The original appellants/cross-respondents may reply to the case for the cross-appeal in their supplemental case.

7.5.7 Fees are payable in cross-appeals see the Appendix to the Rules which is reproduced at Annex 2 to this Practice Direction.

Death of a party

7.6.1 If a party to an appeal dies before the hearing, immediate notice of the death must be given in writing to the Registrar and to the other parties. The appeal cannot proceed until a new party has been appointed to represent the deceased person's interest.

7.6.2 Any application to substitute the new party must be filed with the prescribed fee within 42 days of the date of notice of death. It should explain the circumstances in which it is being filed. It must be endorsed with a certificate of service on all other parties.

7.6.3 If the death takes place after the case for the deceased person has been filed but before the appeal has been heard, the appellants must file a supplemental case setting out the information about the newly-added parties.

7.6.4 If a party to an application for permission to appeal dies and that party has no personal representative, immediate notice of the death must be given in writing to the Registrar and to the other parties. The Registrar may direct that the application proceeds in the absence of a person representing the estate of the deceased or may appoint a person to represent the deceased person's interest. Any application to substitute the new party must be filed with the prescribed fee within 28 days of the date of notice of death. It should explain the circumstances in which it is being filed. It must be endorsed with a certificate of service on all other parties.

Dispute between Parties Settled

7.7.1 It is the duty of counsel and solicitors in any pending appeal, if an event occurs which arguably disposes of the dispute between the parties, either to ensure that the appeal is withdrawn by consent or, if there is no agreement on that course, to bring the facts promptly to the attention of the Registrar and to seek directions. See further paragraph 7.16 below.

⁹ Amended April 2013

¹⁰ Amended April 2013

Exhibits

7.8.1 Parties who require exhibits to be available for inspection at the hearing must apply to the Registrar for permission for the exhibits to be brought to the Judicial Committee before the hearing.

Fees and security for costs

7.9.1 Fees are payable in the amounts set out in column 2 of the table in the Appendix to the Rules on the occasions described in column 1; this table is reproduced at Annex 2 to this Practice Direction. Fees are payable on the taking of the step for which a fee is provided **not** at the conclusion of the proceedings. Payments of fees and deposits of security money may be made by banker's draft or cheque. Drafts and cheques for fees must be made payable to 'Judicial Committee Fees Account'. Drafts and cheques for security money must be made payable to 'Judicial Committee Security Fund Account'. For financially assisted persons see rule 38 and paragraph 7.12.1-7.12.3.

7.9.2 Normally the Judicial Committee will not make an order for security for costs in an appeal as of right where security has been provided below. An order may be made by the Judicial Committee in exceptional circumstances where the appeal appears likely to amount to an abuse of process.

Interveners

7.10.1 A person who is not a party to an appeal may apply for permission to intervene in accordance with rule 27. See paragraph 6.8 of Practice Direction 6.

New Submissions

7.11.1 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Judicial Committee new circumstances which have arisen and which might affect the decision or order of the Judicial Committee, application must be made without delay by letter to the Registrar for permission to make new submissions. The application should indicate the circumstances and the submissions it is desired to make, and a copy must be sent to the agents for the other parties to the appeal.

Financially assisted persons

7.12.1 Rule 38 enables an appellant who has been granted, or has applied for, assistance from public funds under arrangements in force in the appellant's jurisdiction, or an appellant whose means are such that payment of a prescribed fee would involve undue financial hardship, to file an application to be treated as a financially assisted person by the Judicial Committee. Any such application should be supported by sworn or credible

evidence as to the applicant's means. The Registrar will certify, if the application is approved, that the appellant is to be treated as a financially assisted person.

7.12.2 Where a certificate has effect in relation to an appellant, the appellant will be entitled to remission or reduction of any liability for fees which are payable under the Rules¹¹.

7.12.3 Any certificate under rule 38 has effect in relation to an appellant until it is withdrawn by the Registrar; and 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.

7.12.4 Rule 38 and paragraphs 7.12.1 – 7.12.3 apply to respondents as they apply to appellants with such modifications as may be necessary.¹²

Specialist advisers

7.13.1 Any party to an appeal may apply in writing to the Registrar for specialist advisers to attend the hearing: rule 36. Such advisers provide assistance to the Judicial Committee and are strictly independent of the parties to the appeal.

Stay of execution

7.14.1 The filing of a notice of appeal or an application for permission to appeal does not in itself place a stay of execution on any order appealed from. A party seeking such a stay must apply to the court appealed from, not to the Judicial Committee: rule 39.

Transcription

7.15.1 See paragraph 6.5.6 of Practice Direction 6 for transcriptions.

Withdrawal of appeals and applications

7.16.1 Attention is drawn to the provisions of rule 33.

Applications for permission to appeal

¹¹ Amended April 2013

¹² Amended April 2013

7.16.2 An application for permission to appeal may be withdrawn by writing to the Registrar, stating that the parties have agreed how the costs should be settled. The respondents should notify the Registrar of their agreement.

Appeals

7.16.3 An appeal that has not been listed for hearing may be withdrawn by writing to the Registrar, stating that the parties to the appeal have agreed the costs of the appeal. The nature of the agreement should be indicated. Where appropriate, the letter should also indicate how any security money should be disposed of. Written notification must also be given to the respondents who must notify the Registrar of their agreement to the withdrawal of the appeal and who must confirm that the costs have been agreed.

