

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	£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			
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	£100		
On filing an application to appeal the Registrar's decision	£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		£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 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.