Practice Direction 1

Section 1: The Supreme Court - General Note

1.1.1 The Supreme Court of the United Kingdom was established by Part 3 of the Constitutional Reform Act 2005 ("the Act"), coming into force on 1st October 2009. Its jurisdiction corresponds to that of the House of Lords in its judicial capacity under the Appellate Jurisdiction Acts 1876 and 1888 (which are repealed) together with devolution matters under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006, which are transferred to the Supreme Court from the Judicial Committee of the Privy Council. The jurisdiction of the Supreme Court is defined by section 40 of, and Schedule 9 to, the Act.

1.1.2 Under section 45 of the Act, the senior Lord of Appeal in Ordinary has, after consulting the Lord Chancellor, the General Council of the Bar of England and Wales, the Law Society of England and Wales, the Faculty of Advocates of Scotland, the Law Society of Scotland, the General Council of the Bar of Northern Ireland, the Law Society of Northern Ireland and other bodies likely to be affected by the Rules, made the Supreme Court Rules, which are published as S.I. 2009/1603. The Rules, which come into force on 1st October 2009, apply to civil and criminal appeals to the Court and to appeals and references under the Court's devolution jurisdiction.

1.1.3 The overriding objective of the Supreme Court Rules is to secure that the Court is accessible, fair and efficient and the senior Lord of Appeal in Ordinary, the President of the Supreme Court, has issued these Practice Directions to supplement the Supreme Court Rules, to provide for the forms to be used in the Supreme Court and to provide general guidance and assistance to parties and their legal representatives.

1.1.4 Transitional arrangements Rule 55 of the Supreme Court Rules makes transitional arrangements for appeals and applications which were filed before 1st October 2009. Unless the Court or the Registrar directs otherwise, the Rules apply, with any necessary modifications, to any appeals and applications which were lodged in the House of Lords before 1st October 2009 and the Court or the Registrar may give special directions in these circumstances.

1.1.5 Forms. The Practice Directions provide for a number of forms and a reference in the Supreme Court Rules or in these Practice Directions to a form by number means the form so numbered in the relevant practice direction. The forms are to be used in the cases to which they apply or in the particular circumstances for which they are provided but a form may be varied by the Court or a party if the variation is required by the circumstances of a particular case. The forms are set out in Annex 1 to Practice Direction 7.

1.1.6 Jurisdiction. The jurisdiction of the Supreme Court corresponds to that of the House of Lords in its judicial capacity together with devolution matters and its jurisdiction is summarised in Section 2 of this Practice Direction.

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Section 2: The Jurisdiction of the Supreme Court

Civil Appeals

1.2.1 The key provisions in relation to civil appeals are subsections (2) and (3) of section 40 of the Act:

(2) An appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings.

(3) An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section.

1.2.2 The principal provisions relating to civil appeals from Scotland are in section 40 of the Court of Session Act 1988 as amended by the Act. (But see also sections 24, 27 (5), 32(5), 41, 42, 43 and 52(3) as amended for further matters of detail as amended for further matters of detail and paragraph 1.2.25 1.)

1.2.3 The principal provisions relating to civil appeals from Northern Ireland are in section 42 of the Judicature (Northern Ireland) Act 1978 as amended by the Act. See also sections 43 (preserving leapfrog appeals), 44 (contempt) and 45 (habeas corpus), as amended.

1.2.4 Schedule 9 to the Act also amends a large number of statutes which gave rights of appeal (often limited to issues of law) to the House of Lords; these are replaced by corresponding rights of appeal to the Supreme Court.

1.2.5 Section 40(6) of the Act provides:

An appeal under subsection (2) lies only with the permission of the Court of Appeal or the Supreme Court; but this is subject to provision under any other enactment restricting such an appeal.

The most important general restriction on rights of appeal is section 54(4) of the Access to Justice Act 1999 (2). The effect of this provision is that the Supreme Court may not entertain any appeal against an order of the Court of Appeal refusing permission for an appeal to the Court of Appeal from a lower court.

1.2.6 Where the Supreme Court does not have jurisdiction, the Registrar will inform the appellant in writing that the Supreme Court does not have jurisdiction.

Other statutory restrictions

1.2.7 There are other statutory restrictions on the Court's jurisdiction. The following are excluded from the Court's jurisdiction and are inadmissible -

a. appeals from incidental decisions of the Court of Appeal which may be called into question by rules of court: see Senior Courts Act 1981, section 58 (as amended by Access to Justice Act 1999, section 60);

b. appeals from preliminary decisions of the Court of Appeal in respect of a case in which permission to appeal to the Court of Appeal was not granted (see Lane v Esdaile [1891] AC 210);

c. applications brought by a person in respect of whom the High Court has made an order under section 42 of the Senior Courts Act 1981 (restriction of vexatious legal proceedings)(3);

d. applications for permission to appeal from a decision of the Court of Appeal on any appeal from a county court in any probate proceedings (4);

e. applications for permission to appeal from a decision of the Court of Appeal on an appeal from a decision of the High Court on a question of law under Part III of the Representation of the People Act 1983 (legal proceedings)(5);

f. applications for permission to appeal against the refusal by the Court of Appeal to reopen (6) a previously concluded appeal or application for permission to appeal (7).

Civil Contempt of Court Cases

1.2.8 In cases involving civil contempt of court, an appeal may be brought under section 13 of the Administration of Justice Act 1960 (8). Permission to appeal is required and an application for permission must first be made to the court below. If that application is refused, an application for permission to appeal may then be made to the Supreme Court. Where the decision of the court below is a decision on appeal under the same section of the same Act, permission to appeal to the Supreme Court is only granted if the court below certifies that a point of law of general public importance is involved in that decision and if it appears to that court or to the Supreme Court, as the case may be, that the point is one that ought to be considered by the Supreme Court. Where the court below refuses to grant the certificate required, an application for permission to appeal is not accepted for filing in the Supreme Court.

Time limit for applying for permission to appeal (civil appeals)

1.2.9 The time limit for applying for permission to appeal in civil cases (other than civil contempt of court or habeas corpus) is 28 days from the date of the order appealed from. The Supreme Court may extend this time limit.

Criminal Appeals

1.2.10 Appeals to the Supreme Court in criminal proceedings in England and Wales or Northern Ireland are subject to special restrictions limiting such appeals to cases of general public importance. As before, there is no appeal in criminal proceedings from the High Court of Justiciary or any other court in Scotland, but issues relating to criminal proceedings in Scotland may come before the Supreme Court as devolution issues under the Scotland Act 1998.

England and Wales (except courts-martial)

1.2.11 Appeals to the Supreme Court in criminal proceedings in England and Wales are regulated by sections 33 and 34 of the Criminal Appeal Act 1968 and sections 1 and 2 of the Administration of Justice Act 1960 as amended (in each case) by section 88 of the Courts Act 2003 and section 40 of, and Schedule 9 to, the Act. All such appeals may be made at the instance of the accused or the prosecutor. Section 13 of the Administration of Justice Act 1960 (as amended) extends the scope of sections 1 and 2, with some qualifications, to appeals relating to contempt of court (civil or criminal). Sections 36 to 38 of the Criminal Appeal Act 1968 (as amended) contain ancillary provisions about bail, detention and attendance at appeal hearings.

1.2.12 Any appeal under these provisions requires the permission of the court below or the Supreme Court, which may be granted (except for a first appeal in a contempt of court matter) only if (i) the court below certifies that a point of general public importance is involved and (ii) it appears to the court below or to the Supreme Court that the point is one which ought to be considered by the Supreme Court.

1.2.13 Section 36 of the Criminal Justice Act 1972 (as amended) permits the Court of Appeal to refer a point of law to the Supreme Court where (after an acquittal) the Attorney-General has referred the point of law to the Court of Appeal.

Northern Ireland

1.2.14 Similar provisions apply to appeals in criminal proceedings in Northern Ireland: see sections 31 and 32 of the Criminal Appeal (Northern Ireland) Act 1980 and section 41 of, and Schedule 1 to, the Judicature (Northern Ireland) Act 1978 as amended (in each case) by section 105 of the Courts Act 2003 and section 40 of, and Schedule 9 to, the Act.

Courts-Martial

1.2.15 Similar provisions apply to appeals from the Courts-Martial Appeal Court: see sections 39 and 40 of the Courts-Martial (Appeals) Act 1968 as amended by section 91 of the Courts Act 2003 and section 40 of, and Schedule 9 to, the Act.

Time limit for applying for permission to appeal (criminal appeals)

1.2.16 As a result of amendments made by the Courts Act 2003 the time limit for applying for permission to appeal is 28 days from the date of the decision to be appealed from, or (if later) the date when reasons for the decision are given. The Supreme Court may extend time except in appeals under the Extradition Act 2003 (see sections 32 and 33 of that Act).

Leapfrog Appeals (9)

1.2.17 Appeals in civil matters may exceptionally be permitted to be made direct to the Supreme Court under sections 12 to 16 of the Administration of Justice Act 1969, sections 14A to 14C of the Tribunals, Courts and Enforcement Act 2007, sections 37A to 37C of the Employment Tribunals Act 1996 and under sections 7B to 7D of the Special Immigration Commission Act 1997. These appeals are generally called leapfrog appeals.

1.2.18 Such appeals are permitted only if the relevant statutory conditions are satisfied and the Supreme Court grants permission.(10)

1.2.19 The relevant statutory conditions are set out in section 12(3) and (3A) of the Administration of Justice Act 1969, section 14A(4) and (5) of the Tribunals, Courts and Enforcement Act 2007, section 37A(4) and (5) of the Employment Tribunals Act 1996 and section 7B(4) and (5) of the Special Immigration Commission Act 1997.(11)

Judicial review in England and Wales: civil matters

1.2.20 An application for permission to apply for judicial review is made to the Administrative Court (which is part of the King's Bench Division of the High Court). If the judge in the Administrative Court refuses the application without a hearing, an application can be made for the decision to be reconsidered at a hearing. Where permission to apply for judicial review has been refused by the Administrative Court after reconsideration at an oral hearing, the applicant may appeal against the refusal of permission. Such an appeal must be filed in the Court of Appeal within 7 days. For such an appeal to be successful, the applicant needs to be granted both i) permission to appeal against the Administrative Court's determination; and ii) permission to apply for judicial review.

1.2.21 If the Court of Appeal refuses permission to appeal to it against the Administrative Court's refusal of permission to apply for judicial review, there is no appeal to the Supreme Court. The Supreme Court has no jurisdiction to entertain such an appeal: R v Secretary of State for Trade and Industry, ex parte Eastaway [2000] 1 WLR 2222 applying the principle in Lane v Esdaile [1891] AC 210. However, if the Court of Appeal (a) grants permission to appeal to it against the Administrative Court's refusal of permission to apply for judicial review, but then (b) itself refuses permission to apply for judicial review, the Supreme Court does have jurisdiction to hear an appeal against that refusal: R v Hammersmith and Fulham LBC, ex parte Burkett [2002] 1WLR 1593.

1.2.22 Similar provisions apply in Scotland and Northern Ireland.

Human Rights

1.2.23 The Human Rights Act 1998 applies to the Supreme Court and issues under that statute will often arise on appeals to the Supreme Court. But the Human Rights Act 1998 does not confer any general right of appeal beyond those mentioned in this Practice Direction. As to declarations of incompatibility, see rule 40 and Practice Direction 9 (Human Rights Act issues).

Devolution Matters

1.2.24 Devolution matters raise issues of constitutional importance as to the purported or proposed exercise of a function by a member of the Scottish Executive, a Minister in Northern Ireland or a Northern Ireland department or the Welsh Ministers or as to the legislative competence of the Scottish Parliament under the Scotland Act 1998, the Northern Ireland Assembly under the Northern Ireland Act 1998, and the National Assembly for Wales 12 under the Government of Wales Act 2006. Under these Acts, as amended by Part 2 of Schedule 9 to the Act, the Supreme Court has an appellate jurisdiction in proceedings for the determination of a devolution issue and special statutory powers to consider referred questions, including questions referred by the relevant law officer or Ministers. See rule 41 and Practice Direction 10 (Devolution Issues).

Civil appeals from Scotland

1.2.25 Where judgment is pronounced after 22 September 2015 on a decision of the Inner House of the Court of Session which is

1. a decision constituting final judgment in any proceedings,
2. a decision in an exchequer cause,
3. a decision, on an application under s,29 of the Court of Session Act 1988, to grant or refuse a new trial in any proceedings,
4. any other decision in any proceedings,

i. there is a difference of opinion among the judges making the decision, or

ii. the decision is one sustaining a preliminary defence and dismissing the proceedings.

an appeal may be made to the Supreme Court

1. with the permission of the Inner House, or
2. if the Inner House has refused permission, with the permission of the Supreme Court.

- "final judgment", in relation to any proceedings, means a decision which, by itself or taken along with prior decisions in the proceedings, disposes of the subject matter of the proceedings on its merits, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for,
- "preliminary defence", in relation to any proceedings, means a defence that does not relate to the merits of the proceedings.

In the case of any other decision of the Inner House, an appeal may be made to the Supreme Court only with the permission of the Inner House.

No appeal may be taken to the Supreme Court against any decision of a Lord Ordinary.

An application to the Inner House for permission to take an appeal must be made-

1. within the period of 28 days beginning with the date of the decision against which the appeal is to be taken, or
2. within such longer period as the Inner House considers equitable having regard to all the circumstances.

An application to the Supreme Court for permission to appeal must be made-

1. within the period of 28 days beginning with the date on which the Inner House refuses permission for the appeal, or
2. within such longer period as the Supreme Court considers equitable having regard to all the circumstances.

The Inner House or the Supreme Court may grant permission for an appeal only if the Inner House or, as the case may be, the Supreme Court considers that the appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time 13.

References under Art. 267

1.2.26 Community law requires that the Supreme Court (as the domestic court of last resort) should refer to the Court of Justice of the European Union any doubtful questions of Community law necessary to its decision. See rule 42 and Practice Direction 11 (The European Court of Justice).

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Section 3: The exercise of the Supreme Court's jurisdiction

1.3.1 Some of the powers of the Court may be exercised by a single Justice and by the Registrar. Rule 9 makes specific provision for procedural decisions. If any procedural question arises which is not dealt with by the Rules, the Court or the Registrar may adopt any procedure that is consistent with the overriding objective, the Act and the Rules: rule 9(7).

1.3.2 Procedural Decisions Except where rule 9(2) (see paragraph 1.3.4) applies, the powers of the Court under the following rules may be exercised by a single Justice or the Registrar without an oral hearing -

rule 5 (time limits),
rule 8 (non-compliance with Rules),
rule 11 (rejection of applications)
rule 33 (change of interest),
rule 34 (withdrawal of appeal),
rule 35 (advocate to the Court and assessors),
rule 36 (security for costs),
rule 37 (stay of execution) and
rule 41 (devolution jurisdiction).

1.3.3 The single Justice may direct an oral hearing or may refer the matter to a panel of (at least three) Justices to be decided with or without an oral hearing: rule 9(3).

1.3.4 A contested application

a. alleging contempt of the Court; or

b. for a direction under rule 8 dismissing an appeal or debarring a respondent from resisting an appeal; or

c. for security for costs, has to be referred to a panel of three Justices: rule 9(2).

In a case of an alleged contempt, an oral hearing must be held; in any other case the Justices may hold an oral hearing.

1.3.5 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 a single Justice (and paragraphs 1.3.2 and 1.3.3 then apply) or to a panel of three Justices for decision.

1.3.6 A party who is dissatisfied with a decision of the Registrar may apply for that decision to be reviewed by a single Justice. Any application must be made in Form 2 and must be filed within 14 days of the Registrar's decision: rule 9(5). A fee is payable and the procedure in paragraphs 1.3.2 and 1.3.3 applies. See paragraph 7.1 of Practice Direction 7 for applications and for the relevant fee see Annex 2 to Practice Direction 7.

1.3.7 Oral hearings on procedural matters are normally heard in open court or in a place to which the public are admitted.

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Footnotes

1. September 2015 Return to footnote 1
2. Section 54 of the Access to Justice Act 1999 does not extend to Northern Ireland and the Civil Procedure Rules do not apply there, but the rule in Lane v Esdaile (see Lane v. Esdaile [1891] AC210) applies to Northern Ireland Return to footnote 2
3. It is open to such a person to seek to appeal the section 42 order itself if that order was the subject of an appeal to the Court of Appeal Return to footnote 3
4. County Courts Act 1984 s 82 Return to footnote 4
5. Representation of the People Act 1983 s 157(1) Return to footnote 5
6. Under the rule in Taylor v. Lawrence [2002] EWCA Civ 90 the Court of Appeal can in exceptional circumstances re-open an appeal or application for permission to appeal after it has given a final judgment Return to footnote 6
7. Civil Procedure Rules, r 52.17 Return to footnote 7
8. Or, in Northern Ireland, under Judicature (Northern Ireland) Act 1978 s44 Return to footnote 8
9. April 2015 Return to footnote 9
10. April 2015 Return to footnote 10

11. April 2015 These statutes are amended by the Criminal Justice and Courts Act 2015, sections 63 to 66 on a day to be appointed Return to footnote 11

12. September 2015 Return to footnote 12

13. September 2015 Return to footnote 13

THE SUPREME COURT OF THE UNITED KINGDOM

Practice Direction 2

The registry of the Supreme Court

2.1.1 The registry of the Supreme Court is situated on the ground floor of the building in Parliament Square which houses the Supreme Court, the former Middlesex Guildhall. The staff of the Registry act under the guidance and supervision of the Registrar. The Registry of the Judicial Committee of the Privy Council is situated in the same room and the staff of that Registry act under the guidance and supervision of the Registrar of the Privy Council. Where a member of staff of one Registry is not available, a member of staff of the other Registry will try to assist.

2.1.2 The postal address of the Supreme Court is

The Supreme Court of the United Kingdom
Parliament Square
London
SW1P 3BD

DX 157230 Parliament Square 4

The telephone numbers are:

- 020 7960 1991
- 020 7960 1992

Email Registry

The Registry public counter is open from 11 am to 3 pm on Mondays to Thursdays during the law terms(1) only. During August and September the Registry public counter will be open at such times as the Registrar directs if the Court or the JCPC is sitting. Registry staff are available to answer telephone and email queries from 10 am to 4pm on Mondays to Fridays during the law terms and from 11am to 2 pm during the summer vacation. The Registry is closed during all other vacations.(2).

2.1.3 The Registry is closed on

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 Eve. At a time when the Registry is closed, the Registrar can for urgent business be contacted via the Supreme Court switchboard on 020 7960-1900. (3)

2.1.4 Enquiries about fees and the filing of documents, papers ~~and~~, volumes and authorities should be addressed to Registry. Litigants should contact the registry staff if they have difficulty in complying with the requirements of the Court's Practice Directions(4). The management of the Supreme Court'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 Deputy Registrar or the costs clerk at costs@supremecourt.uk(5).

2.1.5 Cheques and drafts for fees should be made payable to "The Supreme Court of the United Kingdom". Fees may be paid by verified Bank Transfer and the Registry will supply the necessary details on request(6).

2.1.6 Cheques and drafts for security money should be made payable to "UK Supreme Court Security Fund Account". Payment may also be made by bank transfer(7).

Filing Documents in the Registry of the Supreme Court

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 [...] practice direction" : rule 6(1)(8).

When an application for permission to appeal, a notice of appeal, a notice of objection, an acknowledgement by a respondent 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 the relevant practice direction: rule 7(3).

Documents under 10MB in size can be sent to the registry attached to an email sent to registry@supremecourt.uk(9).

Documents and bundles over 10MB should be submitted via SharePoint see the Annex to Practice Direction3 or Practice Direction 14(10).

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. On refusing 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 from court fees is made (see paragraphs 2.1.28 - 2.1.30).

Time limits

2.1.12 Rule 10(2) provides that an application for permission to appeal must be made first to the court below and an application may be made to the Supreme Court only after the court below has refused to grant permission to appeal. Where an application is made to the Supreme Court, the Rules provide for the following time limits to apply.

a. Except in cases of contempt of court and in leapfrog appeals, an application for permission to appeal must be filed "within 28 days from the date of the order or decision of the court below": rule 11. This period runs from the date of the substantive order appealed from, not from the date on which the order is sealed or the date of any subsequent procedural order (e.g. an order refusing permission to appeal).

b. A notice of appeal must be filed within 42 days of the date of the order or decision of the court below: rule 19(2). This period runs from the date of the substantive order appealed from, not from the date on which the order is sealed or the date of any subsequent procedural order (e.g. an order granting permission to appeal).

c. If an appellant has applied for public funding, the Registrar must be informed in writing within the original 28 or 42 day period that public funding has been applied for. The above periods are then extended to 28 days after the final determination of the application for funding, including any appeals. (See rules 5(2) and 11.)

2.1.13 The Registry may accept an application for permission to appeal or a notice of appeal which is out of time if the application or the notice sets out the reason(s) why it was not filed within the time limit and it is in order in all other respects. The Registrar may reject an application for permission to appeal solely on the ground that it is out of time (11).

2.1.14 The Justices 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 of time may be granted after the time limit has expired. A prospective application for an extension of time cannot be made and parties should bear in mind that under the Rules unnecessary disputes over procedural matters are to be discouraged(12).