7.16.4 An appeal that has been listed for hearing may only be withdrawn by order of the Judicial Committee on application. (See paragraph 7.1 of Practice Direction 7 for applications.) An application for such an order should include submissions on costs and, where appropriate, indicate how any security money should be disposed of. The application must be submitted for their consent to those respondents who have filed an acknowledgement. The application should be filed with the prescribed fee.

Application for order that an agent has ceased to act¹³

7.17.1 An agent may apply for an order declaring that he has ceased to be the agent acting for a party.

7.17.2 Where such an application is made

- (a) the application must be served on the party for whom the agent is acting, unless the Registrar directs otherwise; and
- (b) the application must be supported by evidence.

7.17.3 Where the Registrar makes an order that an agent has ceased to act a copy of the order must be served on every party to the proceedings and the order takes effect when it is served.

References under section 4 of the Judicial Committee Act 1833¹⁴

7.18.1 Rules 56 to 59 provide the procedure where a reference is made to the Judicial Committee under section 4 of the Judicial Committee Act 1833.¹⁵

¹³ Amended Jan 2012

¹⁴ Amended April 2013

¹⁵ Amended April 2013

7.18.2 In cases where a reference is made, the use of Form 1 may be inappropriate and, in those circumstances, a document should be filed which contains the information set out in Annex 3 to this Practice Direction.¹⁶

¹⁶ Amended April 2013

Annex 1

- Form 1 Application for permission/notice of appeal
- Form 2 Application form
- Form 3 Notice of objection/acknowledgement by respondent

Annex 2¹⁷**Fees to be taken**

<i>Column 1</i> <i>Number and description of fee</i>	<i>Column 2</i> <i>Amount of Fee</i>		
	Appeal value up to £100,000	Appeal value up to £100,000 – £500,000	Appeal value over £500,000
1. On filing an application for permission to appeal On filing notice under rule 17(1) On filing a notice of appeal	£150 £100 £100	£500 £800 £800	£1000 £1600 £1600
2. On filing a notice of objection by a Respondent On filing an acknowledgement by a Respondent	£160 £160	£160 £160	£160 £160
3. On filing an incidental application On filing a notice of objection to an incidental application On filing an application to appeal the Registrar's decision	£100 £70 £100		
4. On filing a case	£400	£2500	£5000
5. On request for a copy of a document (a) for ten pages or less (b) for each subsequent page		£5 50p	
6. On filing a request for an assessment of costs		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	
8. Certified documents		£20	

¹⁷ Amended April 2013

Annex 3

References to the Judicial Committee

1. Where a reference is made to the Judicial Committee, the provisions of the Rules and the Practice Directions which supplement the Rules, are to be applied with such variations or modifications as may be required by the particular circumstances of the reference: see rule 56.
2. The reference must be produced on A4 paper, securely bound on the left using both sides of the paper. A reference must be served in accordance with the Rules before it is filed. Notice of the filing of a reference should be given to those persons and bodies who have an interest in, or who are affected by, the reference. Ten copies of the reference should be filed.
3. The person at whose request the reference is made (“the applicant”) must
 - (a) provide the Registrar with the name and address of any person or body who was served with the reference (*“the respondent”*) and the dates when service was effected;
 - (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;
 - (c) inform the Registrar of any person or body who has been notified of the making of the reference, providing the names, addresses and contact details of that person or body and their legal representatives.
4. A respondent who wishes to take part in the reference must notify the Registrar and provide the names, addresses and contact details of his legal representatives.
5.
 - (1) At least 8 weeks before the hearing (or within such period as may be specified by the Registrar), the applicant must file 12 copies of an appendix of the essential documents which are necessary for consideration of the reference.
 - (2) The appendix must be submitted to, and agreed with, every respondent before being filed.
 - (3) The applicant and every respondent must sequentially exchange and then file 12 copies of their written cases at least 2 weeks before the hearing.

The Judicial Committee of the Privy Council

Practice Direction 8

Costs

Note: enquiries about costs and fees should be made to the Costs Clerk (tel: 020-7960 1990).

Drafts and cheques for fees, including assessment fees, should be made payable to '**Judicial Committee Fees Account**'.

Drafts and cheques for security money only should be made payable to '**Judicial Committee Security Fund Account**'.

Contents

Section 1

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Section 2: Form 5 (Bill of Costs)

Section 3: Guideline Hourly Rates for Agents

1. Section 1 – Introduction

1.1 This Practice Direction relates to the costs incurred in proceedings before the Judicial Committee. Detailed assessments of costs in the Judicial Committee may be conducted by the Senior Costs Judge or any costs judge nominated by him. Under section 15 of the Judicial Committee Act 1833 the Judicial Committee may appoint a person or persons other than the Registrar to tax or assess costs and the Costs Judges have been appointed under this provision. A Costs Judge sits alone when assessing costs.

1.2 The Costs Clerk is an officer in the Registry of the Judicial Committee who acts under the direction and supervision of the Registrar.

1.3 Detailed assessments are conducted in public.

1.4 The assessment of costs is governed by the relevant provisions of the Judicial Committee (Appellate Jurisdiction) Rules supplemented by this and the other Practice Directions issued by the Judicial Committee. To the extent that the Judicial Committee (Appellate Jurisdiction) Rules and Practice Directions do not cover the situation, the rules and Practice Directions relating to Parts 44 to 47 of the Civil Procedure Rules are applied by analogy at the discretion of the Costs Judge, with appropriate modifications for appeals from foreign jurisdictions. The legal principles applied are those also applicable to assessments between parties in the High Court and Court of Appeal in England and Wales.

