

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