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 (13).

(See paragraphs 1.2.9 and 1.2.16 of Practice Direction 1 for general time limits for permission applications. For special cases see paragraph 2.1.16 and for notices of appeal see paragraph 4.3.1 of Practice Direction 4.)

Special cases: contempt of court and leapfrog appeals

2.1.16 An application for permission to appeal in

a. a case involving civil contempt of court must be filed within 14 days, beginning with the date of the refusal of permission by the court below; and

b. a "leapfrog appeal" (14) must be filed within one month from the date on which the certificate is granted under sections 12 to 16 of the Administration of Justice Act 1969, sections 14A to 14C of the Tribunals, Courts and Enforcement Act 2007, sections 37A to 37C of the Employment Tribunals Act 1996 or sections 7B to 7D of the Special Immigration Commission Act 1997.

Form of application for permission to appeal and notice of appeal

2.1.17 The form of an application for permission to appeal is dealt with in paragraphs 3.1.1 - 3.1.5 of Practice Direction 3. The form of a notice of appeal is dealt with in paragraphs 4.2.1 - 4.2.4 of Practice Direction 4.

Case title

2.1.18 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 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.

2.1.19 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).

2.1.20 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 Supreme Court can take account of the need for anonymity. Applications involving children are normally given a title in the form B (Children).

2.1.21 In case titles involving the Crown, the abbreviation "R" meaning "Regina" is used. "R" is always given first. So case titles using this abbreviation take the form R v Jones (Appellant) or R v Jones (Respondent) (as the case may be) or R (on the application of Jones) (Appellant) v Secretary of State for the Home Department (Respondent).

2.1.22 Apart from the above, Latin is not used in case titles.

Service

2.1.23 Documents such as applications for permission to appeal and notices of appeal must be served by the party or their solicitors on the respondents or their solicitors, in accordance with rule 6 or with any relevant statutory provisions (15), before they are filed. A party or his solicitor 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.

2.1.24 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

2.1.25 See paragraph 3.1.7 of Practice Direction 3 for the documents which must be filed with an application for permission to appeal.

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

2.1.27 See paragraph 7.1.3 of Practice Direction 7 for guidance on documents which may need to be filed in support of an application.

Fees

2.1.28 The fees which are payable in the Supreme Court are prescribed by an order made under section 52 of the Act and rule 45 allows the Registrar to refuse to accept a document or to allow a party to take any step unless the relevant fee is paid.

2.1.29 In circumstances where a party would suffer financial hardship by the payment of fees, the requirement to pay fees may be waived (see the Supreme Court Fees Order 2009, S.I. 2009/2031). Any request for fee remission should be made to the Registrar, supported by evidence of the party's means. The Registrar may then grant full or part remission of the relevant fee. Remission of fees is usually granted where a remission of fees has been granted in the court below.

2.1.30 For the fees payable in the Supreme Court see Annex 2 to Practice Direction 7.

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

2.1.32 Conditional fee agreements. In certain circumstances payment of the court fee may be deferred if the Appellant's solicitors are operating under a CFA which imposes the liability to pay the court fees on the Appellant personally and the solicitor confirms that the Appellant would be eligible for fee remission and provides the necessary supporting evidence. If the Registrar is satisfied with the information provided, then the solicitor will be informed that payment of the fee had been deferred but that the remission of the fee would be reviewed once the permission application had been decided. Where permission to appeal is refused, payment of the fee will be waived if it is confirmed that the Appellant's means had not changed (16).

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Footnotes

1. The law terms are the four terms of the year during which the Supreme Court holds its sittings see Practice Direction 6 paragraph 6.2.1 Return to footnote 1
2. Amended October 2020 Return to footnote 2
3. Amended October 2020 Return to footnote 3
4. Amended October 2020 Return to footnote 4
5. Amended October 2020 Return to footnote 5
6. Amended October 2020 Return to footnote 6
7. Amended October 2020 Return to footnote 7

8. Amended October 2020 Return to footnote 8
9. Amended October 2020 Return to footnote 9
10. Amended October 2020 Return to footnote 10
11. Amended April 2015 Return to footnote 11
12. Amended October 2020 Return to footnote 12
13. Amended April 2015 Return to footnote 13
14. Amended April 2015 Return to footnote 14
15. The Companies Act 1985 and the Companies Act 2006 provide for the method of service on companies and limited liability partnerships. Return to footnote 15
16. Amended November 2013 Return to footnote 16

THE SUPREME COURT OF THE UNITED KINGDOM

Practice Direction 3

Form of application for permission to appeal

3.1.1 Applications for permission to appeal are considered by an Appeal Panel, consisting of three Justices. Applications are generally decided~~(1),~~ without a hearing, and it is essential that the application is in the correct form.

3.1.2 An application for permission to appeal must be produced in Form 1 (PTA) ~~(2) on A4 paper, securely bound on the left, using both sides of the paper. (See~~(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 Court favours brevity and clarity~~(3).~~ The grounds of appeal should not normally exceed 10 pages of A4, in size 12 font with 1.5 line spacing, bearing in mind that the judgments of the courts below will be available to the Justices. 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 issues. 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 3.1.6).

3.1.3 If an application for permission to appeal

a. asks the Supreme Court to depart from one of its own decisions or from one made by the House of Lords~~(3);~~;

b. seeks a declaration of incompatibility under the Human Rights Act 1998; or

c. asks the Supreme Court to depart from any retained EU case law or the application relates to a decision by the court appealed from to depart from any retained EU case law~~(4),~~

this should be stated clearly in the application and full details 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" 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.)

3.1.4 An application for permission to appeal must be signed by the appellant or his agent. An electronic signature is acceptable.

3.1.5 The application for permission to appeal should include the neutral citation of the judgment appealed against, the references of any law report in the courts below, and subject matter catchwords for indexing (whether or not the case has been reported). This can conveniently be done in Section 9 of Form 1 (PTA~~) (6).~~).

Service

3.1.6 A copy of the application (and any amendment to it) must be served on the respondents or his solicitors~~(7),~~ and on any person who was an intervener in the court below in accordance with rule 6, before it is filed. A certificate of service (giving the full name and address of the respondents or his ~~(8~~ solicitors) must be included in the original application and signed or a separate certificate of service must be provided. An electronic signature is acceptable. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2. Additional supporting documents other than those set out in paragraphs 3.1.7 and 3.2.1 (additional documents~~(9)))~~ are not normally accepted.

Supporting documents

3.1.7 In order to comply with rule 14(1), the ~~original~~ application ~~together with 1 copy (10)~~ 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. For the relevant fee see Annex 2 to Practice Direction 7. The application must ~~also~~ be sent in electronic form only, to registry@supremecourt.uk~~(10).~~. 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 2.1.12-2.1.16 of Practice Direction 2. Where an appellant is unable to file his permission application within the relevant time limit, an application for an extension of time must be made in Section 7 of Form 1 (PTA~~) (12).~~). 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 a panel of Justices to be considered at the ~~Registrar and, if it is granted,~~same time as the ~~appellant must then comply with rule 14 and paragraph 3.2.1. 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

3.1.8 Each "respondent who wishes to object to the application must, within 14 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 1 copy(13) must be filed at the Registry together with the prescribed fee. The notice must also be sent in electronic form to registry@supremecourt.uk(14) .~~The notice must be filed in electronic form only, to registry@supremecourt.uk, and the prescribed fee paid. For the relevant fee see Annex 2 to Practice Direction 7. ~~When a notice of objection is filed, it will be sealed by a member of staff in the Registry: rule 7(4).~~

3.1.9 Before filing, a respondent must serve a copy of the notice on the appellant, any other respondent and any person who was an intervener in the court below: 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 2.1.24 of Practice Direction 2. An electronic signature is acceptable.

3.1.10 A notice of objection should

a. set out briefly the reasons why permission to appeal should not be granted by reference to the threshold test for the grant of permission (see paragraph 3.3.3);

b. state any conditions which the Respondent proposes should be attached to the grant of permission and whether permission should be limited to any issues, specifying them;

c. normally not exceed 5 pages of A4 ~~size~~with size 12 font and 1.5 line spacing, in section 3 of Form 3 or in any attachment to Form 3~~ (15).~~.

Anonymity and reporting restrictions

3.1.11 In any application concerning children, the parties, in addition to considering the case title to be used, should also consider whether it would be appropriate for the Court to make an order under section 39 of the Children and Young Persons Act 1933 (~~16~~1) (reporting restrictions). The parties should always inform the Registry if such an order has been made by a court below. In such cases the Registrar will then make a further order imposing reporting restrictions. Any request for such an order to be made by the Court and any objections to the making of such an order should be made in writing, as soon as possible after the filing of an application for permission.

3.1.12 Paragraph 3.1.11 also applies to a request for an order under section 4 of the Contempt of Court Act 1981 (contemporary reports of proceedings).

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Additional papers - the PTA bundle~~(17)~~

3.2.1 To comply with rule 14(2) the appellant must within 21 days after the filing of the application file in electronic form a bundle which includes

a. a copy of the permission application;

b. a copy of the order appealed against and, if separate, a copy of the order of the court below refusing permission to appeal;;

c. a copy of the official transcript of the judgment of the court below;

d. a copy of the final order(s) of all other courts below;

e. a copy of the official transcript of the final judgment(s) of all other courts below;

f. a copy of any unreported judgment(s) cited in the application or judgment of the court below;

g. a copy of the notice of objection filed by any respondent to the application; and

h. any written submissions filed under rule 15 in support of the application.

A bundle under 10MB in size can be sent to the registry attached to an email. Bundles over 10MB should be submitted via SharePoint see the Annex to this Practice Direction~~(18).~~.

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 as to why they are needed. 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 Parties will be contacted if hard copies of the PTA bundle are required~~(19).~~.

3.2.3 Where the necessary supporting documents~~(20)~~ 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 the documents~~(21)~~

3.3.1 The Appeal Panel decides first whether an application for permission to appeal is admissible (that is, whether the Court has jurisdiction to entertain an appeal). The Court's jurisdiction is summarised in section 2 of Practice Direction 1. 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 16 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 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 Supreme Court 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. The Appeal Panel gives brief reasons for refusing permission to appeal. **The reasons given for refusing permission to appeal should not be regarded as having any value as a precedent~~(22).~~.**

For applications in which a question of Community law is raised see paragraph 11.1.2 of Practice Direction 11~~(23).~~.

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 respondents' written objections must be filed in the registry in electronic form~~(24)~~.

3.3.8 A copy of the respondents' objections should be sent to the solicitors 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 are not encouraged to comment on respondents' objections. 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;

d. in an application for permission to appeal under the "leapfrog" procedure (see paragraph 3.6.1), prospective appellants who decline to proceed on the basis of the terms proposed by the Appeal Panel may instead pursue an appeal to the Court of Appeal in the usual way (~~25~~2).

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.

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 solicitor, or in person. If counsel are briefed, solicitors should ensure that the Registry is notified of their names. Only a junior counsel's fee is allowed on assessment (see paragraph 3.4.8).

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.

Interventions in applications for permission to appeal

3.3.17 Any person (and in particular (i) any official body or non-governmental organization who seeks to make submissions in the public interest or (ii) any person with an interest in proceedings by way of judicial review) may make written submissions to the Court in support of an application for permission to appeal. See rule 15. Before the submissions are filed, a copy must be served on

a. the appellant,

b. every respondent and

c. any person who was an intervener in the court below.

The submissions must be sent in electronic form to registry@supremecourt.uk~~(26).~~.

3.3.18 Any submissions which are made are referred to the panel of Justices which considers the application for permission to appeal. Where the panel decides to take the submissions into account and grants permission to appeal, the person making them will be notified. If permission to appeal is granted, a formal application must be made under rule 26 if the intervener wishes to intervene in the appeal. See Practice Direction 7 - Applications.

Sealed Orders

3.3.19 The appellant, any recognised intervener and all respondents who have filed notice of objection under rule 13 are sent a copy of the order sealed by the Registrar which records the Panel's decision.

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Filing notice to proceed

3.4.1 Where permission to appeal is granted by the Supreme Court, 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 by the Court of permission to appeal, file notice under rule 18 that he wishes to proceed with his appeal. ~~When the notice is filed, the application for permission to appeal will re-sealed and, in order to comply with rule 18(2), the appellant must then serve a copy on each respondent, on any recognised intervener (that is, an intervener whose submissions have been taken into account under rule 15) and on any person who was an intervener in the court below and file a copy(27) together with a certificate of service. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2.~~

3.4.2 Where an appellant is unable to file notice under rule 18 within the time limit of 14 days, a formal application for an extension of time must be made in 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 18(2) and paragraph 3.4.1.

Expedition

3.4.3 Once the required bundle~~(28)~~ is filed at the Registry (under paragraph 3.2.1), the procedure described above is normally completed within eight sitting weeks (excluding any oral hearing). In cases involving liberty of the subject, urgent medical intervention or the well-being of children (see paragraph 3.4.4), a request for expedition may be made in writing to the Registrar. See rule 31.

Expedited hearing of proceedings under the Hague Convention etc

3.4.4 The Convention on the Civil Aspects of International Child Abduction (the Hague Convention) deals with the wrongful removal and retention of children from their habitual country of residence. The Revised Brussels II Regulation also deals with these matters (~~293~~). In the Supreme Court an expedited timetable applies. The parties must therefore inform the Registrar that the proceedings fall under the Convention or Regulation. The Court normally gives judgment within six weeks of the commencement of proceedings but this can only be achieved with the fullest coÂ¬operation of the parties.

3.4.5 The following timetable may be taken as a general guideline:

a. an application for permission to appeal is decided by an Appeal Panel within 7 days of being filed;

b. an appeal is heard within 21 days of a decision to grant permission to appeal;

c. the result of the appeal is given immediately after the end of the hearing with reasons given later or, if judgment is reserved, the result of the appeal and the reasons are given within 2 weeks of the end of the hearing.

3.4.6 In order to achieve the above timetable the Court will set aside or vary the time limits and practice directions that normally apply to applications and appeals.

3.4.7 Abridged procedures and special rules for the production of documents are applied to meet the circumstances of each application and appeal. The following timetable for the production of documents is therefore indicative only:

a. the statement of facts and issues is filed within 7 days of the decision to grant permission to appeal;

b. the appellant's case is filed within 10 days of the decision to grant permission to appeal (or, if the relevant day falls on a Saturday or Sunday, the following Monday);

c. the respondent's case is filed within 14 days of the decision to grant permission to appeal;

d. the core volumes (if required) and the ~~volumes of~~ authorities are filed within 17 days of the decision to grant permission to appeal (or, if the relevant day falls on a Saturday or Sunday, the following Monday).

Counsel

3.4.8 Appellants and respondents to an application for permission to appeal may instruct leading or junior counsel, but on any assessment of costs only junior counsel's fees will be allowed for any stage of an application for permission to appeal, even if a public funding or legal aid certificate provides for leading counsel. The only exception to this practice is where leading counsel who conducted the case in the court below are instructed by the Legal Services Commission or legal aid authorities to advise on the merits of an appeal.

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Costs

3.5.1 Where an unsuccessful application for permission to appeal is determined without an oral hearing, costs may be awarded as follows:

a. to a publicly funded or legally aided appellant, reasonable costs incurred in preparing papers for the Appeal Panel;

b. to a publicly funded or legally aided respondent, only those costs necessarily incurred in attending the client, attending the appellant's solicitors, considering the application for permission to appeal, filing notice of objection under rule 13 and, where applicable, preparing respondent's objections to the application;

c. c. to an unassisted respondent where the appellant is publicly funded or legally aided, payment out of the Community Legal Service Fund (pursuant to section 11 of the Access to Justice Act 1999 ~~(30))~~) of costs as specified at (b) above;

d. to a respondent where neither party is publicly funded or legally aided, costs as specified at (b) above.

3.5.2 Where costs are sought under (c) or (d) 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.

3.5.3 Where an application for permission to appeal is referred for an oral hearing and is dismissed, 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.

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

3.5.5 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. If permission to appeal is granted, the costs of respondent's objections become costs in the appeal. Any claim for the costs of responding to an application will be expected to be in the range of £1000 to £2500 (see paragraphs 6 and 15 of Practice Direction 13~~) (31).~~).

3.5.6 Bills of costs must be filed within three 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 34. For the withdrawal of an application see paragraph 8.16.2 of Practice Direction 8. 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 three month period, the Registrar takes into account the circumstances set out in paragraph 8.2 ~~(32)~~ of Practice Direction 13.

3.5.7 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 48 - 53 and Practice Direction 13. For security for costs see paragraph 4.7.1 of Practice Direction 4.

Withdrawal of application for permission to appeal

3.5.8 This is dealt with in paragraph 8.16.2 of Practice Direction 8.

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~~**Leapfrog appeals (33)**~~

Leapfrog appeals

3.6.1 In certain cases an appeal lies direct to the Supreme Court see paragraph 1.2.17 of Practice Direction 1. A certificate must first be obtained and the permission of the Supreme Court then given before the appeal may proceed (~~34~~4). Such appeals are known as "leapfrog" appeals.

Judge's certificate

3.6.2 An application for a certificate may be made by any of the parties~~(35)~~ to any civil proceedings in the High Court before a single judge or before a Divisional Court. The application should be made immediately after the trial judge gives judgment in the proceedings or, if no such application is made, within 14 days from the date on which judgment was given.

3.6.3 A certificate will be granted only if the relevant statutory conditions are fulfilled.

3.6.4 The relevant conditions are set out in section 12(3) and (3A) of the Administration of Justice Act 1969, section 14A(4) and(5) of the Tribunals, Courts and Enforcement Act 2007, section 37A(4) and (5) of the Employment Tribunals Act 1996 and section 7B(4) and (5) of the Special Immigration Commission Act 1997.

3.6.5 A certificate may not be granted in the cases specified in section 15 of the Administration of Justice Act 1969 section 14C of the Tribunals, Courts and Enforcement Act 2007, section 37C of the Employment Tribunals Act 1996 (inserted by the Criminal Justice and Courts Act 2015) or section 7D of the Special Immigration Appeals Commission Act 1997 (inserted by the Criminal Justice and Courts Act 2015).

3.6.6 No certificate may be given where the judge's decision concerns punishment for contempt of court.

3.6.7 No appeal lies against the grant or refusal of a certificate, but if a certificate is refused the applicant may appeal to the Court of Appeal from the High Court's decision in the normal way, once the time for applying for a certificate has expired.

Application for permission to appeal direct from High Court

3.6.8 At any time within one month from the date on which the judge grants the certificate, or such extended time as the Supreme Court may allow, any of the parties may apply to the Supreme Court for permission to appeal. Application is made in accordance with paragraph 3.1 of this Practice Direction. If any party to the proceedings in the High Court is not a party to the application, the application must be endorsed with a certificate of service on that party.

3.6.9 One copy of the judge's certificate must be filed with the application. The application should indicate under what provision~~(36)~~ the judge's certificate was granted.

3.6.10 The following additional papers for use by the Appeal Panel must be filed within seven days of the filing of the application:

a. the application;

b. a copy of the order of the High Court;

c. a copy of the leapfrog certificate, if not contained in the order; and

d. a copy of the transcript of the judgment being appealed~~(37).~~.

No other papers are required, and documents other than those listed above will not be normally accepted.

3.6.11 Applications for permission to appeal are normally determined by an Appeal Panel without a hearing.

3.6.12 In applications where the certificate has been granted by the judge under section 12(3)(a) of the 1969 Act, the Appeal Panel only grants permission to appeal where:

a. there is an urgent need to obtain an authoritative interpretation by the Supreme Court;

b. the case is one in which permission to appeal to the Supreme Court would have been granted if it had not been brought direct to the Supreme Court and the judgment had been that of the Court of Appeal; and

c. it does not appear likely that any additional assistance could be derived from a judgment of the Court of Appeal.

Similarly, where the certificate has been granted under section 12(3)(b) of the 1969 Act, the Appeal Panel only grants permission where:

i. the case is not distinguishable from the case that was the subject of the previous decision;

ii. the previous case was fully considered in a previous judgment after argument that appears to have been adequate; and

iii. the case is one in which permission to appeal to the Supreme Court would have been granted if it had not been brought direct to the Supreme Court and the judgment had been that of the Court of Appeal.

3.6.13 The appellant and all respondents who have filed notice of objection under rule 13 are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Extensions of time

3.6.14 Where an appellant is unable to file his application within the time limit, an application for an extension of time must be made in Section 7 of Form 1 (PTA~~) 38.~~). The respondent's views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. A prospective application for an extension of time cannot be made and respondents should bear in mind that under the Rules unnecessary disputes over procedural matters are to be discouraged. (In cases to which rule 5(5) applies time limits are extended automatically where the Registrar is informed that an application for public funding has been made~~(39).~~).)

Proceedings after permission to appeal is granted or refused

3.6.15 If the Appeal Panel grants permission to appeal without terms, no appeal from the decision of the judge lies to the Court of Appeal but only to the Supreme Court. The appeal is brought in accordance with Practice Direction 4 and the usual requirements apply. However, an appeal does lie to the Court of Appeal from the judge's decision

i. where no application is made to the Supreme Court within the one month period after the judge has granted the certificate; or

ii. where permission to appeal direct to the Supreme Court has been refused by the Appeal Panel.