1.5 In this Practice Direction

- “the Costs Officer” means the Senior Costs Judge or any costs judge nominated by him to conduct the detailed assessment on behalf of the Registrar and
- “bill of costs” means a claim for costs in Form 5 filed in accordance with Rule 45 of the Judicial Committee (Appellate Jurisdiction) Rules.

2. Entitlement to Costs

2.1 Costs are in the discretion of the Board and it “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” rule 43(1).

2.2 A bill of costs in Form 5 (see Section 2 of this Practice Direction) may be filed in the Registry for assessment where costs are payable by appellants, respondents or other persons under an order for costs made by an Appeal Panel or by the Board.

3. Basis of Assessment

3.1 Costs in the Judicial Committee are ordered to be assessed on the standard basis or on the indemnity basis in accordance with rules 47 and 48 of the Judicial Committee (Appellate Jurisdiction) Rules. The Board will not allow costs which have been unreasonably incurred or which are unreasonable in amount.

3.2 The assessment of costs in the Judicial Committee shall be limited to costs incurred in the United Kingdom except that fees for work done outside the United Kingdom in advising on an appeal to the Privy Council, preparing an application for permission to appeal to the Privy Council, preparing a case on an appeal and preparing for a hearing are treated as having been incurred in the United Kingdom.

4. Costs of Preparing Applications for Permission to Appeal or Notice of Objection

General

4.1 Where a party applies for costs in accordance with paragraph 3.5.3 of Practice Direction 3 (that is, in circumstances where an application for permission to appeal is refused) the application is made by filing and serving Form 5.

4.2 As a general rule the Registrar does not grant the application where:

- (a) the application for permission was not served on the respondent making the application for costs; or
- (b) the respondent making the application did not file a notice of objection to the application for permission; or
- (c) the application is made by one of two or more parties and the Registrar is not satisfied that the applicant had an interest in the application for permission to appeal that required separate representation.

4.3 Where an unsuccessful application for permission to appeal is determined without an oral hearing, costs may include the reasonable costs of preparing and filing respondent's objections and attending the client, counsel or other parties.

4.4 If an application for permission to appeal is dismissed after an oral hearing, the costs of the hearing are allowable in addition to the costs at 4.3 above.

4.5 The costs of a successful application for permission to appeal become costs in the appeal unless the Board orders otherwise.

Counsel's fees

4.6 The general rule is that a fee for one junior counsel is allowed for preparing an application for permission to appeal or a notice of objection. A fee will be allowed for Queen's Counsel instead of or in addition to junior counsel if this is held to be necessary because of the difficulty or complexity of the case or other good reason.

4.7 For guideline figures for fees on application for permission to appeal, see paragraph 13.

5. Filing

5.1 A claim for costs in Form 5 must be filed within three months of the date on which the relevant costs order is made and must at the same time be served on the other parties.

5.2 The following documents only must be filed with the Costs Clerk:

- (a) two copies of the bill of costs (Form 5);
- (b) counsel's fee notes (which must be receipted) and, where counsel's fees exceed the guideline rates in paragraph 13, a detailed note explaining why; and
- (c) receipts or other evidence of disbursements of £500 or more

5.3 The certificate of service must include the details of all parties entitled to be represented at the detailed assessment.

5.4 The certificates in part 3 of Form 5 must be completed where appropriate. The completed certificate of discharge is accepted as evidence of payment of disbursements under £500, but may, subject to any direction by the Costs Officer, be challenged by the paying party.

5.5 All papers may be filed by email with the Costs Clerk.

5.6 Other papers on which the parties intend to rely may be brought to the hearing or filed with the Costs Clerk as he thinks appropriate. Where a bill is complex or large any papers the Costs Officer need to pre-read must be filed at least 7 days before the hearing.

Points of dispute to bill of costs

5.7 Points of dispute under rule 45 may, and if the bill is above £5,000 must, be filed at the Registry and served on the receiving party within 21 days of service of the bill of costs. The receiving party may within 14 days from service of the points of dispute respond to the points if they think it appropriate to do so. Any request for an extension of time to file points of dispute or replies must be made to the Costs Clerk within the relevant time period or, after expiry of that limit, by application made in Form 2. (For applications see Practice Direction 7.)

5.8 Where the paying party does not file points of dispute a provisional assessment will be conducted (see paragraph 7 below).

Fees

5.9 The fee payable on filing a bill of costs is 2.5% of the amount claimed (including VAT).

5.10 The fee payable on assessment of a bill of costs is 2.5% of the amount allowed (including the costs of assessment and VAT).

5.11 The filing fee and the assessment fee are costs of the detailed assessment.

5.12 Where a bill of costs is agreed less than 21 days prior to assessment the assessment fee is payable on the amount agreed between the parties. In these circumstances all parties must confirm the position in writing or by email to the Costs Clerk.

5.13 Drafts and cheques for fees are payable to the 'Judicial Committee Fees Account'.

5.14 The fees payable under the Rules are set out in Annex 2 to Practice Direction 7.

Completing Form 5

5.15 Form 5 (including the agreed costs figures and the summary) must be completed and returned to the Costs Clerk along with the assessment fee within one month of the assessment.