3.6.16 Prospective appellants who decline to proceed on the basis of the terms proposed by the Appeal Panel may instead pursue an appeal to the Court of Appeal in the usual way.

Habeas corpus

3.6.17 Proceedings for a writ of habeas corpus in England and Wales are subject to the procedures governing criminal appeals to the Supreme Court. These are set out in Practice Direction 12. In proceedings for a writ of habeas corpus, an appeal lies from the King's Bench Divisional Court to the Supreme Court at the instance of the defendant or prosecutor with the permission either of the Divisional Court or the Supreme Court. No certificate stating a point of law of general public importance is required.

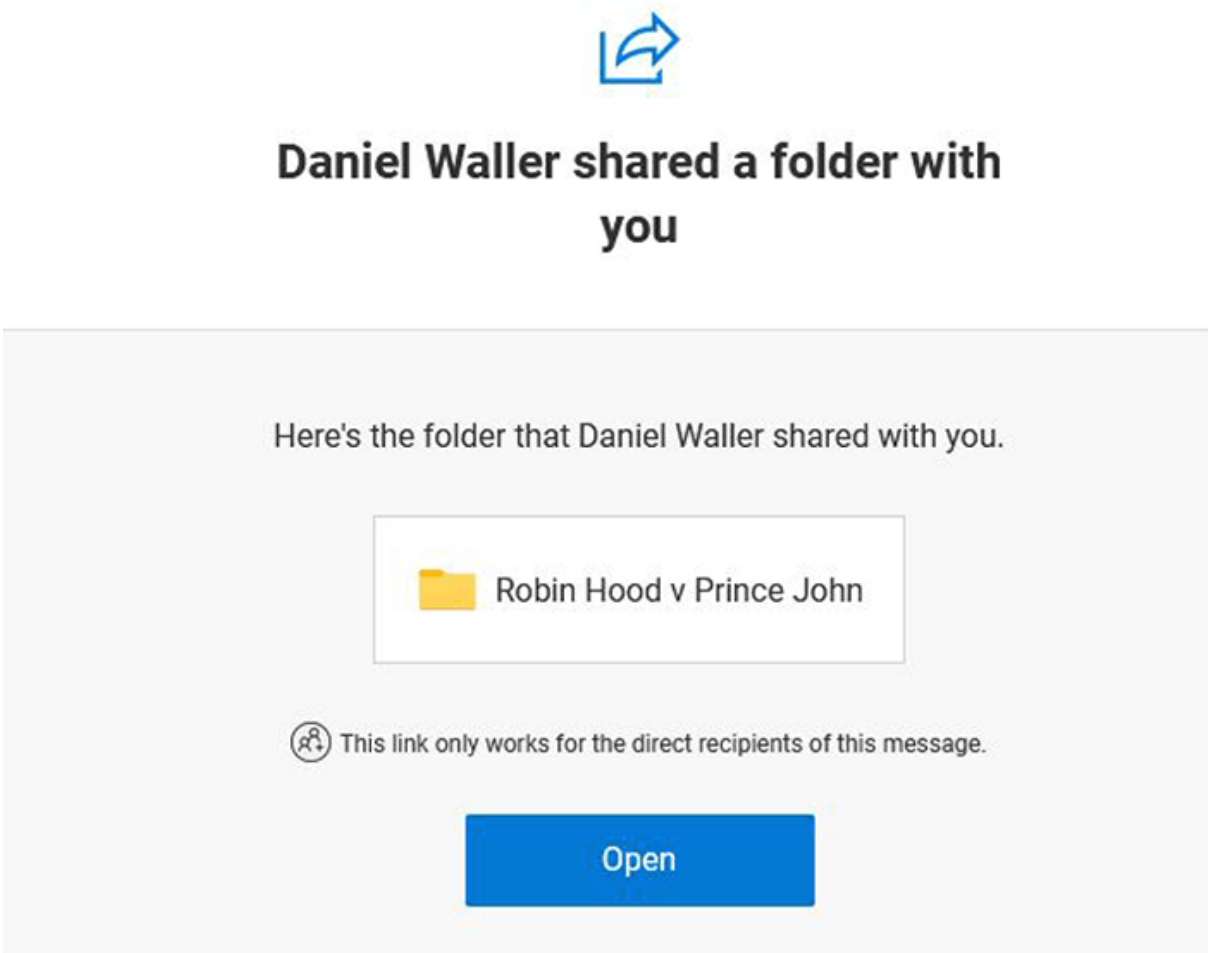
3.6.18 Such an application is normally determined by an Appeal Panel without an oral hearing. The appellant and all respondents who have filed notice of objection under rule 13 are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Annex to Practice Direction 3

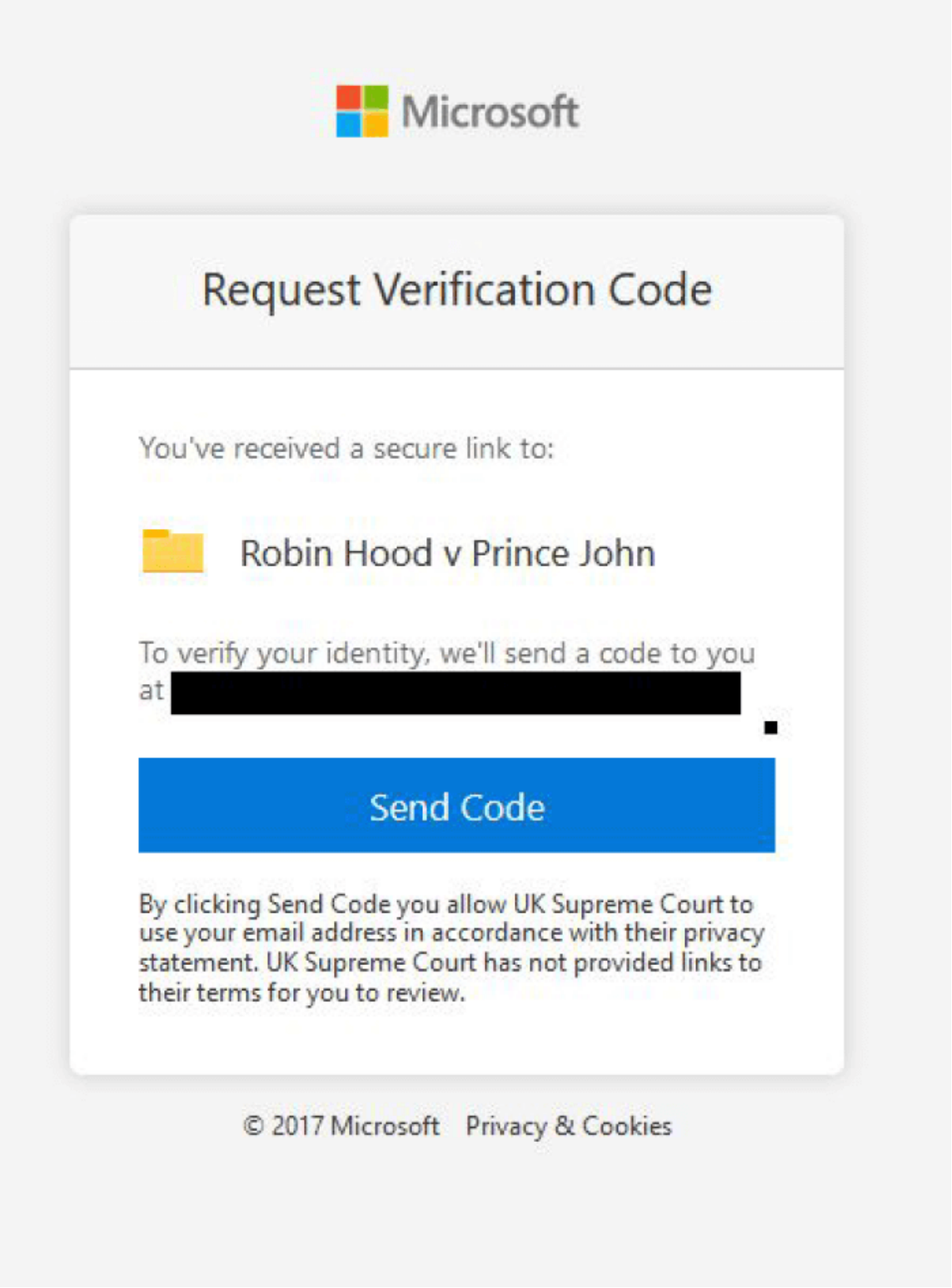
Filing papers electronically via SharePoint

When you have papers to lodge that are too large to email (over 10 MB) please contact the Registry to ask them to give you access to our upload area.

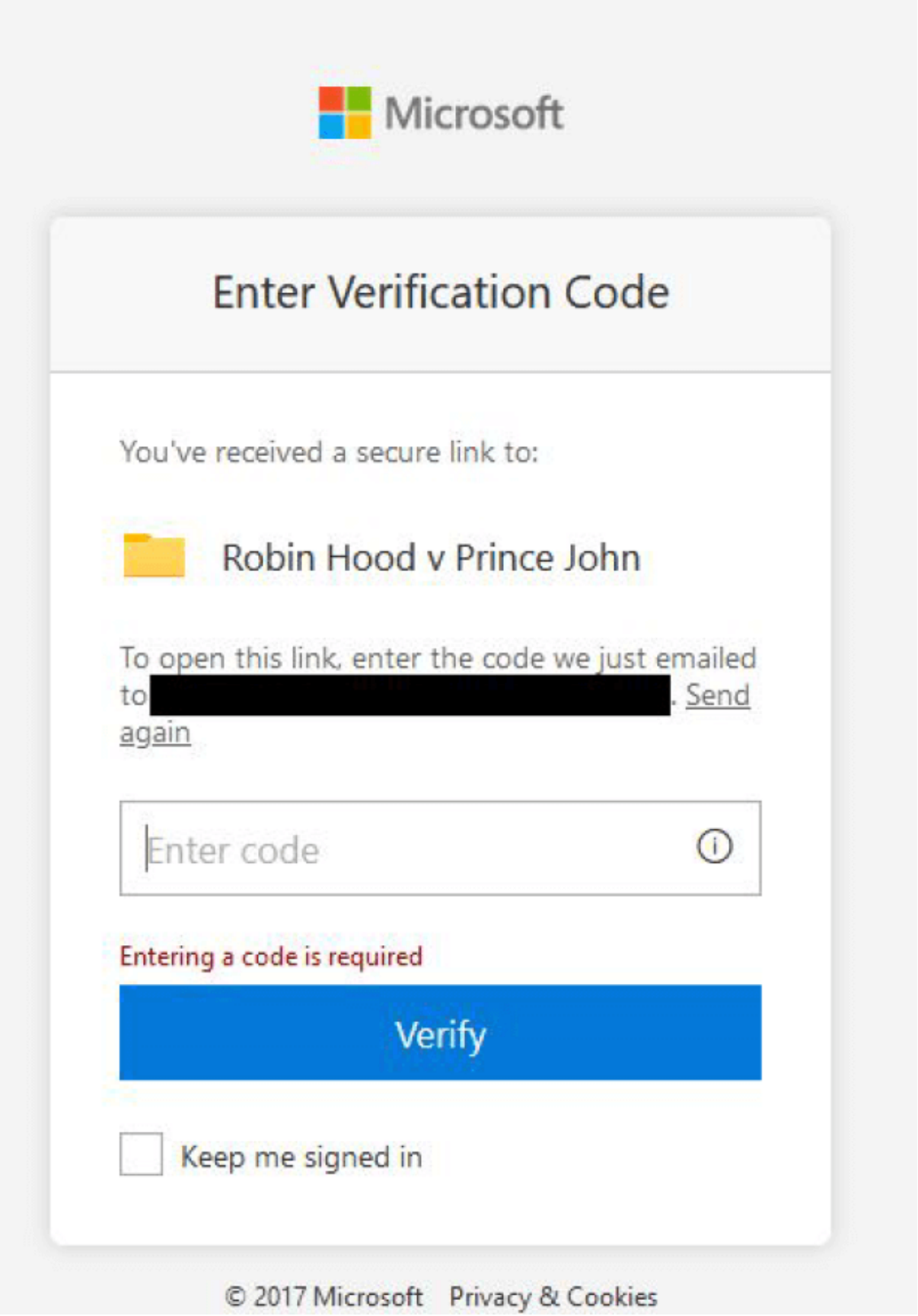
You will receive an email that looks like this:



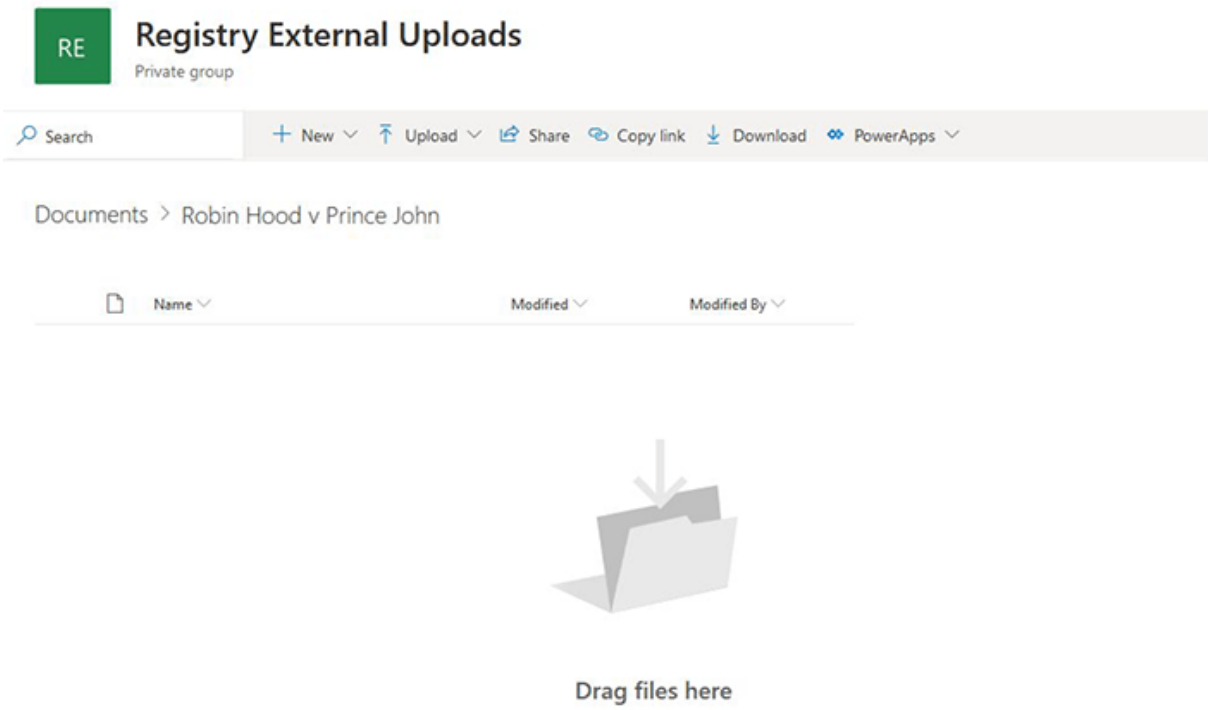
Please click open. This will take you to a web page* that looks like this:



Please click send code. A screen appears for you to input the code which you will receive by email.



Once you put the code in and click verify you'll be taken to the SharePoint area where you can then click upload to upload your files, or drag and drop if your browser supports that.



Once you have finished uploading your files please inform Registry who will then take the files and close the access area. Should you need to lodge further papers you must request a fresh link.

***Important Note**

If you have an existing Office 365/SharePoint account on your system you may find it does not let you connect to our system. Rather than having to change your system settings we have learned that copying the original link into an Incognito or Private Window within your web browser allows you access.

How to open an Incognito window in:

Internet Explorer

Firefox

Chrome

Edge

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Footnotes

1. ~~Amended Oct 2020~~ ~~Return to footnote 1~~
2. ~~Amended Nov 2018~~ ~~Return to footnote 2~~

3. Amended Feb 2013; an Appeal Panel directed that irrespective of the outcome of the appeal the costs of preparing a permission application should not be recoverable in a case where it considered that a very long application did not assist the Panel Return to footnote 3

4. Amended Nov 2018 Return to footnote 4

5. Amended Jan 2012 Return to footnote 5

6. Amended Nov 2018 Return to footnote 6

7. Amended Nov 2018 Return to footnote 7

8. Amended Oct 2020 Return to footnote 8

9. Amended Oct 2020 Return to footnote 9

10. Amended Oct 2020 Return to footnote 10

11. Amended Oct 2020 Return to footnote 10

12. Amended Nov 2018 Return to footnote 12

13. Amended Oct 2020 Return to footnote 13

14. Amended Oct 2020 Return to footnote 14

15. Amended Oct 2016 Return to footnote 15

16.1. Extended to Scotland by the Children and Young Persons (Scotland) Act 1963, s 57(3) Return to footnote 161

17. Amended Oct 2020 Return to footnote 17

18. Amended Oct 2020 Return to footnote 18

19. Amended Oct 2020 Return to footnote 19

20. Amended Oct 2020 Return to footnote 20

21. Amended Oct 2020 Return to footnote 21

22. Amended Feb 2013 Return to footnote 22

23. Amended Feb 2013 Return to footnote 23

24. Amended Oct 2020 Return to footnote 24

25.2. Ceredigion County Council v Jones and others [2007] UKHL 24 Return to footnote 252

26. Amended Oct 2020 Return to footnote 26

27. Amended Oct 2020 Return to footnote 27

28. Amended Oct 2020 Return to footnote 28

29.3. Council Regulation (EC) No 2201/2003 Return to footnote 293

30. Amended September 2015 Return to footnote 30

~~31. Amended Oct 2016 Return to footnote 31~~

~~32. Amended September 2015 Return to footnote 32~~

~~33. Amended April 2015 Return to footnote 33~~

~~34.~~4. Sections 12 to 16 of the Administration of Justice Act 1969 (as amended by the Criminal Justice and Courts Act 2015) provide circumstances in which decisions of the High Court or the Divisional Court may be "leapfrogged" to the Supreme Court. Sections 14A to 14C of the Tribunals, Courts and Enforcement Act 2007 and sections 37A to 37C of the Employment Tribunals Act 1996 (inserted by the Criminal Justice and Courts Act 2015) provide circumstances in which decisions of certain tribunals which have High Court equivalent jurisdiction may be "leapfrogged" to the Supreme Court and sections 7B to 7D of the Special Immigration Appeals Commission Act 1997 (inserted by the Criminal Justice and Courts Act 2015) provide circumstances in which SIAC decisions may be "leapfrogged" to the Supreme Court~~. Return to footnote 34~~. Return to footnote 4

~~35. Amended Oct 2020 Return to footnote 35~~

~~36. Amended Oct 2020 Return to footnote 36~~

~~37. Amended Oct 2020 Return to footnote 37~~

~~38. Amended Nov 2018 Return to footnote 38~~

~~39.~~ ~~Amended Oct 2020 Return to footnote 39~~

Practice Direction 4

General note

4.1.1 The practice is that where permission to appeal is granted by the Supreme Court, 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 18(1). The appellant must, within 14 days of the grant by the Court of permission to appeal, file notice under rule 18(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, on any recognized intervener (that is, an intervener whose submissions have been taken into account under rule 15) and on any intervener in the court below; and file one copy(1): rule 18(2). In any other case an appellant must file a notice of appeal in Form 1. (See Annex 1 to Practice Direction 7 for Form 1 (Appeal) (2).

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Form of notice of appeal

4.2.1 A notice of appeal must 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 (Appeal) (3). 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 Court and will not unfairly prejudice the respondents or cause undue delay. Any amendments must be served on the respondents (see paragraph 4.2.15).

4.2.2 The notice of appeal must be signed by the appellants or their agents. In appeals where permission to appeal is not required (for example, in most Scottish appeals) the notice of appeal must be certified as reasonable by two counsel from the relevant jurisdiction and signed by them (4).

4.2.3 The notice of appeal should include the neutral citation of the judgment appealed against, the references of any law report in the courts below, and subject matter catchwords for indexing (whether or not the case has been reported). This can conveniently be done in Section 9 of Form 1.

4.2.4 If an appellant

a. asks the Supreme Court to depart from one of its own decisions or from one made by the House of Lords;

b. seeks a declaration of incompatibility under the Human Rights Act 1998; or

c. asks the Supreme Court to depart from any retained EU case law or the appeal relates to a decision where the court appealed from departed from any retained EU case law,

this should be stated clearly in the notice of appeal and full details 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" 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

4.2.5 Notices of appeal to the Supreme Court 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.

4.2.6 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).

4.2.7 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 Supreme Court can take account of the need for anonymity. Notices of appeal involving children are normally given a title in the form B (Children) (see also paragraph 4.2.10).

4.2.8 In case titles involving the Crown, the abbreviation "R" meaning "Regina" is used. "R" is always given first. Case titles using this abbreviation take the form R v Jones (Appellant) or R v Jones (Respondent) (as the case may be) or R (on the application of Jones) (Appellant) v Secretary of State for the Home Department (Respondent).

4.2.9 Apart from the above, Latin is not used in case titles.

Anonymity and reporting restrictions

4.2.10 In any appeal concerning children, the parties, in addition to considering the case title to be used, should also consider whether it would be appropriate for the Court to make an order under section 39 of the Children and Young Persons Act 1933FF (reporting restrictions) (5)FF. The parties should always inform the Registry if such an order has been made by a court below. In such cases a further order imposing reporting restrictions may be made(6)

4.2.11 Paragraph 4.2.10 also applies to a request for an order under section 4 of the Contempt of Court Act 1981 (contemporary reports of proceedings).

Human Rights Act 1998

4.2.12 Where an appellant or a respondent seeks a declaration of incompatibility or seeks to challenge an act of a public authority under the Human Rights Act 1998, the appropriate section of Form 1 (Appeal) (7) or Form 3 must be completed. Parties should set out briefly in their cases the arguments involved and state whether the point was taken below. The Crown has a right to be joined as a party to the appeal where a question of incompatibility is raised (see rule 40 and Practice Direction 9).

References to the European Court

4.2.13 If an appellant seeks a reference to the Court of Justice of the European UnionFF (8)FF, this should be stated clearly in the notice of appeal and special provisions apply: see rule 42 and Practice Direction 11. The appellant must also notify the Registrar in writing.

London agents

4.2.14 Solicitors outside London may appoint London agents. Those who decide not to do so should note that any additional costs incurred as a result of that decision may be disallowed on any assessment of costs.

Service

4.2.15 A copy of the notice of appeal must be served on the respondents or their solicitors, on any recognized intervener (under rule 15) and on any person who was an intervener in the court below, 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 (Appeal) (9) and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2.

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Filing a notice of appeal

4.3.1 A notice of appeal must be filed in the Registry within 42 days of the date of the order or decision of the court below (see rule 19). However, this time limit may be varied by the Court under rule 5. For other relevant time limits see paragraphs 2.1.12Â¬ - 2.1.16 of Practice Direction 2. When 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 19(2), the original notice of appeal together with 1 copy(10) 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 Supreme Court: rule 19(3). 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": rule 19(3).

Filing notice to proceed under rule 18

4.3.3 Where under rule 18(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 Court of permission to appeal, file notice that he wishes to proceed with his appeal. See paragraph 3.4.1 of Practice Direction 3 for filing notice to proceed and paragraph 3.4.2 where an appellant is unable to file notice within the prescribed time limit.

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Out of time appeals

4.4.1 Where an appellant is unable to file a notice of appeal within the relevant time limit, an application for an extension of time must be made in the relevant box in Form 1 (Appeal)(11). 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 and, if it is granted, the appellant must comply with rule 19 and paragraph 4.3.2. A prospective application for an extension of time cannot be made and respondents should bear in mind that under the Rules that unnecessary disputes over procedural matters are to be discouraged. (In cases to which rule 5(5) applies time limits are extended automatically where the Registrar is informed that an application for public funding has been made.(12)

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Fees

4.5.1 For the fees payable on filing a notice of appeal and on filing notice to proceed under rule 18 see Annex 2 to Practice Direction 7.

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Acknowledgement by respondent

4.6.1 Each "respondent who intends to participate in the appeal must, within 14 days after service under rule 18(2)(a) or rule 20, file notice" in Form 3: rule 21(1). (See Annex 1 to Practice Direction 7 for Form 3.) (Where under rule 18(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 21 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, any other respondent and any person who was an intervener in the court below or whose submissions were taken into account under rule 15: see rule 21(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 2.1.24 of Practice Direction 2.

4.6.3 The original notice together with 1 copy(13) must be filed at the Registry with the prescribed fee. For the relevant fee see Annex 2 to Practice 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 does not give notice under rule 21 will not be permitted to participate in the appeal and will not be given notice of its progress: rule 21(3). An order for costs will not be made in favour of a respondent who has not given notice.

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Security for costs

4.7.1 Orders for security for costs under rule 36 will be sparingly made but the Court 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.

An application for security should be made in the general form of application, Form 2 (see paragraph 7.1 of, and Annex 1 to, Practice Direction 7). An order made under rule 36 may require payment of the judgment debt (and costs) in the court below instead of, or in addition to, the amount ordered by way of security for costs.

4.7.2 For payment of security see paragraph 8.7.1 of Practice Direction 8.

4.7.3 The following are generally not required to give security for costs:

a. an appellant who has been granted a certificate of public funding/legal aid;

b. an appellant in an appeal under the Child Abduction and Custody Act 1985;

c. a Minister or Government department.

4.7.4 No security for costs is required in cross-appeals.

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.

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Expedition

4.8.1 In cases involving liberty of the subject, urgent medical intervention or the wellÂ¬being of children (see paragraph 3.4.4 of Practice Direction 3), a request for expedition may be made in writing to the Registrar. See rule 31. Wherever possible the views of all parties should be obtained before a request for an expedited hearing is made.

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Footnotes

1. Amended Oct 2020 Return to footnote 1
2. Amended Nov 2018 Return to footnote 2
3. Amended Nov 2018 Return to footnote 3
4. Amended Oct 2020 Return to footnote 4
5. Extended to Scotland by the Children and Young Persons (Scotland) Act 1963, s 57(3). Return to footnote 5
6. Ammended Oct 2020 Return to footnote 6
7. Ammended Nov 2018 Return to footnote 7
8. Ammended Feb 2013 Return to footnote 8
9. Ammended Nov 2018 Return to footnote 9
10. Ammended Oct 2020 Return to footnote 10
11. Ammended Nov 2018 Return to footnote 11
12. Ammended Oct 2020 Return to footnote 12
13. Ammended Oct 2020 Return to footnote 13

Practice Direction 5

General note

5.1.1 The Supreme Court is moving to a system under which the vast majority of the documents filed are to be provided in electronic form only. The original and one hard copy of key documents such as the statement of facts and issues may be requested for the court record. It is essential that duplication of material is avoided particularly where two or more appeals are heard together(1).

5.1.2 See Practice Direction 6 for core volumes, cases and the authorities ~~volumes~~

5.1.3 **The statement of facts and issues** must be a single document, drafted initially by the appellant but "submitted to, and agreed with, every respondent before being filed": rule 22(2). The statement must set out the relevant facts 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 a 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 appendix. 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 all 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 statement (2).

5.1.4 **The appendix** should contain only such material as is necessary for understanding the legal issues and the argument to be presented to the Supreme Court (see rule 22(2)). It should not contain documents which were not in evidence below, nor should it contain transcripts of the proceedings or evidence below unless they are essential to the legal argument. If necessary, the appendix should be prepared in several parts, only the most essential documents being included in Part 1; only Part 1 will be included in the core volumes. The appendix must be submitted to, and agreed with, every respondent before being filed: rule 22(2).

5.1.5 Documents must be included in the appendix in the following order -

a. the order appealed against;

b. if separate from the order at (a) above, the order refusing permission to appeal to the Supreme Court;

c. the official transcript of the judgment of the court below (3);

d. the final order(s) of all other courts below;

e. the official transcript of the final judgment(s) of all other courts below;

f. (where they are necessary for understanding the legal issues and the argument) the relevant documents filed in the courts below;

g. (where they are necessary for understanding the legal issues and the argument) the relevant documents and correspondence relating to the appeal.

All documents must be numbered, and each part of the Appendix must include a list of its contents.

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Time limits

5.2.1 The statement of facts and issues and the appendix must be filed by the appellant within 112 days after the filing of the notice under rule 18(1)(c) or the filing of the notice of appeal: rule 22(1). Where the parties have agreed a timetable for the filing of documents in an appeal, the Registrar should be informed and that timetable will be approved unless it will prejudice the hearing date or adversely affect the preparation time the Justices require(4).

5.2.2 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 5.2.3.)

Extensions of time for filing the statement of facts and issues and the appendix

5.2.3 Appellants who are unable to complete preparation of the statement and appendix 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.

5.2.4 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

5.2.5 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.

Filing the Statement and Appendix

5.2.6 When the statement and appendix are ready, the statement and Part 1 of the appendix must be filed (in electronic form)(5) at the Registry with the prescribed fee. The original and one hard copy of the statement should also be filed(6). (For the fee payable, see Annex 2 to Practice Direction 7.)

5.2.7 Within 7 days after filing the statement and the appendix, the parties must comply with rule 22(3) 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).

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Footnotes

1. Amended Oct 2020 Return to footnote 1
2. Amended Sep 2016 Return to footnote 2
3. If the judgment has been published in a report which is ordinarily received in court, copies of the report may be filed instead of transcripts Transcripts of judgments marked "in draft" are not accepted without certification by the relevant court that the copy is the final version of the judgment. Return to footnote 5
4. Amended Oct 2020 Return to footnote 4
5. Amended Oct 2020 Return to footnote 5

6. Amended Oct 2020 Return to footnote 6

THE SUPREME COURT OF THE UNITED KINGDOM

Practice Direction 6

General note

6.1.1 The Supreme Court ~~is moving~~has moved to a system under which the vast majority of ~~the~~ documents filed are to be provided in electronic form only. ~~One~~Only the Key Documents bundle is required in hard copy ~~of key documents such as the statement of facts and issues may~~(see paragraph 6.4.4.) No other document should be ~~requested~~filed in hard copy~~.~~ unless specifically requested by the Registrar. It is essential that duplication of material is avoided particularly where two or more appeals are heard together~~(1)~~ .

Fixing the hearing date

6.2.1 Within 7 days after the filing of the statement of facts and issues and the appendix (see paragraphs 5.1.3 and 5.2.1 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: rule 22(3). Parties are encouraged to offer agreed dates which are convenient to all counsel at an early stage, but 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 Court's discretion, they are used as the basis for arranging the Court's list. The sittings of the Court (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 Court 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 two days are normally allowed for the hearing of an appeal and appeals are listed for hearing on this basis. Estimates of more than two days must be fully explained in writing to the Registrar and may be referred to the presiding Justice. Counsel should agree an order of speeches and timetable for the hearing and submit it to the Registry at least 3 working days~~(2)~~ before the hearing.

The Registrar will subsequently inform the parties of the date fixed for the hearing. The appellant and every respondent (and any intervener or advocate to the Court) must then sequentially exchange their respective written cases and file them ~~(3).~~.

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 Court may decide that a directions hearing should be held. A directions hearing will normally be held before 3 Justices. 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.

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Appellants' and Respondents' cases

6.3.1 The case is the statement of a party's argument in the appeal. ~~The Court does not prescribe any maximum length but the~~The Court favours brevity and a case should be a concise summary of the submissions to be developed. A case should not (without permission of the Court) exceed 50 pages of A4 size and in most cases fewer than 50 pages will be sufficient~~.(4)~~. Cases in excess of 50 pages will not be accepted unless permission to file a longer case has been sought and obtained. Any such application should be made not less than 14 days before the case is due to be filed. The page limit includes footnotes, which should be brief and should not contain substantive argument. In addition to the page limit, the following formatting is required for written cases:

- Font size 12;
- 1.5 line spacing;
- Numbered paragraphs;
- Signature and name of Counsel to appear at the end (an electronic signature will suffice).

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 5.1.3 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 Court to depart from one of its own decisions or from a decision of the House of Lords, 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.

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 Court. An electronic signature is acceptable.

6.3.7 The filing of a case carries the right to be heard by two counsel. The fees of two counsel only for any party are allowed on assessment unless the Court has ordered otherwise ~~(5).~~.

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 No later than eight ~~(6)~~ weeks before the proposed date of the hearing, the appellants must file ~~at~~their case with the Registry ~~the original and **1 copy** (7) of their case~~ and serve it on the respondents. The case should be filed ~~in hard copy and~~ electronically~~(8).~~ only at this stage, although a hard copy will subsequently be required as part of the Key Documents bundle (see paragraph 6.4.4).

6.3.10 No later than six weeks ~~(9)~~ 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 **1 copy**(10) of their case, as must~~and any other party filing a case (for example, an intervener or advocate to the court~~).~~

~~6.3.11~~) must file with the Registry and serve on the appellants a copy of their case in response. The ~~number of copies of cases exchanged~~ case should be ~~enough to meet the requirements of counsel and solicitors and should not usually exceed eight.~~filed electronically only at this stage, although a hard copy will subsequently be required as part of the Key Documents bundle (see paragraph 6.4.4)

6.3.~~12~~11 Following the exchange of cases, further arguments by either side may not without permission be submitted in advance of the hearing. In particular, speaking notes should not be submitted either in advance of or at the hearing: attention is drawn to the observations by Lord Hodge in Harold Chang (Appellant) v The Hospital Administrator and 2 others [2023] UKPC 44, para 26.

~~**Form of cases**~~

~~6.3.13 Cases must be:~~

~~a. printed or reproduced (both as to font size and otherwise) so as to be easily legible – preferably font size 12 and one and a half line spacing;~~

~~b. reproduced on paper of A4 size, printed on both sides with numbered paragraphs; and signatures of counsel at the end, above their printed names; and~~

~~c. (unless this causes great difficulty) presented in bound form, properly labelled and indexed.~~

~~Gothic script and Roman numerals should be avoided(11).~~

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The core volumes and the authorities ~~volumes~~

6.4.1 As soon as the parties' cases have been exchanged and in any event not later than 28 days before the date fixed for the hearing the appellant must file core volumes in accordance with paragraph 6.4.3 ~~(12).~~.

6.4.2 The core volume must be filed in electronic form only, together with the key documents bundle provided for by paragraph 6.4.4 and the ~~volumes of~~ authorities, as to which see paragraphs 6.5.1-6.5.10~~(13).~~.

6.4.3 The core volume must contain in the following order:

a. ~~a.~~ Form 1 - a copy of the notice of appeal (Form 1 (Appeal)) or the re-sealed application for permission to appeal (Form 1 (PTA~~)) (14);~~));

b. notice of cross-appeal (if any) and any acknowledgement and notice of objection filed by the respondent ~~(15);~~;

c. any order made by the Supreme Court granting permission to appeal and any order made as to the costs of the appeal or the terms on which the appeal is to be brought ~~(16);~~;

d. statement of facts and issues;

e. appellants' and respondents' cases, with cross-references (in a footnote or in the body of the text) to the Appendix and the authorities ~~volume(s);~~;

f. case of the advocate to the court or intervener, if any;

g. Part 1 of the appendix; and

h. index to the authorities ~~volume(s)(17).~~.

Form of key documents bundle

6.4.4 The key documents bundle must be filed in hard copy only, and must contain in the following order ~~hard~~ copies of:

~~1.~~ the statement of facts and issues;

~~2.~~1. the appellants' and respondents' cases, with cross-references (in a footnote or in the body of the text) to the Appendix and the authorities ~~volume(s);~~;

~~3.~~2. the case of the advocate to the court or intervener, if any; and

~~4.~~3. the following orders and judgments

a. The order appealed against;
b. The official transcript of the judgment of the court below;
c. The final order(s) of all other courts below; and
d. The official transcript of the final judgment(s) of all other courts below~~(18).~~.

The key documents bundle

a. should be bound, preferably with plastic comb binding and with blue (or, for criminal appeals, red) card covers;

b. should include tabs for each of the documents set out in paragraph 6.4.3, preferably with the name of the document on the tab;

c. should show on the front cover a list of the contents and the names and addresses of the solicitors for all parties;

d. must indicate (by e.g. a label attached to the plastic spine) the volume number (in Arabic numerals) and the short title of the appeal.

~~For volumes in electronic form see Practice Direction 14.(19)~~

e. must be paginated. Any pagination should accord with the pagination of the electronic bundle, regardless of whether or not this means that the pagination in the key documents bundle is not consecutive.

A copy of the key documents bundle must be provided for each Justice hearing the appeal and the copies must be filed four weeks before the hearing.

Provision of documents

6.4.5 To enable the appellants to produce the core volume, the respondents must provide the appellants' solicitors with the respondents' case. ~~(20).~~

6.4.6 Respondents should arrange with the appellants' solicitors for the delivery to them of such core volumes as the respondents' counsel and solicitors~~(21)~~ require.

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Authorities

6.5.1 A joint set of authorities, jointly produced, should be compiled for the appeal. ~~This set should include a primary volume, agreed between Counsel for the parties, containing those legislative provisions and caselaw authorities to which frequent reference is likely to be made during oral argument. Two(22) sets of the primary volume should be filed in hard copy (23) at the same time as the core volumes referred to in paragraph 6.4.3. All these~~The authorities must ~~also~~ be filed electronically only, and included in the electronic bundle prepared for the hearing in accordance with ~~Practice Direction 14 (24).~~ Practice Direction 14. Respondents should arrange with the appellants for the delivery to them of such ~~volumes~~ of the authorities as the respondents' counsel and solicitors require. The following paragraphs give guidance on the arrangement and order of the ~~volumes~~authorities but where the parties consider that a different order or arrangement would be of greater assistance to the Court, that order or arrangement should be adopted ~~(25).~~.

Form and content of the authorities ~~volumes~~

6.5.2 The authorities should appear in alphabetical order ~~in the primary volume as well as in other bundles or categories within bundles.~~. The ~~primary volume~~ authorities should include an index ~~to all authorities in all the volumes of authorities, and, where there is a large number of volumes, this~~ . The index ~~should also be reproduced separately. Every volume of authorities other than the primary volume should contain an index of its own contents. (The indexes~~ must be included in the pagination~~) (26).~~.

6.5.3 Authorities should (where appropriate) be ~~further~~ divided into the categories: domestic, Strasbourg, foreign and academic material. Where the parties consider that a different order or arrangement would be of greater assistance to the Court, that order or arrangement should be adopted. ~~The hard copies(27) 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] (28);~~

~~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 during the hearing;~~

~~e. have printed clearly on the front cover the title of the appeal and the names of the solicitors 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.~~

Where an authority or other document extends to many pages, only those pages that are relevant to the appeal should be copied. In cases where it is necessary to cite substantial ~~members~~numbers of Strasbourg authorities, the Court should be provided with an agreed Scott schedule: see Lord Reed's judgment in R (Faulkner) [2013] UKSC 23 at paragraphs 99 to 103. ~~(29)~~

6.5.4 Copies of cases that have been reported should be of the case as reported in the Law Reports or Session Cases, failing which copies of the case as reported in other recognised reports should be provided. In Revenue appeals, copies of the case as reported in the Tax Cases or Simon's Tax Cases may be provided, but references to any report of the case in the Law Reports or Session Cases should be included when the case is listed in the index. Unreported copies of the judgment should only be included if the case has not been reported in any of the recognised reports.

6.5.5 The Court 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 the Law Reports~~.

6.5.6 ~~All the volumes (30) of authorities should be filed in the Registry, preferably in separate containers from the core volumes.~~

~~6.5.7 In order to produce the volumes of authorities, parties may download text from electronic sources; but the volumes of authorities must be filed in paper form. Where online versions of textbooks or academic authorities are used, the front sheet or first page must be included so that the date of the relevant edition and other such information is provided (31). See Practice Direction 14 for provisions in relation to electronic volumes.~~

~~6.5.8 In certain circumstances~~ If it becomes apparent (for example, ~~when~~ during the hearing ~~it becomes apparent~~) that ~~a particular~~an authority is needed ~~but is not in the volumes of authorities), the Supreme~~ that has not been filed in advance, parties must file the authority electronically. Hard copies will also be required for the assistance of the Court ~~Library can arrange for copies of authorities to be made available at the hearing. Parties must themselves provide ten copies of any other authority or of unreported cases. They must similarly provide copies of any authority of which notice has not been given~~if the authority is to be cited at once.

6.5.~~9~~7 The cost of preparing the ~~volumes of~~ authorities falls to the appellants, but is ultimately subject to the decision of the Court as to the costs of the appeal.

Respondents' documents

6.5.~~108~~ Respondents are not encouraged to provide additional documents of their own but, where it is necessary for a respondent to place documents before the Court, they should be provided to the Registry in advance of the hearing with an explanatory letter.

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The hearing

6.6.1 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. Counsel, solicitors and parties are, however, advised to hold themselves in readiness during the week before and the week following the provisional date given. Solicitors receive formal notification shortly before the hearing.

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

6.6.3 The Court usually hears appeals on Mondays from 11.00am to 1pm and from 2pm to 4pm and on Tuesdays to Thursdays from 10.30am to 1pm and from 2 to 4pm.

6.6.4 Only in wholly exceptional circumstances will the Court consider sitting in private. Any request for the Court 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 other parties will normally be referred to the presiding Justice.

6.6.5 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).~~.

6.6.6 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.

6.6.7 The Registrar will on request inform the parties of the intended constitution of the Court for the hearing of a forthcoming appeal; this will be subject to possible alteration. Counsel should assume that the Court will have read the printed cases and the judgment under appeal but not all the papers which have been filed. The Justices should be addressed as 'My Lord' or 'My Lady' as the case may be.

6.6.8 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 Court will normally agree to such a request ~~(32).~~.

6.6.9 Hearings may be filmed and broadcast on television: see paragraph 8.17.1 of Practice Direction 8. Permission has been given for video footage of hearings to be streamed live, and made available afterwards on the Supreme Court website ~~(33).~~.