5.16 If a paying party refuses to sign Form 5, the signature of the receiving party will be sufficient, provided the Registrar is satisfied that the paying party has refused to sign without good reason.

6. Extension of time and Filing Out of Time

6.1 Any request for an extension of the three month period for filing a bill must be made in writing or by email to the Costs Clerk and copied to the other parties. If such an extension is agreed by the parties they should inform the Costs Clerk.

6.2 An application to file a bill of costs out of time made after the expiry of the three month period must be made in Form 2. In deciding whether to grant an application the Registrar takes into account all the circumstances, including:

- (a) the interests of the administration of justice;
- (b) whether the failure to file in time was intentional;
- (c) whether there is a good explanation for the failure to file in time;
- (d) the effect which the delay has had on each party; and
- (e) the effect which the granting of an extension of time would have on each party.

6.3 See Practice Direction 7 for applications.

7. Provisional Assessment

7.1 A provisional assessment (carried out on the papers provided by the parties) is conducted without a hearing:

- (a) where one of the parties requests such an assessment (see rule 46(3));
- (b) where the costs claimed are £75,000 or less; and

- (c) where the paying party fails to file points of dispute (for points of dispute see paragraph 5.7 above)

7.2 The parties are informed in writing of the outcome of the provisional assessment. If a party is dissatisfied with the result representations should be filed with the Costs Clerk within 14 days of receipt of the assessed bill. If points of disagreement cannot be resolved in correspondence, a detailed assessment will be carried out at an oral hearing.

7.3 A detailed assessment in these circumstances proceeds on the basis of the original claim for costs and any points of dispute and replies, any of which may be amended in light of the provisional assessment.

8. Attendance and Detailed Assessment

8.1 The Registrar gives at least 21 days notice of the day and time appointed for assessment to all those entitled to be heard at the assessment. Only the parties or their agents who were responsible for the case in the Judicial Committee or their deputies have a right to be heard. For the purpose of this paragraph, a deputy may be another member of the agent's firm, or the Privy Council/London agent, or the costs draftsman; but those attending must be fully conversant with the matters to be considered. The bill must be endorsed before filing with a certificate of service on the parties entitled to be represented at the assessment or their agents. Information about the date and time of the assessment is sent to all such parties or their agents.

8.2 The receiving party or their agent must attend the assessment.

8.3 If additional papers are brought to the detailed assessment (see paragraph 5.6 above) three copies must be provided and one copy for each other party.

Counsel

8.4 For counsel's fees of attending the detailed assessment see paragraph 13.

Detailed assessment of papers

8.5 The Registrar may, at the request of a party or if the circumstances justify it, direct that a detailed assessment be carried out on the papers.¹

9. Costs Officer's Discretion

9.1 The Costs Officer has discretion as to the amount to allow. In exercising this discretion he bears in mind the terms "reasonably incurred" and "reasonable in amount" in rule 48 of the Judicial Committee (Appellate Jurisdiction) Rules.

¹ Amended Oct 2016

The factors considered include:

- (a) to what extent an item assisted the Board in determining the appeal;
- (b) the length of a hearing;
- (c) the complexity of the issues as indicated by the judgments delivered by the Board, and
- (d) the general level of fees sought and allowed in the lower courts.

9.2 In the case of applications for permission to appeal, a major consideration is whether the application gave rise to a point of public importance.

9.3 The Costs Officer will reduce or disallow claims in respect of documents (including electronic documents) provided by a party where those documents were excessive, inadequate or proved unhelpful to the Board or the Appeal Panel.

9.4 For guideline figures for agents and counsel see paragraph 13 below.

10. Review of Costs Officers' Decision

Application for a review

10.1 Any party to an assessment who is dissatisfied with all or part of a decision of the Costs Officer may apply in accordance with rule 51 for that decision to be revised by the Judicial Committee. The application must be made in Form 2 and served on the other parties. For applications see Practice Direction 7.

10.2 An application may be made only on a question of principle and not in respect of the amount allowed on any item.

10.3 Any application must be made within 14 days of the end of the detailed assessment or such longer period as may be fixed by the Costs Officer or by the Registrar.

10.4 An application for a review must include written submissions stating concisely the grounds of the objections and must be served on the other parties.

10.5 A party who objects to the application may, within 14 days of service or such longer period as may be fixed by the Costs Officer or by the Registrar, file a notice of objection in Form 3, which must be served on the other parties.

Reference to a Single Justice

10.6 The matter is then referred to a member of the Board nominated by the senior member of the Board who heard the appeal or application for permission to appeal.

10.7 The nominated member of the Board will decide whether the matter should be referred to the Judicial Committee and, before he makes a decision, he may consult the other members of the Board who heard the appeal or application. If the nominated member of the Board is of the opinion that the matter should not be referred the decision of the Costs Officer is affirmed.

Referral to the Judicial Committee

10.8 The Judicial Committee decides the matter with or without an oral hearing.

10.9 If the application is referred for hearing the parties must liaise with the Costs Clerk over papers and listing.

11. Assessment Certificates

11.1 When the assessment fee has been paid, an assessment certificate for the costs allowed will be sent to the receiving party, except in the case of respondents whose costs can be wholly satisfied from money deposited as security for costs (see rules 37, 50 and 52).