6.6.10 The Supreme Court has not formally re-issued the House of Lords' Practice Statement of 22 May 2008 (Practice Statement (House of Lords: Appearance of Counsel) [2008] 1 WLR 1143) which stated that Counsel instructed in an appeal are expected to be present throughout the hearing as such hearings take precedence over hearings in lower courts. However, the Practice Statement has as much effect in the Supreme Court as it did in the Appellate Committee in the House of Lords ~~(34).~~.

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Costs

6.7.1 Rule 46 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 47 if the Court so directs. If a party wishes to defer making submissions as to costs until after judgment, the court must be informed of this not later than at the close of the oral argument. If the Court **"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": rule 47(2).

~~**The original and 1 copy**(35) of any~~Any written submissions must be filed at the Registry in electronic form. Copies should also be sent to the other parties to the appeal. Costs submissions are considered without a hearing~~(36).~~.

Conditional fee agreements

6.7.2 Conditional fee agreements may properly be made by parties to appeals before the Supreme Court ~~(37).~~. It is open to the officer assessing costs to reduce the percentage uplift recoverable under a conditional fee agreement if he considers it to be excessive. The costs officer decides questions of percentage uplift in accordance with the principles set out in Designers Guild Limited v. Russell Williams (Textiles) Limited (trading as Washington DC) [2003] 2 Costs LR 204. If a party appearing before the Court seeks a ruling that the percentage uplift provided for in a conditional fee agreement should be wholly disallowed on legal grounds, such a ruling should (unless otherwise ordered) be expressly sought from the Court before the end of the hearing.

This paragraph does not apply to appeals from Scotland or Northern Ireland.

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Judgment

All correspondence about judgments should be sent to judgments@supremecourt.uk.

Place and time of judgment

6.8.1 Judgments are given on a day notified in advance. One week's notice is normally given. If judgment is to be handed down on a Wednesday, copies will normally be released on the previous Thursday. All corrections are to be submitted in line with the directions given by the Court.

Attendance of Counsel

6.8.2 Counsel or agents for each party or group of parties who have filed a case may attend when judgment is delivered in open court, but the attendance of counsel is not required. If counsel do attend, they should be familiar with the subject matter of the appeal and with the options for its disposal~~.~~ and should wherever possible let the judgments clerk know in advance that they propose to attend, by email to judgments@supremecourt.uk.

Conditions under which judgments are released in advance

6.8.3 The judgment of the Court may be made available to parties' legal teams before judgment is given. In releasing the judgment, the Court gives permission for the contents to be disclosed to counsel, 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 Court or the Registrar directs otherwise. A direction will be given where there is reason to suppose that disclosure to the parties would not be in the public interest.

6.8.4 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 Court as soon as possible. This should be done by email to judgments@supremecourt.uk, in line with the deadline provided. 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] 1WLR 1587.

6.8.5 Accredited members of the media may on occasion also be given a printed copy of the judgment in advance by the Court's communications team. The contents of this document are subject to a strict embargo, and are not for publication or broadcast before judgment has been delivered. The documents are issued in advance solely at the Court's discretion, and in order to inform later reporting, on the strict understanding that no approach is made to any person or organisation about their contents before judgment is given.

6.8.6 The Registrar will prepare a draft of the order, which will normally be sent to counsel for comment. If parties have been able to agree the order for costs, the Registry should be informed.

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Intervention

6.9.1 A person who is not a party to an appeal may apply in accordance with rule 26 for permission to intervene in the appeal. An intervener under rule 15 who wishes to intervene in the appeal must make a formal application under rule 26.

6.9.2 An application should be made in the general form of application, Form 2~~,~~ (see paragraph 7.1 of Practice Direction 7 for applications~~)~~), and should state whether permission is sought for both oral and written interventions or for written intervention only. The application should be filed electronically 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.

6.9.3 The application should explain the intervener's interest in the proceedings, and any prejudice which the intervener would suffer if the application were refused. It should summarise the submissions to be advanced if permission is given, and explain why those submissions will be useful to the court and different from those of the parties. If permission is sought for an oral intervention, the application should explain why oral intervention is necessary in addition to written intervention. If an intervener wishes to support the submissions to the Court with a witness statement and exhibits, permission to do so must be sought from the Court.

6.9.4 Applications for permission to intervene should be filed at least 10 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 the core volumes, and may delay the hearing of the appeal. The Court will wish to consider all the applications to intervene at one time and the Registrar will group applications together and refer them to members of the Court as a group. Strict adherence to the time limit for filing is therefore necessary ~~(39).~~.

6.9.5 Permission is not given as a matter of course, even if no party objects. The fact that a person was allowed to intervene in the court below does not entitle a person to intervene in this Court. Permission will be given only for interventions which will provide the Court with significant assistance over and above the assistance it can expect to receive from the parties, and only where any cost to the parties or any delay consequent on the intervention is not disproportionate to the assistance that is expected.

6.9.6 Interventions will be allowed in writing only, unless compelling reasons are shown for the allowance of oral intervention. If oral intervention is allowed, the time allocated to an intervener will normally come out of the time allowed to the party with whose case the intervener's submissions are aligned. In considering applications to intervene, the Court will be mindful of the need to maintain a balance between the arguments before it, and the importance of the appearance, as well as the reality, of an equality of arms. It will also have regard to the matters mentioned in paragraphs 6.9.5 above and 6.9.8 below.

6.9.7 If permission is given, written submissions must be filed electronically and also given to the appellants and respondents for incorporation into the core volumes at least 6 weeks ~~(40)~~ before the hearing. They should normally not exceed 20 pages of A4 size, inclusive of any supplementary documents, other than authorities. Permission should be sought if that limit is to be exceeded.

6.9.8 Interveners' submissions, whether written or oral, should focus on advancing the intervener's argument on a legal issue before the court. They should avoid repeating material that is in the parties' written cases. They should not challenge findings of fact. They should not ordinarily seek to introduce new evidence, especially where that would cause procedural unfairness to a party or undermine the basis on which the legal issues were considered by the courts below. They should not introduce new legal issues or seek to expand the case.

6.9.9 All counsel instructed on behalf of an intervener with permission to address the Court should attend the hearing unless specifically excused.

6.9.10 Subject to the discretion of the Court, interveners bear their own costs and any additional costs to the appellants and respondents resulting from an intervention are costs in the appeal. Orders for costs **"will not normally be made either in favour of or against interveners but such orders may be made if the Court considers it just to do so (in particular if an intervener has in substance acted as the sole or principal appellant or respondent)"**: rule 46(3).

6.9.11 In relation to interventions by devolved legislatures in devolution references, attention is drawn to the observations by Lord Hope in *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53; [2013] 1 AC 792, paras 99-100.

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Specialist advisers and advocates to the Court

6.10.1 For a request for a specialist adviser or an advocate to the Court to be appointed in an appeal see paragraphs 8.13.1 and 8.13.2 of Practice Direction 8.

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37. Conditional fee agreements are sanctioned by the Courts and Legal Services Act 1990, as amended by the Access to Justice Act 1999 Return to footnote 37

38. Amended Nov 2018 Return to footnote 39

39. Amended Oct 2020 Return to footnote 40

Practice Direction 7

Applications

7.1.1 Applications are governed by rule 30. 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 and should be served on all the other parties before it is filed: rule 30(1)(3).

7.1.3 An application must state what order the applicant is seeking and, briefly, why the applicant is seeking the order: see rule 30(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 Court 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 7 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(4).

7.1.5 The parties to an application for a consent order must ensure that they provide any material needed to satisfy the Court 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 procedural applications are referred to a Panel of Justices and may be decided with or without an oral hearing.

7.1.7 The original application must be filed in electronic form(1), 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 notice of objection must be filed in electronic form(2), with the prescribed fee. The original notice must bear a certificate of service on the other parties. Hard copies of these documents are not required unless requested by the Registry(3).

7.1.8 If the Panel of Justices orders an oral hearing, the parties may seek permission to adduce affidavits, witness statements and such other documents as they may wish. (4) Copies of such documents must be served on the other parties before the oral hearing. Authorities are not normally cited before the Panel.

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Documents

Preparation

~~7.2.1 All formal documents for the Supreme Court must be produced on A4 paper, securely bound on the left, using both sides of the paper.~~7.2.1 The Supreme Court has moved to a system under which the vast majority of documents are to be provided in electronic form only. Only the key documents bundle is required in hard copy (see Practice Direction 6, paragraph 6.4.4). No other document should be filed in hard copy unless specifically requested by the Registrar. It is essential that duplication of material is avoided particularly where two or more appeals are heard together. Documents which are not legible or which are not produced in the authorised form or which are unsatisfactory for some other similar reason are not accepted.

7.2.2 See paragraph 7.2.4 for a list of the provisions governing the form of documents which are to be filed.

Number of documents required

7.2.3 The following table shows the numbers of documents usually required for the hearing of an appeal. The numbers shown are the minimum prescribed by the Rules. Actual requirements must be subject to agreement and depend on the number of parties, counsel and solicitors 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 1 copy(5) on filing	One on service
Statement of facts and issues	The original and one copy(6)	As arranged
Appendix Part 1	8	One in advance otherwise as arranged
Appendix Part 2 and any subsequent Parts	10	One in advance otherwise as arranged
Case	Original and 1 copy(7) no later than eight weeks before the hearing; 10 copies two weeks before the hearing	As arranged
Key documents bundles	One for each member of the constitution(8) no later than four(9) weeks before the hearing	As arranged
Primary volume of authorities (10)	2(11) no later than four(12) weeks before the hearing	As arranged
Â	Â	Â

The respondents (and any interveners) must provide:

Document	For Registry	For other side
Case	Original and 1 copy (13) no later than six weeks before the hearing (14);	As arranged on exchange; 10 for core volumes
Respondents' additional documents (if any)	2(15)	As arranged
A	A	A

7.2.3 A copy of the key documents bundle must be provided for each Justice hearing the appeal and the copies must be filed four weeks before the hearing.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 5.1.3
- For Appendix: see Practice Direction 5 paragraph 5.1.4
- For Cases: see Practice Direction 6 paragraph 6.3
- For Core volumes: see Practice Direction 6 paragraph 6.4
- For Volumes ofthe authorities: see Practice Direction 6 paragraph 6.5.

Disposal of documents

7.2.5 All forms and supporting documents which are filed become the property of the Court. 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. and will not be returned. Original documents are retained.

7.2.6 Documents filed for the use of the Court may be inspected by persons who are not a party to the appeal on application under rule 39. Such persons must comply with any anonymity orders, data protection requirements and/or conditions imposed by the Registrar under rule 39.

Forms

7.3.1 Rule 4 provides for the forms which are to be used in the Supreme Court.

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

- Form 1 (PTA) (16) - Application for permission to appeal
- Form 1 (Appeal) - Notice of appeal(17)
- Form 2 - Application form
- Form 3 - Notice of objection/acknowledgement by respondent

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Orders

Draft order

7.4.1 Before the Court hands down its judgment, the Registrar will normally send a draft order to all parties who filed a case. The drafts must be returned to the Registrar no later than 2 days after receipt (unless otherwise directed), either approved or with suggested amendments. If amendments are proposed, they must be submitted to the solicitors for the other parties, who should indicate their approval or disagreement both to the solicitors submitting the proposals and to the Registrar.

Final order

7.4.2 A copy of the sealed final order is sent to the solicitors for all parties.

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Annex 1

- Form 1 - Application for permission to appeal
- Form 1 - Notice of appeal (18)
- Form 2 - Application form
- Form 3 - Notice of objection/acknowledgement by respondent

Annex 2

Fees payable in the Supreme Court

The fees set out in column (2) of the table below are payable in the Supreme Court in respect of the items described in column (1) of the table.

No fee in column (2) is payable in respect of criminal proceedings, other than the fee payable on submitting a claim for costs and for copying documents (19).

In relation to its devolution jurisdiction the fees set out in column (3) of the table are payable in respect of the items described in column (1) of the table.

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(1) Number and description of fee	(2) Amount of fee	(3) Amount of fee
1 Application for permission to appeal		
1.1 On filing an application for permission to appeal (20).	£1000	£400
1.2 On filing notice of objection to an application for permission to appeal.	£160	£160
2 Appeals etc		

(1) Number and description of fee	(2) Amount of fee	(3) Amount of fee
2.1 On filing notice under rule 18(1)(c) of the 2009 Rules of an intention to proceed with an appeal.	£800	£400
2.2 On filing a notice of appeal.	£1600	£400
2.3 On filing a reference under the Supreme Court's devolution jurisdiction. No fee is payable where the reference is made by a court.	N/A	£200
2.4 On filing notice under rule 21(1) of the 2009 Rules (acknowledgement by respondent).	£320	£160
2.5 On filing a statement of relevant facts and issues and an appendix of essential documents.	£4820	£800
3 Procedural applications		
3.1 On filing an application for a decision of the Registrar to be reviewed.	£1500	£200
3.2 On filing an application for permission to intervene in an appeal.	£800	£200
3.3 On filing any other procedural application.	£350	£200
3.4 On filing notice of objection to a procedural application.	£150	£150
4 Costs		
4.1 On submitting a claim for costs.	2.5% of the sum claimed	2.5% of the sum claimed
4.2 On certification by the Registrar under rule 52 of the 2009 Rules of the amount of assessed costs, or on receipt of an order showing the amount.	2.5% of the sum allowed	2.5% of the sum allowed
5 Copying		

(1) Number and description of fee	(2) Amount of fee	(3) Amount of fee
5.1 On a request for a copy of a document (other than where fee 5.2 or 5.3 applies) -		
(a) for ten pages or less;	£5	£5
(b) for each subsequent page.	50p	50p
5.2 On a request for a copy of a document to be provided on a computer disk or in other electronic form, for each such copy.	£5	£5
5.3 On a request for a certified copy of a document.	£20	£20

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Practice Direction 8

Bankruptcy or winding up

8.1.1 If a party to an appeal is adjudicated bankrupt or a corporate body is ordered to be wound up, their solicitor must give immediate notice in writing to the other parties and to the Registrar, who must also be provided with a certified copy of the bankruptcy or winding up order. The bankrupt party (or his trustee in bankruptcy) or the liquidator must file an application to pursue the appeal and the appeal cannot proceed until the application has been approved.

8.1.2 An application to pursue the appeal must be filed within 42 days of the date of the notice.

8.1.3 The form of application and the procedure for any supplemental case follows that for death of a party (see paragraph 8.4 below).

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Grouping or linking of appeals

8.2.1 The Registrar may direct that appeals raising the same or similar issues are heard either together or consecutively by the court constituted by the same Justices and may give any consequential directions that appear appropriate.

8.2.2 The Registrar should be consulted on whether grouping or linking is likely to be appropriate. A principal consideration will be to avoid wherever possible separate representation by counsel and any duplication in the submissions made or in the documents produced for the hearing.

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Cross-appeals

8.3.1 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 "leave is required from the Court of Session for an appeal from that court or... 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 Supreme Court.

8.3.2 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 Court of permission to appeal. Where permission to cross-appeal is granted by the Supreme Court, the application for permission to cross-appeal will stand as the notice of appeal and the appellant must then comply with rule 18 and paragraph 3.4.1 of Practice Direction 3.

8.3.3 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 grant by the Court of permission to appeal or the filing of the notice of 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.

8.3.4 A cross-appeal may be presented out of time in accordance with paragraph 4.4.1 of Practice Direction 4. For the fees payable for cross-appeals see Annex 2 to Practice Direction 7.

8.3.5 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.

8.3.6 In a cross-appeal, the cases on the original appeal must be filed 6 weeks (1) before the hearing. The cross-appellants' case for the cross-appeal must be filed 4 weeks (2) 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 case filed in the core volumes.

8.3.7 There is only one Appendix for the original appeal and cross-appeal, and documents in respect of the appeal and cross-appeal must be included in the same Appendix. The original-appellants/cross-respondents are responsible for filing the Statement and Appendix and for notifying the Registrar that the appeal and cross-appeal are ready for listing (including payment of the fee).

8.3.8 The provisions of the above paragraphs apply to appeals from Scotland with the appropriate modifications.

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Death of a party

8.4.1 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.

8.4.2 The 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.

8.4.3 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.

8.4.4 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.

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Dispute between parties settled

8.5.1 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 8.16 below.

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Exhibits

8.6.1 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 Court before the hearing.

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Fees and security for costs

8.7.1 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 'The Supreme Court of the United Kingdom'. Drafts and cheques for security money must be made payable to 'UK Supreme Court Security Fund Account'.

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Interveners

8.8.1 A person who is not a party to an application for permission to appeal may apply for permission to intervene in accordance with rule 15. See paragraph 3.3.17 of Practice Direction 3. A person who is not a party to an appeal may apply for permission to intervene in accordance with rule 26. See paragraph 6.9 of Practice Direction 6.

8.8.2 Attention is drawn to paragraphs 2 and 3 of Lord Hoffmann's opinion in E v The Chief Constable of the Royal Ulster Constabulary (Northern Ireland Human Rights Commission intervening) [2008] UKHL 66, [2009] 1 AC 536, where he said this.

"2. It may however be of some assistance in future cases if I comment on the intervention by the Northern Ireland Human Rights Commission. In recent years the House has frequently been assisted by the submissions of statutory bodies and non-governmental organisations on questions of general public importance. Leave is given to such bodies to intervene and make submissions, usually in writing but sometimes orally from the bar, in the expectation that their fund of knowledge or particular point of view will enable them to provide the House with a more rounded picture than it would otherwise obtain. The House is grateful to such bodies for their help.

3. An intervention is however of no assistance if it merely repeats points which the appellant or respondent has already made. An intervener will have had sight of their printed cases and, if it has nothing to add, should not add anything. It is not the role of an intervener to be an additional counsel for one of the parties. This is particularly important in the case of an oral intervention. I am bound to say that in this appeal the oral submissions on behalf of the NIHRC only repeated in rather more emphatic terms the points which had already been quite adequately argued by counsel for the appellant. In future, I hope that interveners will avoid unnecessarily taking up the time of the House in this way."

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New submissions

8.9.1 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Court new circumstances which have arisen and which might affect the decision or order of the Court, 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 solicitors for the other parties to the appeal.

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Opposed procedural applications

8.10.1 See paragraph 7.1 of Practice Direction 7 for applications.

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Patents

8.11.1 This direction applies to any appeal direct from the High Court under sections 12 and 13 of the Administration of Justice Act 1969, from an order for the revocation of a patent made under section 32 or section 61 of the Patents Act 1949 or under section 72 of the Patents Act 1977.

8.11.2 Notice of intention to file an appeal, with a copy of the notice of appeal, must be served on the Comptroller-General of Patents, Designs and Trade Marks, as well as on the respondents.

8.11.3 If at any time before the hearing of the appeal the respondents decide not to file an acknowledgement to oppose the appeal, they must without delay serve notice of their decision on the Comptroller and on the appeal. Any such notice served on the Comptroller must be accompanied by a copy of the petition under section 32 of the 1949 Act or of the statements of case in the claim and the affidavits filed therein.

8.11.4 The Comptroller must, within 14 days of receiving notice of the respondents' decision, serve on the appellant and file a notice stating whether or not he intends to file an acknowledgement

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8.11.5 The Comptroller may appear and be heard in opposition to the appeal:

a. in any case where he has given notice of his intention to appear, and

b. in any other case (including in particular a case where the respondents withdraw opposition to the appeal during the hearing) if the Court so directs or allows.

8.11.6 The Court makes such orders for the postponement or adjournment of the hearing of the appeal as may appear necessary for the purpose of giving effect to the provisions of this paragraph.

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Public funding and legal aid

8.12.1 The Court does not provide public funding or legal aid. Application for public funding must be made in England and Wales to the Legal Aid Agency (3), in Scotland to the Scottish Legal Aid Board, and in Northern Ireland to the Legal Aid Committee.

8.12.2 A party to whom a public funding or legal aid certificate has been issued must as soon as possible thereafter file a copy at the Registry. Any emergency certificate and subsequent amendments and the authority for leading counsel must also be filed.

Effect of application by appellant for public funding/legal aid

8.12.3 Provided the Registrar and the other parties have been notified in writing, an application by an appellant for public funding or legal aid suspends the commencement of proceedings and the time limits in rules 11 and 19 are extended until 28 days after the determination of the application for public funding or legal aid (including any appeals against a refusal of funding). Proof that an application has been made for legal aid must be provided to the Registrar (4).

8.12.4 Notification must be given far enough before the expiry of the original time limits to ensure that the appeal is not dismissed as being out of time. A copy of the order appealed from must be submitted by the applicant with the notification.

Effect of application by respondent for public funding/legal aid

8.12.5 Where a respondent to an appeal has applied for public funding or legal aid, they should inform the Registrar as soon as possible and in any event within the original time limit for filing the statement and appendix, particularly if they anticipate any possible difficulty in complying with a relevant time limit (5) .

Issuing of public funding/legal aid certificate

8.12.6 Where a public funding or legal aid certificate is granted, the relevant date for the purpose of calculation of time limits under paragraphs 8.12.3 and 8.12.4 (6) is the date of issue of the certificate.

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Specialist advisers and advocates to the Court

8.13.1 Any party to an appeal may apply in writing to the Registrar for specialist advisers to attend the hearing: rule 35(7). Such advisers provide assistance to the Court and are strictly independent of the parties to the appeal.

8.13.2 A request for an advocate to the Court to be appointed in an appeal should be made in writing to the Registrar. Any request should indicate whether the other parties to the appeal support the request.

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Stay of execution

8.14.1 Filing 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 Supreme Court. The Supreme Court cannot stay an interlocutor of the Court of Session(8).

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Transcription

8.15.1 See paragraph 6.6.6 of Practice Direction 6 for requests for stenographers and transcripts.

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Withdrawal of appeals and applications

8.16.1 Attention is drawn to the provisions of rule 34.

Applications for permission to appeal

8.16.2 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

8.16.3 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.

8.16.4 An appeal that has been listed for hearing may only be withdrawn by order of the Court 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.

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Broadcasting

8.17.1 The President and the Justices of the Supreme Court have given permission for video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice and the recording and broadcasting (9) is conducted in accordance with the protocol (10) which has been agreed with representatives of the relevant broadcasting authorities. The President or the presiding Justice may additionally impose such conditions as he or she considers to be appropriate including the obtaining of consent from all the parties involved in the proceedings.

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Enforcement of orders made by the Supreme Court

8.18.1 The enforcement of orders made by the Supreme Court in England and Wales is dealt with in paragraph 13 of Practice Direction 40B which supplements Part 40 of the Civil Procedure Rules. This provides for an application to be made in accordance with CPR Part 23 for an order to make an order of the Supreme Court (or the House of Lords) an order of the High Court. The application should be made to the procedural judge of the Division, District Registry or court in which the proceedings are taking place and may be made without notice unless the court directs otherwise.

8.18.2 The Part 23 application must be supported by the following:

1. details of the order which was the subject of the appeal to the Supreme Court or the House of Lords;
2. details of the order of the Supreme Court or the House of Lords, with a copy annexed, and
3. a copy of the certificate of the Registrar of the Supreme Court or of the Clerk of Parliaments of the assessment of the costs of the appeal to the Supreme Court or the House of Lords.

8.18.3 The order to make an order of the Supreme Court or the House of Lords an order of the High Court should be in form no PF68.

8.18.4 An order made by the Supreme Court is a UK judgment and enforcement of such an order in Scotland and Northern Ireland is dealt with in accordance with Schedule 6 to the Civil Jurisdiction and Judgments Act 1982. See Part 74 of the Civil Procedure Rules.

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Application for order that a solicitor has ceased to act (11)

8.19.1 A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.

8.19.2 Where such an application is made

a. the application must be served on the party for whom the solicitor is acting, unless the Registrar directs otherwise; and

b. the application must be supported by evidence.

8.19.3 Where the Registrar makes an order that a solicitor 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.

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Footnotes

1. Amended Feb 2013 Return to footnote 1
2. Amended Feb 2013 Return to footnote 2
3. Amended Nov 2013 Return to footnote 3
4. Amended May 2013 Return to footnote 4
5. Amended May 2013 Return to footnote 5
6. Amended May 2013 Return to footnote 6
7. For Nautical Assessors, see also Supreme Court of Judicature Act 1891 s 3 Return to footnote 7
8. Court of Session Act 1988 s 41(2). Return to footnote 8
9. Amended Dec 2015. Return to footnote 9
10. The protocol ensures that certain types of proceedings and some aspects of proceedings such as private discussions 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 Return to footnote 10
11. Amended Jan 2013 Return to footnote 11

Practice Direction 9

Appeals involving declarations of incompatibility

9.1.1 Where an appellant or a respondent seeks a declaration of incompatibility under the Human Rights Act 1998, the appropriate section of Form 1 or Form 3 must be completed and the provisions of the relevant Practice Direction must be complied with: see Practice Direction 4 paragraph 4.2.12.

9.1.2 The Crown has the right to intervene in any appeal where the Court is considering whether to declare that a provision of primary or subordinate legislation is incompatible with a Convention right: see rule 40. In any appeal where the Court is considering, or is being asked to consider, whether to make, uphold or reverse such a declaration, the Registrar must notify the appropriate Law Officer(s) (1) if the Crown (through a Minister, governmental body or other person defined in Human Rights Act 1998 s 5(2)) is not already a party to the appeal: rule 40(1).

9.1.3 The person notified under paragraph 9.1.2 must within 21 days of receiving such notice, or such extended period as the Registrar may allow, serve on the parties and file a notice stating whether or not the Crown intends to intervene in the appeal; and the identity of the Minister or other person who is to be joined as a party to the appeal (2). Where the Crown intends to intervene in the appeal, notice can be given in Form 2.

9.1.4 If a Minister or other person has already been joined to proceedings in the court below in accordance with the provisions of s 5 of the Human Rights Act 1998, the permission of the Court is not required for the continued intervention of the Crown.

9.1.5 Once joined to the appeal, the case for the Minister or other person must be filed in accordance with Practice Direction 6, paragraph 6.3.

9.1.6 The Court may order the postponement or adjournment of the hearing of the appeal for the purpose of giving effect to the provisions of this direction or the requirements of the Act.

Other Human Rights Act appeals

9.1.7 Where an appellant or a respondent seeks to challenge an act of a public authority under the Human Rights Act 1998, the appropriate section of Form 1 or Form 3 must be completed and the provisions of the relevant Practice Direction must be complied with: see Practice Direction 4 paragraph 4.2.12.

9.1.8 Where an issue under the Human Rights Act is raised in respect of a judicial act (3), the Registrar notifies the Crown through the Treasury Solicitor as agent for the Lord Chancellor (4).

9.1.9 Except as stated above, no special steps are required for other Human Rights Act appeals.

Footnotes

1. The Registrar notifies:

i. in appeals from England, the Attorney-General

ii. in appeals from Scotland, the Advocate General for Scotland and the Lord Advocate

iii. in appeals from Wales, if appropriate, the Counsel General of the National Assembly for Wales

iv. in appeals from Northern Ireland, the Attorney General for Northern Ireland Return to footnote 1

2. Human Rights Act 1998 ss5(2) and 9(5) Return to footnote 2

3. Human Rights Act 1998 ss 7, 9(3) and 9(4) Return to footnote 3

4. In appeals from Scotland, the Registrar notifies the Solicitor to the Scottish Government; in appeals from Northern Ireland, he notifies the Crown Solicitor and the Departmental Solicitor Return to footnote 4.

Practice Direction 10

General note

10.1.1 The Supreme Court has jurisdiction to hear and determine questions relating to the powers and functions of the legislative and executive authorities established in Scotland and Northern Ireland by the Scotland Act 1998 and the Northern Ireland Act 1998 respectively, and questions as to the competence and functions of those established by the Government of Wales Act 2006, whether or not the issue arises in proceedings in England and Wales, Scotland or Northern Ireland. These questions are referred to in the relevant legislation as "devolution issues", except that as a result of provisions introduced by Part 4 of the Scotland Act 2012 a question of the kind described in section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995 is referred to as a "compatibility issue" and the powers of the Supreme Court are exercisable only for the purpose of determining that issue: section 288ZB(6) of the Criminal Procedure (Scotland) Act 1995 (1).

10.1.2 The Supreme Court can also be asked to scrutinise Bills of the Scottish Parliament (under sections 32A or (2) 33 of the Scotland Act), Bills of the Northern Ireland Assembly (under section 11 of the Northern Ireland Act) and Bills of the National Assembly for Wales (3) (under section 112 of the Government of Wales Act 2006) (4).

10.1.3 Questions of the kind referred to in paragraphs 10.1.1 and 10.1.2.(5) can reach the Supreme Court in four ways.

a. by way of a reference of a question by a relevant officer.

b. by way of an appeal from the determination of a devolution issue by (6) certain superior courts of England and Wales, Scotland and Northern Ireland and from the determination of a compatibility issue by a court of two or more judges of the High Court of Justiciary in Scotland (7).

c. by way of a reference of a devolution issue or a compatibility issue (8) by certain appellate courts.

d. by way of a direct reference by a relevant officer (9) of a devolution issue whether or not the devolution (10) issue is the subject of litigation.

10.1.4 Rule 3(2) defines "relevant officer" as meaning

a. in relation to proceedings in England and Wales, the Attorney General and, in relation to proceedings that particularly affect Wales, the Counsel General to the Welsh Assembly Government

b. in relation to proceedings in Scotland, the Advocate General for Scotland and the Lord Advocate, and

c. in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland and (11) the Attorney General for Northern Ireland.

10.1.5 Rule 41 of the Supreme Court Rules provides in general for appeals or references under the Court's devolution jurisdiction (as defined by section 40 of, and Schedule 9 to, the Constitutional Reform Act 2005) to be dealt with in accordance with the Rules, but the Court will give special directions as and when necessary and in particular as to -

a. any **question** referred to the Supreme Court (12) for decision under sections 32A or (13) 33 of the Scotland Act 1998, section 11 of the Northern Ireland Act 1998 or section 99 or 112 of the Government of Wales Act 2006;

b. any reference of a **devolution issue** or a **compatibility issue** (14);

c. any **direct reference** under paragraph 33 or 34 of Schedule 6 to the Scotland Act 1998, paragraph 33 or 34 of Schedule 10 to the Northern Ireland Act 1998 or paragraph 29 or 30 of Schedule 9 to the Government of Wales Act 2006.

As to **(a)** above, sections 32A or (15) 33 of the Scotland Act 1998 provide for the scrutiny of Bills of the Scottish Parliament by the Supreme Court. Section 11 of the Northern Ireland Act 1998 provides for the scrutiny of Bills of the Northern Ireland Assembly (16) Section 112 of the Government of Wales Act 2006 provides for the scrutiny of Bills of the National Assembly for Wales (17).

As to **(b)** above,

i.a **devolution issue** is defined by Schedule 6 to the Scotland Act 1998, Schedule 10 to the Northern Ireland Act 1998 or Schedule 9 to the Government of Wales Act 2006: see paragraph 10.1.1 above. Under paragraphs 10, 11, 22 and 30 of Schedule 6 to the Scotland Act 1998, paragraphs 9, 19, 28 and 29 of Schedule 10 to the Northern Ireland Act 1998 or paragraphs 10, 18, 19 and 27 of Schedule 9 to the Government of Wales Act 2006, certain appellate courts may refer a devolution issue arising in proceedings before them to the Supreme Court;

ii.a **compatibility issue** is defined by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995, inserted by section 34(3) of the Scotland Act 2012. Under section 288ZB (1) and (2) of the Criminal Procedure (Scotland) Act 1995 a court consisting of two or more judges of the High Court of Justiciary in Scotland may refer, or be required to refer, a compatibility issue which has arisen in proceedings before it to the Supreme Court. (18).

As to **(c)** above, (i) a relevant officer may make a direct reference of a devolution issue to the Supreme Court under paragraph 33 or 34 of Schedule 6 to the Scotland Act 1998, paragraph 33 or 34 of Schedule 10 to the Northern Ireland Act 1998 or paragraph 29 or 30 of Schedule 9 to the Government of Wales Act 2006 whether or not the issue is the subject of litigation.

10.1.6 The forms set out in Annex 1 to Practice Direction 7 may be used for appeals and applications brought under the Court's devolution jurisdiction. In cases where a reference is made to the Court, the use of Form 1 is likely to be inappropriate and, in those circumstances, a document should be filed which contains the information set out in Annex 1 to this Practice Direction: see the Local Government Byelaws (Wales) Bill 2012 - Reference by the Attorney General for England and Wales (19)

10.1.7 In cases where the Court is asked to consider the provisions of Bills passed by devolved legislatures, it will usually be desirable for special directions to be given, particularly if there is some urgency. It is helpful if at an early stage the relevant officer making the reference notifies any relevant officer and any other person or body who has a potential interest in the proceedings, of the making of the reference and of any request for directions. All parties to the proceedings are expected to co-operate with one another in order that the Court can ensure that the proceedings are conducted efficiently and expeditiously (20).

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References of a question by a relevant officer

10.2.1 A reference of a question by a relevant officer is made by -

a. filing the reference, and

b. serving a copy on any other relevant officer who is not already a party and who has a potential interest in the proceedings, within any time limits specified by the relevant statute.

10.2.2 The reference should state -

a. the question to be determined with respect to the proposed Order in Council or Bill to which the reference relates;

b. whether it applies to the whole Order in Council, Bill or to a provision of it, and the reference shall have annexed to it a copy of the Order in Council or Bill to which it relates.

10.2.3 Any relevant officer (other than the one making the reference) who wishes to participate in the proceedings shall within 7 days of service of the reference on him give notice to the Registrar by filing an acknowledgment in Form 3 and serve that notice on (21) the other parties. Any relevant officer who gives notice automatically becomes a respondent to the proceedings.

10.2.4 The relevant officer making the reference shall, within 14 days of filing the reference, file a case with respect to the question referred. The referring relevant officer's case should include a copy of any statement made in relation to the Order in Council or Assembly Bill in accordance with the relevant statute and any relevant extracts from the Official Report of proceedings in the Parliament or Assembly.

10.2.5 Any other relevant officer who is participating in the proceedings shall file a case with respect to the question referred within 14 days of the notice given under paragraph 10.2.3.

10.2.6 The relevant officer making the reference shall, within 7 days of filing the reference (22), also notify the relevant Assembly or Parliament which passed the Bill or approved the draft of the Order in Council, as the case may be, of the making of the reference and, in the case of a Bill passed by the Northern Ireland Assembly, the relevant officer shall also notify the Office of the First Minister and Deputy First Minister (23).

10.2.7 If the Supreme Court decides that an Act or a provision of an Act is not within the competence of the relevant Assembly or Parliament that a member of the relevant executive authority did not have power to make, confirm or approve a provision of subordinate legislation or that any other purported exercise of a function by a member of the Scottish Executive was outside devolved competence, it may make an order removing or limiting any retrospective effect of that decision or suspending its effect for a period to allow the defect to be corrected. Where that decision relates to a compatibility issue, however, the power to make such an order is exercisable by the High Court of Justiciary instead of the Supreme Court: Scotland Act 1998, section 102, as amended by Scotland Act 2012, section 36(3) (24).

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Appeals to the Supreme Court

a. Permission to appeal

10.3.1 Part 2 of the Supreme Court Rules applies to applications for permission to appeal. Permission to appeal to the Supreme Court may be sought only if permission to appeal has been applied for and refused by the court below. Where permission is sought for the purpose of determining a compatibility issue, the application must be made within 28 days of the date on which the High Court of Justiciary refused permission or within such longer period as the Supreme Court considers equitable having regard to all the circumstances: Section 288AA(8) of the Criminal Procedure (Scotland) Act 1995 (25). The provisions of this section apply, with necessary modifications, to applications for permission to

cross-appeal as they apply to applications for permission to appeal. For the procedure in cases where permission to appeal is not required, see paragraph 10.3.3.

10.3.2 An application for permission to appeal shall -

a. briefly set out the facts and points of law involved in the appeal;

b. conclude with a summary of the reasons why permission to appeal should be granted; and

c. not normally be accompanied by supporting documents except

i. the order or interlocutor appealed from;

ii. the judgment appealed from; and

iii. if separate, the order or interlocutor of the court below refusing permission to appeal to the Supreme Court.

b. Appeals

10.3.3 Rules 18 and 19 and the following paragraphs apply to a person who has obtained permission to appeal from the Supreme Court and in cases where permission to appeal is not required, for example, where a person desires to appeal to the Supreme Court under paragraph 12 of Schedule 6 to the Scotland Act 1998 (26) against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 7 or 8 of that Schedule.

10.3.4 A person who desires to appeal to the Supreme Court shall file Form 1 within 42 days of the date on which the order or interlocutor appealed from was made or permission to appeal was granted, as the case may be.

10.3.5 A notice of appeal must be made in Form 1 and signed by the appellants or their counsel or solicitor.

10.3.6 The appellant must also serve a copy of his Form 1 on any relevant officer to whom it has not already been intimated or (27) who is not already a party and who has a potential interest in the proceedings. Any relevant officer who is so served may intervene in the proceedings on the appeal in the Supreme Court if within 14 days of service he notifies the Registrar by filing an acknowledgement in Form 3 and serving that notice on (28) all other parties. Any relevant officer who gives notice automatically becomes a respondent to the proceedings.

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References by Courts

10.4.1 A reference by a court is made by the appropriate officer of the court -

a. filing the reference,

b. serving a copy of the reference on the parties, and

c. serving a copy of the reference on any relevant officer who is not already a party and who has a potential interest in the proceedings.

10.4.2 The reference shall set out -

a. the question referred;

b. the addresses of the parties;

c. the name and address of any person who applied for or required the reference to be made;

d. concise statement of the background to the matter including -

- the facts of the case, including any relevant findings of fact by the referring court or lower courts; and
- the main issues in the case and the contentions of the parties with regard to them;

e. the relevant law, including the relevant provisions of the relevant statute;

f. the reasons why an answer to the question is considered necessary for the purpose of disposing of the proceedings.

10.4.3 All judgments and orders already given in the proceedings, including copies of any interlocutors and any notes attaching to such interlocutors, shall be annexed to the reference.

10.4.4 Any party to the proceedings in the court making the reference who intends to participate in the proceedings in the Supreme Court shall within 14 days of service of the copy reference on him notify the Registrar by filing Form 3 and serving that form on (29) the other parties. Any relevant officer who is already a party to the proceedings automatically becomes a respondent to the proceedings.

10.4.5 Any party who does not intend to participate shall give notice in writing to the Registrar and the other parties accordingly.

10.4.6 Where notice has to be given under this section of this Practice Direction, it shall also be given to any relevant officer who is not already a party and who has a potential interest in the proceedings.

10.4.7 Any relevant officer who is not already a party to the proceedings may intervene in the proceedings on the reference by filing Form 3 and serving that form on (30) other relevant officers with a potential interest and the court making the reference.

10.4.8 Unless the Supreme Court directs otherwise, once a final judgment has been given on a reference by a court the proceedings shall stand remitted to the court from which the reference came without further order, subject to the disposal of any outstanding issues as to the costs of the reference.

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Direct reference by a relevant officer

10.5.1 In a case where the devolution issue arises in proceedings before a court or tribunal to which the relevant officer is a party, a direct reference by the relevant officer is made by -

a. filing the reference,

b. serving a copy of the reference on the parties to those proceedings, and

c. serving a copy of the reference on all other relevant officers who are not already a party to those proceedings and who have a potential interest.

10.5.2 The reference shall set out -

a. the question referred;

b. the addresses of the parties;

c. the name and address of any person who applied for or required the reference to be made;

d. a concise statement of the background to the matter including -

- the facts of the case, including any relevant findings of fact by the court or tribunal; and
- the main issues in the case and the contentions of the parties with regard to them;

e. the relevant law, including the relevant provisions of the relevant statute;

f. the reasons why an answer to the question is considered necessary for the purpose of disposing of the proceedings.

10.5.3 All judgments and orders already given in the proceedings, including copies of any interlocutors and any notes attaching to such interlocutors, shall be annexed to the reference.

10.5.4 Any party to the proceedings in the court or tribunal who intends to participate in the proceedings in the Supreme Court shall within 14 days of service of the copy reference on him notify the Registrar by filing Form 3 and serving that form on (31) the other parties. Any relevant officer who gives notice automatically becomes a respondent to the proceedings.

10.5.5 In a case where the devolution issue is not the subject of proceedings before a court or tribunal, a direct reference by the relevant officer is made by -

a. filing the reference, and

b. serving a copy of the reference on any other relevant officer who has a potential interest.

10.5.6 Any relevant officer served with a copy of the reference may intervene in the proceedings on (32) the reference by filing Form 3 and serving that form on the relevant officer making the reference.

10.5.7 Where notice has to be given to any person under the Scotland Act 1998, the Northern Ireland Act 1998 or the Government of Wales Act 2006, as the case may be, the reference shall state the name and address of that person and when he was notified.

10.5.8 A person who has to be notified under paragraph 35 of Schedule 6 to the Scotland Act 1998, paragraph 35 of Schedule 10 to the Northern Ireland Act 1998 or paragraph 30 of Schedule 9 to the Government of Wales Act 2006, as the case may be, but who does not intend to participate in the proceedings in the Supreme Court shall give notice in writing within 14 days to the Registrar and the other parties to the proceedings.

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Annex 1 (33)

References to the Supreme Court

1. Where a reference is made to the Supreme Court, the provisions of the Supreme Court Rules 2009 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.

2. The reference must contain the matters required to be set out by Practice 10 (34) and 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 relevant statute and the provisions of this Practice Direction before it is filed. Notice of the filing of a reference should be given to those persons and bodies required to be notified

by the terms of the relevant statute or of this Practice Direction. 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. The information required by paragraphs 3 and 4 is to be supplied in addition to the information and details which are required to be supplied by the terms of Practice Direction 10.

6. Appendix and cases

a. At least 4 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.

b. The Appendix must be submitted to, and agreed with, every Respondent before being filed.

c. The Applicant and every Respondent must file 12 copies of their written cases at least 2 weeks before the hearing.