Default costs certificate

11.2 Where a party fails to file or serve points of dispute within 14 days, or such other period as may be fixed by the Registrar, the receiving party may apply for a default costs certificate. Such a certificate will normally certify all the costs claimed in the bill of costs but the Registrar may reduce costs which appear to be unreasonably incurred, unreasonable in amount or disproportionate²

12. Interest

12.1 Interest is payable on costs assessed between the parties. The rate of interest is in accordance with the provisions of the Judgments Act 1838, as amended, and interest accrues from the day on which the costs order is made or such other date as the Judicial Committee may specify unless the Costs Officer exercises his discretion to vary the period for which interest is allowed.

13. Guidelines on Fees Allowed

13.1 The Judicial Committee adopts the guideline rates issued by the Senior Courts Costs Office for summary assessment and the rates are the starting point for all assessments. These are consolidated figures that include a mark-up for care and attention. Form 5 must be completed using a consolidated figure for the hourly rate. If a rate is charged that exceeds the guideline rate an explanation must be given under the heading 'Fee earners and hourly rates' in part 1 of Form 5.

13.2 The following table sets out the current hourly rates and localities:

Grade of fee earner	A	B	C	D
	£	£	£	£
City of London	409	296	226	138
Central London	317	242	196	126
Outer London	229-267	172-229	165	121

² Amended Oct 2016

National 1	217	192	161	118
National 2	201	177	146	111

An explanation of the grades and details of localities is set out in section 3 below. If the rates set by the Civil Justice Council Costs Committee have been amended the Costs Officer will allow the amended rates in lieu of those in this table. Fees for work done overseas for the purpose of proceedings before the Judicial Committee are treated as having been incurred in England (see paragraph 3.2).

13.3 Where agents have charge of producing large documents such as the authorities, it will not usually be appropriate for a higher grade rate to be applied. Time spent photocopying is not recoverable (although the cost of the photocopying is). See also paragraph 9.3 above for documents.

13.4 The Costs Officer may under this head allow reasonable costs of travelling from overseas, particularly the reasonably incurred travel costs of counsel engaged in the courts below who are instructed to present the case before the Judicial Committee.

13.5 Letters and telephone calls are allowed at one tenth (1/10) of the hourly rate.

Counsel

13.6 The following guideline figures are used in assessing payments to counsel at the application for permission to appeal stage:

Applications for permission to appeal	Junior £	QC £
Settling application	1250.00	1750.00
Preparing respondents' objections	800.00	1100.00
One conference	250.00	500.00
Attending oral hearing by Appeal Panel	1600.00	2100.00

13.7 A claim for an increase on any of the above items or claim for any other item must be explained in a detailed note from counsel.

13.8 The general rule is that only one counsel's fees is allowed on assessment for any stage of an application for permission to appeal but see paragraphs 4.6 and 4.7.

13.9 The following guideline figures are used in assessing payments to counsel at the appeal stage:

Appeals	Junior £	QC £
Notice of appeal (where Board has granted permission)	150.00	150.00
Notice of appeal (where permission is not required)	1250.00	1750.00
Statement of facts and issues	2250.00	4500.00
Authorities	900.00	1800.00
Conferences (each, up to a maximum of six)	600.00	1200.00

Advice	1000.00	2000.00
Brief (based on a 1 day hearing)	7500.00	15000.00
Brief (based on a 2 day or longer hearing)	10000.00	20000.00
Refresher (from day two of the hearing)	1625.00	3250.00

Notes

13.10 Counsel's fees are assessed in respect of each item of work counsel has undertaken. It is essential that this approach is reflected by those completing Form 5. It should be borne in mind that the number of hours spent by counsel in preparation is rarely of assistance to the Costs Officer when assessing the amount of counsel's fees at any stage of the proceedings.

13.11 Counsel for an appellant generally commands a higher fee than counsel for a respondent.

13.12 The brief fee includes all work on **the brief, the written case, counsel-only conferences and the first day of attendance.**

13.13 The Costs Officer exercises discretion in instances where junior counsel has undertaken most of the work on a particular item.

13.14 For settling a notice of appeal where the Board has granted permission, only one counsel's fee is permitted.

These fees are intended as a guide. If counsel seek higher fees, they must provide an explanation in a detailed note.

14. Conditional Fee Agreements

14.1 Privy Council costs practice does not allow for the recovery of after-the-event premiums or success fees under conditional fee agreements: *Seaga v Harper*, No 90 of 2006 [2009] UKPC 26.

15. Costs of Litigants in Person

15.1 The amount allowed to a litigant in person may not exceed the loss actually sustained or, where no loss has been sustained, £18 for each hour reasonably spent, subject in either case to a maximum for any particular item of two thirds of the sum which in the opinion of the Costs Officer would have been allowed for that item if the litigant had been represented by an agent. The two thirds limit does not apply to out-of-pocket expenses which would be disbursements if incurred by an agent. (For further information see CPR 46.5 and paragraph 3 of Practice Direction 46 which supplements it.)

16. Costs of Assessment

16.1 By way of guidance for smaller claims, the following sums are usually justified for completing Form 5:

Amount of bill	Amount allowed
Bills assessed at up to £2000 (excluding VAT)	£300
Bills assessed at £2001-£5000 (excluding VAT)	£500
Bills assessed at £5001-£10000 (excluding VAT)	£700

16.2 For a larger bill the amount allowed for time reasonably spent in drafting the bill is calculated as a multiple of the relevant hourly rate for a Grade D fee-earner (unless a claim for a higher grade is justified).