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Footnotes

1. Amended Apr 2013 Return to footnote 1
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THE SUPREME COURT OF THE UNITED KINGDOM

Practice Direction 11

The Court of Justice of the European Union

11.1.1 In this Practice Direction -

a. unless otherwise stated, an Article referred to by number means the Article so numbered of the EU-UK Withdrawal Agreement, as given effect by sections 7A and 7C of the European Union (Withdrawal) Act 2018;

b. " Article 12(4)" means Article 12(4) of the Ireland/Northern Ireland Protocol, as given effect by sections 7A and 7C of the European Union (Withdrawal) Act 2018;

c. the "European Court" means the Court of Justice of the European Union;

d. "the reasoning in CILFIT" means the reasoning of the European Court in CILFIT v Ministry of Health (Case 283/81).

11.1.2 Under Article 158, the European Court has jurisdiction to give preliminary rulings on questions concerning the interpretation of Part Two of the EU-UK Withdrawal Agreement (on Citizens' Rights) and, where such a question is raised before the Supreme Court, the Supreme Court may, if it considers that a decision on the question is necessary to enable it to give judgment, request the European Court to give such a ruling.

11.1.3 Under Article 160, the European Court has jurisdiction to give preliminary rulings on questions concerning the interpretation and application of the provisions of EU law referred to in Article 136 and Article 138(1)-(2) (on the UK's contribution to and participation in the EU Budget) and, where such a question is raised before the Supreme Court, the Supreme Court will request the European Court to give a ruling unless:

1. the question raised is irrelevant;
2. the provision in question has already been interpreted by the European Court;
3. the question raised is materially identical to a question which has already been the subject of a preliminary ruling in a similar case; or
4. the correct application of the law is so obvious as to leave no scope for any reasonable doubt as to the manner in which the question of interpretation or validity is to be resolved.

This reflects the reasoning in CILFIT.

11.1.4 Under Article 12(4), the European Court has jurisdiction to give preliminary rulings on questions concerning the provisions of EU law made applicable by the second subparagraph of Article 12(2), Article 5, and Articles 7-10 of the Ireland/Northern Ireland Protocol and, where such a question is raised before the Supreme Court, the Supreme Court will request the European Court to give a ruling thereon unless:

1. the question raised is irrelevant;
2. the provision in question has already been interpreted by the European Court;
3. the question raised is materially identical to a question which has already been the subject of a preliminary ruling in a similar case; or

4. the correct application of the law is so obvious as to leave no scope for any reasonable doubt as to the manner in which the question of interpretation or validity is to be resolved.

This reflects the reasoning in CILFIT

11.1.5 When the Supreme Court refuses permission to appeal in a case where the application includes a contention that a question should be referred to the European Court under Article 160 or under Article 12(4), the Supreme Court gives additional reasons for its decision not to grant permission to appeal. These reflect the reasoning in CILFIT.

11.1.6 The Supreme Court may order a reference to the European Court before determining whether to grant permission to appeal. In such circumstances, proceedings on the application for permission to appeal are stayed until the answer is received.

11.1.7 When the Supreme Court intends to make a reference, it will give consequential directions as to the form of the reference and the staying of the appeal (see rule 42(3)), and the parties are invited to submit an agreed draft of the question(s) to be referred. A further statement of facts and issues, for the use of the European Court, may also be appropriate. The Supreme Court then makes the reference, with or without judgments. At this stage the appeal may also be disposed of in part.

11.1.8 The reference must contain the matters specified in the European Court's rules of procedure and comply with any guidance given by the European Court. Parties should be aware that the European Court will not translate documents which are longer than 20 pages; only summaries are made (1).

Further proceedings in the Supreme Court

11.1.9 Within 28 days of the judgment of the European Court, the parties must file written submissions on whether a further hearing before the Supreme Court is necessary, or on how the appeal is to be disposed of. If a further hearing is required before the Supreme Court, the parties may file supplemental cases.

11.1.10 If supplemental cases are filed, then:

a. no later than 8 weeks before the expected date of the further hearing, the appellants must file the original and 1 copy of their supplemental case and also serve it on the respondents;

b. no later than 6 weeks before the expected date of the further hearing, the respondents must file the original and 1 copy of their supplemental case and also serve it on the appellants;

c. no later than 5 weeks before the expected date of the further hearing, any other party filing a case (e.g. an intervener or advocate to the court) must file the original and 1 copy of their supplemental case, and also provide copies to the appellants and respondents.

11.1.11 As soon as all the supplemental cases have been exchanged, and no later than 4 weeks before the date of the expected hearing, the appellants must file additional sets of core volumes containing:

a. appellants' and respondents' cases;

b. cases of interveners etc, if any;

c. judgment of the European Court;

d. any additional authorities relied on that are not included in the original ~~green authorities' volumes~~authorities.

11.1.12 The Registry will supply the Court with the original core volumes, appendices and the authorities ~~volumes~~ if they are available.

Costs and papers for the European Court

11.1.13 The European Court does not make orders for costs. The costs of the reference are included in the order of the Supreme Court disposing of the appeal; and, if necessary, are assessed by the Costs Officers of the Court.

11.1.14 Parties should be aware that the European Court will not translate documents which are longer than 20 pages; only summaries are made

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Practice Direction 12

Section 1 General Note and the Jurisdiction of the Supreme Court in Criminal Proceedings

1. Introduction

12.1.1 The procedure of the Supreme Court is regulated by statute, by the Supreme Court Rules and by the practice directions which supplement the Rules. Copies of these and other documents may be downloaded from www.supremecourt.uk.

12.1.2 Practice Directions 1-11 and 13 governing civil proceedings apply to criminal proceedings in the Supreme Court subject to any modifications or additional provisions made by this Practice Direction.

Right of appeal

12.1.3 The right of appeal to the Supreme Court is regulated by statute and subject to statutory restrictions. The principal statutes for criminal appeals (as amended in most cases by section 40 of, and Schedule 9 to, the Act) are:

- the Administration of Justice Act 1960;
- the Criminal Appeal Act 1968;
- the Courts-Martial (Appeals) Act 1968;
- the Administration of Justice Act 1969;
- the Judicature (Northern Ireland) Act 1978;
- the Criminal Appeal (Northern Ireland) Act 1980;
- the Proceeds of Crime Act 2002;
- the Extradition Act 2003;
- the Criminal Justice Act 2003;
- the Serious Organised Crime and Police Act 2005.

Every applicant for permission to appeal must comply with the statutory requirements before the application can be considered by the Court. The Human Rights Act 1998 applies to the Court in its judicial capacity. But that Act does not confer any general right of appeal to the Court, or any right of appeal in addition to or superseding any right of appeal provided for in Acts passed before the coming into force of the Human Rights Act 1998.

England and Wales and Northern Ireland

12.1.4 An appeal to the Supreme Court may only be brought with the permission of the court below or, if refused by that court, with the permission of the Supreme Court. Subject to paragraphs 12.2.2 - 12.2.4, in criminal matters such permission may not be granted unless the court below has issued the certificate referred to in paragraph 12.2.1.

12.1.5 Subject to paragraphs 12.1.4 and 12.2.1-12.2.6, an application for permission to appeal to the Supreme Court in a criminal matter may be made by either the defendant or the prosecutor, as follows:

a. from any decision of the Court of Appeal Criminal Division in England and Wales on an appeal to that court (1);

b. from any decision of the Courts-Martial Appeal Court on an appeal to that court (2);

c. from any decision of the Court of Appeal in Northern Ireland on an appeal to that court by a person convicted on indictment (3);

d. from any decision of the Court of Appeal in Northern Ireland in a criminal cause or matter on a case stated by a county court or magistrates' court (4);

e. from any decision of the High Court of Justice in England and Wales in a criminal cause or matter (5);

f. from any decision of the High Court of Justice in Northern Ireland in a criminal cause or matter (6).

Scotland

12.1.6 No appeal lies to the Supreme Court from criminal proceedings in the High Court of Justiciary in Scotland unless in the course of criminal proceedings the High Court of Justiciary determines whether a public authority (including the court) has acted incompatibly with a right guaranteed by the European Convention on Human Rights. In that situation, the UKSC may hear an appeal on an arguable point of law of general importance against the decision of the High Court of Justiciary on that issue.(7)

Criminal contempt of court cases

12.1.7 In cases involving criminal contempt of court, an appeal lies to the Supreme Court at the instance of the defendant only and, in respect of an application for committal or attachment, at the instance of the applicant from any decision of the Court of Appeal Criminal Division, the Courts-Martial Appeal Court or the High Court (8).

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Section 2 Applications for Permission

2. Certificate of point of law

12.2.1 Subject to paragraphs 12.2.2 - 12.2.4, permission to appeal to the Supreme Court in a criminal matter may only be granted if it is certified by the court below that a point of law of general public importance is involved in the decision of that court, and it appears to that court or to the Supreme Court that the point is one that ought to be considered by the Supreme Court (9). An application for permission to appeal without the required certificate may not be filed (paragraph 12.4.3), except as provided by paragraphs 12.2.2 - 12.2.4.

12.2.2 A certificate is not required for an appeal from a decision of the High Court in England and Wales or of the High Court in Northern Ireland on a criminal application for habeas corpus (10).

12.2.3 A certificate is not required for an appeal by a minister of the Crown or a person nominated by him, a member of the Scottish Executive, a Northern Ireland minister or a Northern Ireland department when they have been joined as a party to any criminal proceedings, other than in Scotland, by a notice given under the Human Rights Act 1998 ss. 5(1) and 5(2) and they wish to appeal under section 5(4) of that Act against any declaration of incompatibility made in those proceedings.

12.2.4 A certificate is not required in contempt of court cases where the decision of the court below was not a decision on appeal (11).

12.2.5 In cases where the court below has not certified a point of law of general public importance, the Supreme Court has no jurisdiction (see Gelberg v Miller [1961] 1 WLR 459, Jones v DPP [1962] AC 635).

Judicial Review: Criminal Matters

12.2.6 There is no appeal to the Court of Appeal from a refusal by a Divisional Court to grant permission to apply for judicial review in a criminal case (12); and the Supreme Court has no jurisdiction to hear an appeal against a refusal by a Divisional Court of permission to apply for judicial review in a criminal case (13). So, if a Divisional Court refuses permission to apply to it for judicial review in a criminal matter, there is no further remedy in the domestic courts. The only circumstances in which an application may be made to the Supreme Court for permission to appeal from a Divisional Court in a criminal judicial matter are when the Divisional Court certifies that a point of law of general public importance arises from its decision.

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3. Time Limits

Time within which to apply for permission to appeal

12.3.1 An application for permission to appeal to the Supreme Court in a criminal matter must first be made to the court below. If the court below refuses permission to appeal, application may then be made to the Supreme Court.

12.3.2 An application to the Supreme Court for permission to appeal is made in accordance with rule 10 and Practice Direction 3. An application for permission to appeal to the Supreme Court

a. from a decision of the Court of Appeal under s 33(1) of the Criminal Appeal Act 1968 or

b. from a decision of a Divisional Court of the King's Bench Division in a criminal cause or matter under s 1(1)(a) of the Administration of Justice Act 1960

must be made within 28 days beginning with the date on which the application for permission was refused by the court below (and not the following day) (14). This date is not necessarily that on which the point of law was certified. Where the time prescribed expires on a Saturday, Sunday, bank holiday or other day on which the Registry is closed, the application is accepted as being in time if it is received on the next day on which the Registry is open.

12.3.3 An application for permission to appeal must be made within 14 days if made under one of the following provisions: ss 32(5), 114(5) of the Extradition Act 2003; ss 33, 44 and 66 of the Proceeds of Crime Act 2002 (15); and, ss 183, 193 and 214 of the Proceeds of Crime Act 2002 (16). A 14 day time limit also applies to an application to refer a case pursuant to the Attorney General's Reference procedure under s 36(5) of the Criminal Justice Act 1988 (17).

Application for extension of time to file application for permission

12.3.4 Subject to paragraph 12.3.5, the Supreme Court or the court below may, on application made at any time by the defendant and in certain limited circumstances the prosecutor (18), extend the time within which application for permission to appeal to the Supreme Court may be made to the Supreme Court or to that court (19). Such an application to the Supreme Court is incorporated in the application for permission itself, and should set out briefly the reason(s) why the application is being presented outside the statutory period.

12.3.5 No extension may be granted in respect of applications made under ss 32 and 114 of the Extradition Act 2003.

Public funding and legal aid

12.3.6 Paragraph 8.12 of Practice Direction 8 applies to appeals in criminal proceedings. In criminal proceedings, depending on the route of appeal, application should be made to the court appealed from or, in Northern Ireland, to the Legal Aid Committee.

12.3.7 A copy of the order appealed from must be submitted by the appellant with the notification of the application for funding. The period within which the application for permission to appeal or notice of appeal (as the case may be) must be filed is then extended to 28 days after the final determination of the application for funding, including any appeals. An extension may not be granted to an appellant under the Extradition Act 2003 (20).

12.3.8 A representation order will usually provide for junior counsel and solicitors at the permission stage with the addition of leading counsel if permission is granted.

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4. Application for Permission to Appeal

Form of Application

12.4.1 The provisions of Practice Direction 3 govern the form of applications for permission to appeal.

Case title

12.4.2 In applications where a prosecuting authority is the appellant, the prosecuting authority should be described as follows: "Director of Public Prosecutions (or other prosecuting authority) (on behalf of His Majesty)".

12.4.3 Subject to paragraphs 12.2.2 - 12.2.4, the Registry cannot issue any application for permission to appeal that is not accompanied by the certificate from the court below required by statute, certifying a point of law of general public importance (see paragraph 12.2.1 above).

Service

12.4.4 In habeas corpus appeals and/or in appeals concerning extradition, the application must be served on the government that is seeking extradition or on the Director of Public Prosecutions if he is acting for that government.

Interpretation and translations in proceedings in the Supreme Court (21)

12.4.5 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings applies to proceedings in the Supreme Court. The solicitors to any applicant or respondent who is a suspected, accused or convicted person in the context of the proceedings shall notify the Registry upon, or as soon as they have notice of, the filing of an application for permission to appeal, if it will be necessary to provide translations or interpretation at any stage during the proceedings in compliance with the Directive (22).

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5. Costs

12.5.1 Where an application for permission to appeal is determined without an oral hearing, costs may be awarded as follows:

a. to a publicly funded or legally aided appellant, reasonable costs incurred in preparing papers for the Appeal Panel;

b. to a publicly funded or legally aided respondent, only those costs necessarily incurred in attending the client, attending the appellant's solicitors, considering the application, filing notice of objection and, where applicable, preparing respondent's objections to the application;

c. to an unassisted respondent where the appellant is publicly funded or legally aided, payment in accordance with the relevant statutory provisions (23))(24) of costs as specified at (b) above;

d. to an appellant or respondent, payment out of central funds, pursuant to s 16 or s 17 of the Prosecution of Offences Act 1985, of costs incurred at (a) or (b) above, as the case may be;

e. to a respondent where neither party is publicly funded or legally aided, costs as specified at (b) above to be paid by the appellant.

Where costs are sought under (c), (d) or (e) above, 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.

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

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

12.5.4 Bills of costs for assessment must be filed within three months from the date of the decision of the Appeal Panel or the date on which an application for permission is withdrawn. If an extension of the three months 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 three month period the Registrar takes into account the circumstances set out in paragraph 6.2 of Practice Direction 13.

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6. Fees

12.6.1 No fee is payable at any stage of an application for permission to appeal in a criminal matter. Fees are payable on the assessment of a bill of costs.

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Section 3 Appeals

7. Time Limits

12.7.1 Apart from appeals under the Extradition Act 2003, a notice of appeal must be filed in accordance with rule 19.

12.7.2 Appeals under the Extradition Act 2003 must be filed within 28 days of the grant of permission, starting with the day on which permission is granted. The time for doing so may not be extended (25).

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8. Security for Costs

12.8.1 No security for costs is required in criminal appeals.

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9. Statement of Facts and Issues

12.9.1 The provisions of Practice Direction 5 apply to appeals in criminal proceedings.

12.9.2 In any appeal under the Criminal Appeal Act 1968, the statement of facts and issues must state clearly whether any grounds of appeal have been left undetermined by the Court of Appeal (see also paragraph 12.11.2).

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10. Filing of Statement and Appendix

Respondents' consent

12.10.1 The provisions of Practice Direction 5 apply to appeals in criminal proceedings but it is not the practice in criminal appeals to require the consent of the respondents to applications for extension of time.

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11. Appellants' and Respondents' Cases

12.11.1 The provisions of Practice Direction 6 apply to appeals in criminal proceedings.

12.11.2 In any appeal under the Criminal Appeal Act 1968 in which grounds of appeal have been left undetermined by the Court of Appeal (see paragraph 12.9.2), each party should include in their case submissions on the merits of those grounds and on how they would seek to have them disposed of by the Court.

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12. Core Volumes

Form of Core Volumes

12.12.1 The provisions of Practice Direction 7 apply to appeals in criminal proceedings.

12.12.2 It is not necessary for the appellants' solicitors to produce additional volumes for the use of victims attending the hearing. The Registry provides the necessary documents from among the number produced for the use of the Court.

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13. Bail

12.13.1 The Supreme Court does not grant bail. Applications for bail should be made to the court below. Where bail is granted to a party to an appeal to the Court, the Registrar should be notified.

12.13.2 The attendance of a party to an appeal who is in custody is not normally required or permitted. Where the attendance of a party in custody is required, his solicitors will be informed by the Registrar in writing.

12.13.3 It should be noted that where a party was on bail pending the hearing of the appeal, surrender is usually required on the first day of the hearing.

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14. Exhibits

12.14.1 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 Court before the hearing.

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15. Victims' Code of Practice

12.15.1 The Victims' Code of Practice governs the services to be provided in England and Wales to victims of criminal conduct that has occurred in England and Wales. The Code is issued by the Home Secretary under s 32 of the Domestic Violence, Crime and Victims Act 2004. The Court applies the Code.

12.15.2 Accordingly, all applications for permission to appeal and all appeals are examined to establish whether a victim can be identified and, if so, to determine what services are required to be provided to the victim

.

12.15.3 In giving effect to paragraph 12.15.2 the Registrar may consult the Treasury Solicitor, the Court of Appeal Criminal Division and other relevant persons to obtain any necessary information.

12.15.4 The Registry may either directly or through the joint police/CPS Witness Care Units contact victims to inform them that an application for permission to appeal or an appeal has been filed, to explain the appeals procedure, and to report progress on the application and/or appeal, including the date set for the hearing.

12.15.5 Victims may attend the hearing of an appeal or application for permission to appeal or the handing down of judgment. The Registry arranges such attendance and provides the case papers.

12.15.6 If permission to appeal is granted by an Appeal Panel, the Registrar notifies the joint police/CPS Witness Care Units no later than one working day after the day on which permission to appeal has been granted.

12.15.7 The Registry notifies the joint police/CPS Witness Care Units of the result of the appeal no later than one working day after the day of the result.

12.15.8 The Scottish Strategy for Victims and the Code of Practice for Victims of Crime in Northern Ireland do not cover proceedings in the Supreme Court. In practice the Registry will, with the assistance of the relevant authorities in Scotland and Northern Ireland, seek to provide appropriate services for victims in Scotland and Northern Ireland (26).

Interpretation and translations in proceedings in the Supreme Court (27)

12.16.1 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings applies to proceedings in the Supreme Court. The solicitors to any applicant or respondent who is a suspected, accused or convicted person in the context of the proceedings shall notify the Registry upon, or as soon as they have notice of, the filing of a notice of appeal, if it will be necessary to provide translations or interpretation at any stage during the proceedings in compliance with the Directive (28).