16.3 The parties must prepare costs schedules for the consideration of the Costs Officer after detailed assessment.

16.4 Counsel may not claim a brief fee for attending detailed assessment on their own behalf but may do so if briefed in respect of the entire bill.



Form 5 (Bill of Costs)

This form covers all JCPC proceedings. Please delete rows or sections as appropriate

<p>UKSC Form 5 Part 1 [APPELLANT'S] [RESPONDENT'S] BILL OF COSTS [delete as appropriate]</p>
<p>Case title/JCPC reference</p> <p>On appeal from</p> <p>Parties</p> <p>Summary of Board's decision</p> <p>Brief outline of proceedings below</p>

Brief outline of JCPC proceedings

Outline of funding arrangements

Fee earners and hourly rates

Other useful information

VAT number if appropriate

Item	Description/date etc	Profit costs	Counsel's fees	Other disbursements	VAT
PERMISSION TO APPEAL					
Counsel's fees					
1					
2					
3					
Attendances on and communications with the Registry including fees paid					
4					
5					
6					
Attendances on and communications with counsel					
7					
8					
9					
Attendances on and communications with client					
10					
11					
12					
Attendances on and communications with opponent					
13					
14					
15					

Item	Description/date etc	Profit costs	Counsel's fees	Other disbursements	VAT
Attendances on and communications with others (please specify)					
16					
17					
18					
Attendance at oral hearing					
19					
20					
21					
Work done on documents (itemise at Part 3)					
22					
23					
24					
Other work done/disbursements					
25					
26					
27					
NOTICE OF APPEAL					
Counsel's fees					
28					
29					
30					
31					
32					
33					
Attendances on and communications with the Registry including fees paid					
34					
35					
36					
37					
38					
39					
Attendance at appeal hearing					
40					
41					
42					
43					
Attendances on and communications with counsel					
44					
45					
46					
47					
48					
49					
Attendances on and communications with client					
50					
51					

Item	Description/date etc	Profit costs	Counsel's fees	Other disbursements	VAT
52					
53					
54					
55					
Attendances on and communications with opponent					
56					
57					
58					
59					
60					
61					
Attendances on and communications with others (please specify)					
62					
63					
64					
65					
66					
67					
Work on documents (itemise at Part 3)					
68					
69					
70					
71					
72					
73					
Other work done/disbursements					
74					
75					
76					
77					
78					
79					
COSTS OF ASSESSMENT					
Attendances on and communications with the Registry					
80					
81					
82					
83					
Attendances on and communications with counsel					
84					
85					
86					
87					
Attendances on and communications with opponent					
88					
89					

Item	Description/date etc	Profit costs	Counsel's fees	Other disbursements	VAT
90					
91					
Work done drawing the bill					
92					
93					
94					
95					
Other work done/disbursements					
96					
97					
98					
99					
Detailed assessment costs schedule					
100					
101					
102					
103					
104					
TOTAL COSTS CLAIMED excluding costs of assessment					
Profit costs					
VAT on profit costs					
Counsel's fees					
VAT on counsel's fees					
Other disbursements					
VAT on other disbursements					
TOTAL COSTS OF ASSESSMENT					
Profit costs					
VAT on profit costs					
Counsel's fees					
VAT on counsel's fees					
Other disbursements					
VAT on other disbursements					
Totals					
Grand total					

Part 2 SUMMARY AND AGREED AMOUNT TO BE CERTIFIED					
	Claimed	Assessed off	Allowed	VAT	Total £
Profit costs					
Counsels' fees					
Other					

disbursements					
Filing fee					
Assessment fee					
Total amount to be certified					
Signed for receiving party					
Signed for paying party					

This Part should first be completed and signed by the receiving party and then (if appropriate) by the paying party. The receiving party should then return the bill to the Registry along with the assessment fee.

Cont'd overleaf

Part 4 CERTIFICATES – DELETE OR AMEND AS APPROPRIATE	
<p>CERTIFICATE OF SERVICE</p> <p>This bill was served on the appellant/respondent [NAME] on [DATE] This document was served on the [NAME OF SOLICITORS] by the following method: [METHOD OF SERVICE] I believe that the facts stated in this certificate are true</p>	Y/N
<p>CERTIFICATES AS TO ACCURACY, INTEREST, PAYMENTS AND VAT</p> <p>(i) Accuracy</p> <p>This bill is both accurate and complete <i>(where the receiving party was legally aided)</i></p> <p>All the work claimed as payable by a legal aid provider was done under a certificate issued by the legal aid provider granted to [legally aided party] <i>(where costs are claimed for work done by an employed solicitor)</i> The work claimed at items [] was conducted by a solicitor who is an employee of the receiving party <i>(other cases where costs are claimed for work done by a solicitor)</i> The costs claimed in this bill do not exceed the costs which the receiving party is required to pay me/my firm.</p>	Y/N Y/N Y/N Y/N
<p>(ii) Interest and Payments</p> <p>No rulings have been made in this case which affects the receiving party's entitlement to interest on costs OR The only rulings made in this case as to interest are as follows <i>[give brief details as to the date of such ruling]</i> AND No payments have been made by the paying party on account of costs included in this bill of costs OR The following payments have been made on account of costs included in this bill of costs <i>[give brief details of such payments]</i></p>	Y/N Y/N Y/N Y/N
<p>(iii) Disbursements</p> <p>All disbursements listed in this bill which individually do not exceed £500 (other than those relating to Counsel's fees) have been duly discharged.</p>	Y/N
<p>(iv) VAT</p> <p>With reference to the pending assessment of the appellant's/respondent's costs and disbursements which are payable by the appellant/respondent—the appellant/respondent, on the basis of its last completed VAT return, would [not] be entitled to recover/would be entitled to recover only X percent of the Value Added Tax on such costs and disbursements as input tax pursuant to Section 14 of the Value Added Tax Act 1983.</p>	Y/N
<p>I, _____ Grade solicitor at the firm _____, certify that the above statements are true</p> <p>Signed _____</p> <p>Date _____</p>	Y/N

Section 3: Guideline Hourly Rates for Agents

Solicitors' hourly rates: England and Wales

1. The guideline rates set out in paragraph 13 for agents are broad approximations. Rates include care and attention.
2. The grades of fee earner are those that have been agreed between representatives of the Senior Courts Costs Office, the Association of District Judges and the Law Society. The categories are as follows:
 - A Solicitors with over eight years' post qualification experience including at least eight years litigation experience.
 - B Solicitors, employed barristers and legal executives with over four years' post qualification experience including at least four years litigation experience.
 - C Other solicitors, legal executives and fee earners of equivalent experience.
 - D Trainee solicitors, para legals and fee earners of equivalent experience.
3. "Legal Executive" means a Fellow of the Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.
4. Unqualified clerks who are fee earners of equivalent experience may be entitled to similar rates and in this regard it should be borne in mind that Fellows of the Institute of Legal Executives generally spend two years in a solicitor's office before passing their Section 1 general examinations, spend a further two years before passing the Section 2 specialist examinations and then complete a further two years in practice before being able to become Fellows. Fellows therefore possess considerable practical experience and academic achievement. Clerks without the equivalent experience of legal executives will be treated as being in the bottom grade of fee earner i.e. trainee solicitors and fee earners of equivalent experience. Whether or not a fee earner has equivalent experience is ultimately a matter for the discretion of the court.

The National 1 rates apply to

- Aldershot, Farnham, Bournemouth (including Poole)
- Birmingham Inner
- Bristol
- Cambridge City, Harlow
- Canterbury, Maidstone, Medway & Tunbridge Wells
- Cardiff (Inner)
- Chelmsford South, Essex & East Suffolk
- Chester
- Fareham, Winchester
- Chester
- Hampshire, Dorset, Wiltshire, Isle of Wight
- Kingston, Guildford, Reigate, Epsom
- Leeds Inner (within 2 kilometres radius of the City Art Gallery)

- Lewes
- Liverpool, Birkenhead
- Manchester Central
- Newcastle City Centre (within a 2 mile radius of St Nicholas Cathedral)
- Norwich
- Nottingham City
- Oxford, Thames Valley
- Southampton, Portsmouth
- Swindon, Basingstoke
- Watford

The National 2 rates apply to

- Bath, Cheltenham and Gloucester, Taunton, Yeovil
- Birmingham Outer
- Bradford (Dewsbury, Halifax, Huddersfield, Keighley and Skipton)
- Bury
- Chelmsford North, Cambridge County, Peterborough, Bury St E, Norfolk, Lowestoft
- Cheshire and North Wales
- Coventry, Rugby, Nuneaton, Stratford and Warwick
- Cumbria
- Devon, Cornwall
- Exeter, Plymouth
- Hull (City)
- Hull (Outer)
- Kidderminster
- Leeds Outer, Wakefield and Pontefract
- Leigh
- Lincoln
- Luton, Bedford, St Albans, Hitchin, Hertford
- Manchester Outer, Oldham, Bolton, Tameside
- Newcastle (other than City Centre)
- Northampton & Leicester
- Nottingham & Derbyshire
- Preston, Lancaster, Blackpool, Chorley, Accrington, Burnley, Blackburn, Rawenstall & Nelson
- Scarborough & Ripon
- Stafford, Stoke, Tamworth
- Sheffield, Doncaster and South Yorkshire
- Shrewsbury, Telford, Ludlow, Oswestry
- South & West Wales
- Southport
- St Helens
- Stockport, Altrincham, Salford
- Swansea, Newport, Cardiff (Outer)
- Teesside
- Wigan
- Wolverhampton, Walsall, Dudley & Stourbridge

- Worcester, Hereford, Evesham & Redditch
- York, Harrogate

LONDON BANDS Grade	A	B	C	D
London 1 EC1, EC2, EC3, EC4	£409	£296	£226	£138
London 2 W1, WC1, WC2, SW1	£317	£242	£196	£126
London 3 (All other London post codes: W, NW, N, E, SE, SW and Bromley, Croydon, Dartford, Gravesend and Uxbridge)	£229-267	£172-229	£165	£121

The Judicial Committee of the Privy Council

Practice Direction 9

Filing Documents in the Registry of the Judicial Committee by Electronic Means

Introduction

9.1 The Judicial Committee intends to take full advantage of the opportunities offered by modern information technology and rules 6(1)(d) and 7(1)(d) of the Judicial Committee (Appellate Jurisdiction) Rules 2009 provide for the service and filing of documents “(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”. This Practice Direction makes the necessary provision.

Filing of documents

9.2.1 Subject to paragraph 9.4.6, all documents must be filed electronically at the same time as hard copies are sent to the Registry. See rule 7(3) which provides that:

“Except with the consent of the Registrar, the contents of documents filed in hard copy must also be provided to the Registry by electronic means, and filed by electronic means must also be provided to the Registry in hard copy.”

Other parties should be notified by the filing party that filing has taken place.

9.2.2 Each electronic document must be named in accordance with the file naming convention published by the Registrar.

9.2.3 In the event of a mistake being made, the Registry should be notified immediately.

Submission of electronic documents to the Registry

9.3.1 Unless otherwise directed or permitted by the Registrar, or where the circumstances in paragraph 9.5.5 apply, the means of submitting electronic documents to the Registry is via e-mail at JCPCRegistry@jcpc.uk.

9.3.2 Where the Registrar directs or permits, or in accordance with 9.5.5 below, a party should submit the electronic documents to the Registry on a memory stick, clearly marked or labelled with the title of the case and the identity of the party.

General provisions

9.4.1 A document is not filed until the transmission is received and accepted by the Registry, whatever time it is shown to have been sent.

9.4.2 The time of receipt of a transmission will be recorded electronically on the transmission as it is received.

9.4.3 If a transmission is received after 4pm –

- 1) the transmission will be treated as received; and
- 2) any document attached to the transmission will be treated (if accepted) as filed, on the next day the Registry is open.

9.4.4 A party sending an e-mail is responsible for ensuring that the transmission or any document attached to it is filed within any relevant time limits.

9.4.5 The Registry will normally reply by e-mail where –

- 1) the response is to a message transmitted electronically; and
- 2) the sender has provided an e-mail address.

9.4.6 Parties are advised not to transmit electronically any correspondence or documents of a confidential or sensitive nature, as security cannot be guaranteed.

9.4.7 If a document transmitted electronically requires urgent attention, the sender should contact the court by telephone.

Format of electronic documents for the hearing

9.5.1 Electronic documents for use at the hearing must be prepared in accordance with the following provisions and the parties are encouraged to co-operate in their preparation. **The electronic document (which must be identical to the hard copy) should be contained in a single pdf and must be numbered in ascending order throughout.** Pagination should begin with the first page of the Record (i.e. the cover sheet)¹ and should be continued throughout the entire series of documents. New pagination must not be used for separate documents or folders within the single pdf. When referring to documents, counsel should first refer to the page number on the electronic version. It will also be necessary, where this is different, to refer to the hard copy bundle number. The hard copy bundles should bear the same page numbering as the electronic document as well as any internal page numbering. This should appear at the foot of the page on the right.

9.5.2 The default display view size on all pages must be 100%. Text on all pages must be in a format that will allow comments and highlighting to be imposed on the text. Bookmarks must be labelled so as to identify the document to which each refers. The bookmark should have the same name or title as the actual document. The index page must be hyperlinked to the pages or documents to which it refers. A sample bundle will be available for Court users from the Registry.

9.5.3 Unless otherwise directed or permitted by the Registrar, the record and volumes of authorities must be filed as a single pdf document and bookmarked in accordance with the index so that each individual document can be accessed directly by hypertext link both from the index page and from bookmarks on the left-hand side. Please see the example core volume and accompanying instructions on the Judicial Committee's website at <http://www.jcpc.uk/procedures/electronic-bundle-guidelines.html> ².

9.5.4 Wherever possible, pdf documents within *the record and within volumes of* authorities and otherwise filed with the Registry must be converted to pdf from their original electronic versions rather than scanned as images. Where documents are only available in

¹ Amended 2015

² Amended Jan 2012

hard copy and have to be scanned, the resultant pdf files should, where the quality of the scan allows, be subjected to a process of optical character recognition (OCR). This is to enable the documents to be text searchable and annotatable by the Board. Please see the example core volume and accompanying instructions on the Judicial Committee's website at

<http://www.jcpc.uk/procedures/electronic-bundle-guidelines.html> ³.

9.5.5 Where electronic volumes or other individual documents exceed 10 megabytes in size they must be submitted on memory stick, clearly marked or labelled with the title of the case and the identity of the party. The memory sticks should include, in the following order,

- (1) the index to the electronic bundles
- (2) the Record of Proceedings, (including the index)
- (3) the notice of appeal
- (4) the notice of acknowledgment
- (5) précis
- (6) the statement of facts and issues
- (7) chronology
- (8) the Appellant's case
- (9) the Respondent's case
- (10) index to authorities
- (11) the authorities.

The memory sticks ⁴should be filed no later than two weeks before the hearing.

9.5.6 The Registrar may permit filing in a different or additional format (e.g. Excel) for good reason.

Hypertext linking within documents

9.6.1 The Judicial Committee does not intend at this stage to impose detailed requirements as to hypertext linking within documents. However, it wishes to encourage parties to employ hypertext links within documents. In particular, it would be helpful if hypertext links were introduced at the time the record is produced to link:

- a. the statement of facts and issues to documents in the record,
- b. written cases to documents in the record and to the authorities,
- c. cases to the relevant law reports and to the index of authorities.

9.6.2 The parties should seek to agree on the extent to which hypertext linking is to be used.

Special directions

9.7 The Registrar may give special directions for the filing of electronic documents to meet the requirements of particular cases or by way of experiment.

³ Amended Jan 2012

⁴ Amended April 2015