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Footnotes

1. Criminal Appeal Act 1968 s33(1) (as amended); Criminal Justice Act 2003, Part 9. Return to footnote 1
2. Courts-Martial (Appeals) Act 1968 s39(1). Return to footnote 2
3. Judicature (Northern Ireland) Act 1978 s40(1)(b); Criminal Appeal (Northern Ireland) Act 1980 s31(1) (as amended). Return to footnote 3
4. Judicature (Northern Ireland) Act 1978 s41(1)(b). Return to footnote 4
5. Administration of Justice Act 1960 s1(1)(a) (as amended); Extradition Act 2003 ss 32, 114. Return to footnote 5
6. Judicature (Northern Ireland) Act 1978 s41(1)(a); Extradition Act 2003 ss 32, 114. Return to footnote 6

new footnote

7. Criminal Procedure (Scotland) Act 1995, s 288AA as inserted by the Scotland Act 2012, s 36Return to footnote 7
8. Administration of Justice Act 1960 s13; Judicature (Northern Ireland) Act 1978 s44. For appeals in cases involving civil contempt of court see Practice Direction 1 paragraph 2.1.8. Return to footnote 8
9. Criminal Appeal Act 1968 s 33(2); Administration of Justice Act 1960 s 1(2); Courts-Martial (Appeals) Act 1968 s39(2); Judicature (Northern Ireland) Act 1978 s41(2); Criminal Appeal (Northern Ireland) Act 1980 s31(2); Extradition Act 2003 ss 32, 114; Proceeds of Crime Act (Appeals under Part 4) Order 2003, SI 2003/458. Return to footnote 9
10. Administration of Justice Act 1960 s15(3) (as amended); Judicature (Northern Ireland) Act 1978 s45(3). Return to footnote 10
11. Administration of Justice Act 1960 s13(4); Judicature (Northern Ireland) Act 1978 s44(4). Return to footnote 11
12. Supreme Court Act 1981 s18(1)(a). Return to footnote 12
13. Administration of Justice Act 1960 s1(1) & (2) and the decisions of the House of Lords in Re Poh Eastaway and Burkett. Return to footnote 12
14. Criminal Appeal Act 1968 s34(1) (as amended); Administration of Justice Act 1960 s2(1) (as amended). Return to footnote 14

15. Proceeds of Crime Act 2002 (appeals under Part 2) Order 2003 (SI 2003 No 82), Part 3, Article 12. Return to footnote 15

16. Proceeds of Crime Act 2002 (appeals under Part 4) Order 2003 (SI 2003 No 483), Part 3, Article 12. Return to footnote 16

17. Criminal Justice Act 1988 Sch 3, para 4. Return to footnote 17

18. Criminal Appeal Act 1968, ss 33(1B), 34(2). Return to footnote 18

19. Criminal Appeal Act 1968 s 34(2); Administration of Justice Act 1960 s 2(3); Courts-Martial (Appeals) Act 1968 s 40(2); Criminal Appeal (Northern Ireland) Act 1980 s 32(2); Judicature (Northern Ireland) Act 1978 Schedule 1, paragraph 1(2). Section 1A of the Geneva Convention Act 1957 makes, in relation to protected prisoners, certain extensions to the time limits in the Administration of Justice Act 1960, the Criminal Appeal Act 1968, the Courts-Martial (Appeals) Act 1968 and the Criminal Appeal (Northern Ireland) Act 1968. Return to footnote 19

20. Extradition Act 2003 ss 32, 114. Return to footnote 20

21. Amended Nov 2013 Return to footnote 21

22. Amended Nov 2013 Return to footnote 22

23. September 2015 Return to footnote 23

24. Or s 18 Legal Aid Act 1988; or, in Scotland, pursuant to s 19 Legal Aid (Scotland) Act 1986, or in Northern Ireland, pursuant to Article 16 Legal Aid Advice and Assistance (N.I.) Order 1981. Return to footnote 24

25. Extradition Act 2003 ss 32, 114 Return to footnote 25

26. Introduced Nov 2013 Return to footnote 26

27. Introduced Nov 2013 Return to footnote 27

28. Introduced Nov 2013 Return to footnote 28

THE SUPREME COURT OF THE UNITED KINGDOM

Practice Direction 13

Section 1

1. Introduction

Detailed assessments of costs in the Supreme Court are conducted by Costs Officers appointed by the President: see rule 49. One Costs Officer will be a costs judge of the Senior Courts Costs Office and the second may be the Registrar.

1.2 The assessment of costs is governed by the relevant provisions of the Supreme Court Rules 2009 supplemented by this and the other Practice Directions issued by the President. To the extent that the Supreme Court Rules and Practice Directions do not cover the situation, the Rules and the Practice Directions which supplement Parts 44 to 47 of the Civil Procedure Rules (the "CPR") are applied by analogy at the discretion of the Costs Officers, with appropriate modifications for appeals from Scotland and Northern Ireland. 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).

1.3 References in this Practice Direction to

- "bill of costs" mean a claim for costs in Form 5filed in accordance with Rule 48 of the Supreme Court Rules 2009; "the Costs Officer" include the plural;
- "costs" and "bills of costs" include expenses and accounts of expenses in appeals from Scotland;
- "legal aid provider" include the Legal Aid Agency, the Legal Services Agency Northern Ireland and the Scottish Legal Aid Board;
- "legally aided" mean funded by a legal aid provider and include references to 'publicly funded' in terms of the Access to Justice Act 1999;
- "legal representative" mean a person authorised to conduct litigation;
- "the Access to Justice Act 1999" include references to the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- "pro bono costs order"(2) mean an order made under section 194B of the Legal Services Act 2007;

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2.Entitlement to Costs

Costs are in the discretion of the Court 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 Court": rule 46(1).

2.2 In the exercise of its discretion the Court may, on application, make

a. a costs capping order

b. a protective costs order or

c. an order limiting the recoverable costs of an appeal in an Aarhus Convention claim or in proceedings in which costs recovery is limited or excluded at first instance.

In making such an order, the Court may apply the provisions of CPR 3.19, CPR 45.43 or, as the case may be, CPR52.19 or CPR52.19A.

2.3 An application for a costs capping order, a protective costs order or an order limiting the recoverable costs of an appeal must be made as soon as practicable. See Practice Direction 7 for applications.

2.4 A bill of costs in Form 5(see Section 2 of this Practice Direction) may be filed in the Registry for assessment where:

a. costs are payable by appellants, respondents or other persons under an order for costs made by an Appeal Panel or by the Court;

b. an Appeal Panel or the Court orders a determination of the costs payable by a legal aid provider to appellants, respondents or other persons in accordance with the relevant statutory provisions (i.e. the Access to Justice Act 1999, the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Legal Aid (Scotland) Act 1986 or the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981);

c. costs are payable by a legal aid provider to solicitors, counsel or other legal representatives acting on behalf of a legally aided party.

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3. Basis of Assessment

3.1 Costs in the Supreme Court are ordered to be assessed on the standard basis or on the indemnity basis in accordance with rules 50 and 51 of the Supreme Court Rules or the equivalent bases that apply in Scotland and Northern Ireland. The court will not allow costs which have been unreasonably incurred or which are unreasonable in amount.

3.2 On the standard basis, the court will only allow costs which are proportionate to the matters in issue and will resolve any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

3.3 Costs incurred are proportionate if they bear a reasonable relationship to:

a. the sums in issue in the proceedings;

b. the value of any non-monetary relief in issue in the proceedings;

c. the complexity of the litigation;

d. any additional work generated by the conduct of the paying party; and

e. any wider factors involved in the proceedings, such as reputation or public importance.

Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably incurred or even if they were necessarily incurred.

3.4 On the indemnity basis the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

3.5 Detailed assessments are conducted in public.

3.6 See paragraph 11 for the Costs Officers' discretion as to what to allow.

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4. Costs Orders Against Legally Aided Parties

England and Wales

4.1 Any costs ordered to be paid by a legally aided party must not exceed the amount which is reasonable for them to pay having regard to all the circumstances including:

a. the financial resources of all the parties to the proceedings; and

b. their conduct in connection with the dispute to which the proceedings relate.

4.2 Costs which were incurred by one party during a period when another party was legally aided, and which are not recoverable from the publicly funded party only because of section 11 of the Access to Justice Act 1999 or section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, may, in certain circumstances, be payable by the legal aid provider itself.

4.3 Regulations made under section 11 of the Access to Justice Act 1999 and section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provide a code governing orders for costs against legally aided parties and against the Lord Chancellor or legal aid provider.

4.4 A party who seeks such costs against the Lord Chancellor or legal aid provider, or who may do so, depending upon the amount of costs payable by the legally aided party, must (within the time limit specified in the relevant Regulations) file with his bill of costs copies of any documents (including a statement of resources) and any notice served by him which he has served upon others in compliance with the Regulations.

4.5 Within 21 days of being served with a bill of costs to which section 11 of the Access to Justice Act 1999 or section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 applies, a party who is or was legally aided during any period covered by the bill must respond by filing in the Registry a statement of resources and serving a copy of it on the receiving party and, where relevant, on the Lord Chancellor or the legal aid provider.

4.6 The Lord Chancellor or legal aid provider may appear at any hearing relating to an order made against them.

Scotland and Northern Ireland

4.7 Costs orders against legally aided parties or legal aid providers in Scotland and Northern Ireland and the assessment of those costs are governed by the relevant provisions of Legal Aid (Scotland) Act 1986, the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and Regulations made under them. Paragraphs 4.1 - 4.6 (above) are to be construed with the appropriate modifications.

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5. Pro Bono Costs Orders Under Section 194B of the Legal Services Act 2007 [3]

England and Wales

5.1 A pro bono costs order must specify that the costs payable under it are to be paid to the prescribed charity and the Registrar must send a copy of the costs order to the prescribed charity.

5.2 Where the court makes a pro bono costs order and the amount of costs payable is not agreed the provisions of this Practice Direction will apply to the assessment of those costs with the following modification:

a. references to 'costs orders' and 'orders for costs' are to be read, unless otherwise stated, as if they refer to a pro bono costs order,

b. references to 'costs' are to be read as if they referred to a sum equivalent to the costs that would have been claimed by, incurred by or awarded to, the party with pro bono representation had that representation not been provided free of charge; and

c. references to 'receiving party' are to be read as meaning a party who has pro bono representation and who would have been entitled to be paid costs had that representation not been provided free of charge.

5.3 VAT is not recoverable under a pro bono costs order.

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6. Costs of Preparing Applications for Permission to Appeal or Notices of Objection

General

6.1 Where a party applies for costs in accordance with paragraph 3.5.1 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.

6.2 As a general rule the application is not granted 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 it cannot be demonstrated that the applicant had an interest in the application for permission to appeal that required separate representation.

6.3 Where an unsuccessful application for permission to appeal is determined without an oral hearing, costs may include:

a. the reasonable costs of preparing and filing a legally aided appellant's application for permission to appeal and attending the client, counsel or other parties;

b. the reasonable costs of preparing and filing respondent's objections and attending the client, counsel or other parties.

6.4 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 6.3(a) and (b) above.

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

Counsel's fees

6.6 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.

6.7 A fee will be allowed for King's Counsel instead of or in addition to junior counsel

a. if this is held to be necessary because of the difficulty or complexity of the case or other good reason; or

b. if a legal aid provider has given the appropriate authorisation.

6.8 For guideline figures for fees on applications for permission to appeal, see paragraph 15.

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7. Filing and Service of Bill of Costs

Filing

7.1 A claim for costs in Form 5 must be filed within three months of the date of the relevant costs order and must be served on the other parties.

7.2 All documents must be filed electronically as follows:

a. **the bill of costs** (Form 5);

b. counsel's fee notes (which must be receipted except in the case of legal aid bills) and, where counsel's fees exceed the guideline rates in paragraph 15, a detailed note explaining why; and

c. receipts or other evidence for disbursements of £500 or more.

7.3 The certificate of service (in Part 7 of Form 5) must include the details of all parties entitled to be represented at the detailed assessment.

7.4 The certificates in part 7 of Form 5 must be completed where appropriate. The completed certificate of discharge is accepted as evidence of payment of disbursements under Â£500, but may, subject to any direction by the Cost Officer, be challenged by the paying party.

7.5 Other papers on which the parties intend to rely must be filed before the hearing and in consultation with the costs section of the Registry. Where a bill is complex or large any papers the Costs Officers need to pre-read must be filed electronically at least 7 days before the hearing.

7.6 Where costs between the parties and legal aid costs are claimed together the legal aid costs should be identified clearly in Form 5.

7.7 Points of dispute under rule 48 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 within the relevant time period or, after expiry of that limit, by application made in Form 2 (for applications see Practice Direction 7).

7.8 Where the paying party does not file points of dispute a provisional assessment will be conducted (see paragraph 9 below).

Fees

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

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

7.11 The filing fee and the assessment fee are costs of the detailed assessment. Parties must not include the filing fee when calculating the assessment fee.

7.12 Where a bill of costs is agreed fewer than 21 days prior to assessment the assessment fee is payable on the amount agreed between the parties. Agreement must be notified to the court by email as soon as possible.

7.13 Drafts and cheques for fees are payable to 'The Supreme Court of the United Kingdom'

7.14 The Supreme Court fees provided for by the Supreme Court Fees Order 2009 (as amended) are set out in Annex 2 to Practice Direction 7.

Completing Form 5

7.15 Form 5(includingPart 6B) must be completed and returned to the costs section along with the assessment fee within one month of the assessment.

7.16 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.

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8. Extension of Time and Filing Out of Time

8.1 Any request for an extension of the three-month period for filing a bill must be copied to the other parties. If such an extension is agreed by the partiesthat should be made clear.

8.2 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.

8.3 See Practice Direction 7 for applications.

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9. Provisional Assessment

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

a. for legal aid bills except where a legal aid provider requests a hearing or where the size or complexity of the bill requires a detailed assessment hearing;

b. where one of the parties requests such an assessment (see rule 49(5));

c. where the costs claimed are £75,000 or less; and

d. where the paying party fails to file points of dispute (for points of dispute see paragraph 7.8 above).

9.2 A provisional assessment is usually carried out by a single costs officer. The outcome of the provisional assessment will then be sent to the parties. If a party is dissatisfied with the result representations should be filed 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.

9.3 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.

9.4 The Scottish Legal Aid Board will be informed of any provisional assessment in an appeal from Scotland in order that it may decide whether or not to intervene.

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10. Attendance at Detailed Assessment

10.1 The Registrar gives 14 days' notice of the date and time of the detailed assessment.

10.2 Parties may be represented by their legal representative (including but not limited to a solicitor, costs lawyer or costs draftsperson, or counsel).

10.3 The receiving party or their legal representative must attend the detailed assessment hearing.

Counsel

10.4 For counsel's fees of attending the detailed assessment see paragraph 18.

Detailed assessment on the papers

10.5 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.

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11. Costs Officers' Discretion

11.1 The Costs Officers have discretion as to the amount to allow. In exercising this discretion they bear in mind the terms "reasonably incurred" and "reasonable in amount" in rule 51 of the Supreme Court RulesThe factors they consider include:

a. to what extent an item assisted the Court in determining the appeal;

b. the length of a hearing;

c. the complexity of the issues as indicated by the judgments delivered by the Court; and

d. the general level of fees sought and allowed in the lower courts.

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

11.3 The Costs Officers 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 Court or the Appeal Panel.

11.4 For guideline figures for solicitors and counsel see paragraph 15 below.

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12. Review of Costs Officers' Decision

Application for a review

12.1 Any party to an assessment who is dissatisfied with all or part of a decision of the Costs Officers may apply in accordance with rule 53 for that decision to be reviewed by a single Justice. The application must be made in Form 2 and served on the other parties. For applications see Practice Direction 7.

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

12.3 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 Court.

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

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

Referral to a Single Justice

12.6 The matter is then referred to a single Justice nominated by the presiding or senior Justice who heard the appeal or application for permission to appeal.

12.7 The single Justice will decide whether the matter should be referred to a panel of Justices and, before he makes a decision, he may consult the other Justices who heard the appeal or application. If the single Justice is of the opinion that the matter should not be referred to a panel, the decision of the Costs Officer is affirmed.

Referral to Panel of Justices

12.8 The Panel of Justices decides the matter with or without an oral hearing; and may direct a further oral hearing by the full Court.

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13. Assessment Certificates

Civil

13.1 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 36 and 54).

Criminal

13.2 Where costs have been ordered to be paid out of Central Funds or where costs are paid under Representation Orders issued by the Registrar of the Court of Appeal, Criminal Division, the certificate will be sent to the relevant office of His Majesty's Courts and Tribunals Service to settle with the parties or their solicitors and counsel direct.

Courts-Martial

13.3 Where costs are payable by the Secretary of State for Defence in respect of an appeal from the Courts-Martial Appeal Court, the certificate is sent direct to the Ministry of Defence to settle.

Criminal (Northern Ireland)

13.4 Where the costs are payable in accordance with section 41 of the Criminal Appeal (Northern Ireland) Act 1980 the certificates are sent to the Northern Ireland Office to settle

.

Default costs certificate

13.5 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 disproportionate (4).

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14. Interest

14.1 Interest is payable on costs assessed between the parties and on costs in favour of successful unassisted 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 of the Court is made or such other date as the Court may specify unless the Costs Officers exercise their discretion to vary the period for which interest is allowed.

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15. Guidelines on Fees Allowed

Solicitors practising in England and Wales (5)

15.1 The Court 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.

Solicitors practising in Scotland or Northern Ireland

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

Grade of fee earner	A	B	C	D
London 1	£512	£348	£270	£186

Grade of fee earner	A	B	C	D
London 2	£373	£289	£244	£139
London 3	£282	£232	£185	£129
National 1	£261	£218	£178	£126
National 2/3	£255	£218	£177	£126

An explanation of the grades and details of localities is set out in Section 3 below. If the rates set by the Senior Courts Costs Office have been amended the Supreme Court will allow the amended rates in lieu of those in this table.

15.3 Where solicitors have charge of producing large documents such as the authorities or core volumes, it will not usually be appropriate for a higher grade rate to be applied. Time spent photocopying is not recoverable (although the cost of photocopying is). See also paragraph 11.3 above for documents.

15.4 Travel and waiting are allowed at the rate agreed with the client, unless this is more than the hourly rate allowed on assessment.

15.5 Letters and telephone calls are allowed at one tenth of the hourly rate.

Counsel

15.6 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	KC
Settling application	£1250	£1750
Advice for legal aid provider	£500	£800
Preparing respondents' objections	£800	£1100
One conference	£250	£500
Attending oral hearing by Appeal Panel	£1600	£2100

15.7 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.

15.8 The general rule is that only one counsel's fees is allowed on assessment for work at the application for permission to appeal stage, unless a legal aid provider has authorised two counsel (but see paragraphs 6.6 and 6.7 above).

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

Appeals	Junior	KC
Notice of appeal (where UKSC has granted permission)	£150	£150
Notice of appeal (where permission is not required)	£1250	£1750
Statement of facts and issues	£2250	£4500
Authorities	£900	£1800
Conferences (each, up to a maximum of six)	£600	£1200
Advice	£1000	£2000
Brief (based on a 1 day hearing)	£7500	£15000
Brief (based on a 2 day hearing)	£10000	£20000
Refresher (from day two of the hearing)	£1625	£3250

Notes

15.10 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 spend by counsel in preparation is rarely of assistance to the Costs Officers when assessing the amount of counsel's fees at any stage of the proceedings.

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

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

15.13 The Costs Officers exercise discretion in instances where junior counsel has undertaken most of the work on a particular item.

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

15.15 The Costs Officers have no discretion to allow the fees of more than two counsel unless the Court has ordered otherwise.

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

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16. Conditional Fee Arrangements

16.1 Notification should be given to the opposing parties and to the Registry as soon as practicable after a conditional fee agreement or funding arrangement has been entered into.

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17. Costs of Litigants in Person

17.1 The amount allowed to a litigant in person may not exceed the loss actually sustained or, where no loss has been sustained, £19 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 a solicitor. The two thirds limit does not apply to out-of-pocket expenses which would be disbursements if incurred by a solicitor. (For further information see CPR 46.5 and paragraph 3 of Practice Direction 46 which supplements it.)

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18. Costs of Assessment

18.1 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 to £5000 (excluding VAT)	£500
Bills assessed at £5001 to £10000 (excluding VAT)	£700

18.2 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).

18.3 The parties must prepare costs schedules for the consideration of the Costs Officers after detailed assessment.

18.4 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.

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Section 2

Form 5 - Bill of Costs

- Form 5 - Bill of Costs (DOC)

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Section 3

Guideline Hourly Rates for Solicitors

Solicitors' hourly rates: England and Wales

1. The guideline rates set out in paragraph 15 for solicitors 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
- 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 City
- 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, Keighly & Skipton)
- Bury
- Chelmsford North, Cambridge County, Peterborough, Bury St E, Norfolk, Lowestoft
- Cheshire & North Wales
- Coventry, Rugby, Nuneaton, Stratford and Warwick
- Cumbria
- Devon, Cornwall
- Exeter, Plymouth
- Grimsby, Skegness
- Hull (City)
- Kidderminster
- Leeds Outer, Wakefield & 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
- Sheffield, Doncaster and South Yorkshire
- Shrewsbury, Telford, Ludlow, Oswestry
- South & West Wales
- Southport
- Stafford, Stoke, Tamworth
- St Helens
- Stockport, Altrincham, Salford
- Swansea, Newport, Cardiff (Outer)
- Teesside
- Wigan
- Wolverhampton, Walsall, Dudley & Stourbridge
- Worcester, Hereford, Evesham and Redditch
- York, Harrogate

Grade of fee earner	A	B	C	D
London 1	£512	£348	£270	£186
London 2	£373	£289	£244	£139
London 3	£282	£232	£185	£129
National 1	£261	£218	£178	£126
National 2/3	£255	£218	£177	£126

Grade of fee earner	A	B	C	D

Scotland and Northern Ireland

The Costs Officers bear in mind the guideline rates for England and Wales when determining appropriate rates in appeals from Scotland and Northern Ireland.

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Footnotes

1. Kuwait Airways Corporation v Iraqi Airways Company and others: Appeal Committee, 102nd Report (2001-02), paragraph 16, HL Paper 155 Return to footnote 1
2. Amended Nov 2022 Return to footnote 4
3. Amended Nov 2022 Return to footnote 5

Practice Direction 14

Introduction

14.1 The Supreme Court intends to take full advantage of the opportunities offered by modern information technology and rules 6(1)(d) and 7(1)(d) 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.

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Filing of documents

14.2.1 Subject to paragraph 14.4.6, 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

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."

Other parties should be notified by the filing party that filing has taken place (1).

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

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

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Submission of electronic documents to the Registry

14.3.1 Unless otherwise directed or permitted by the Registrar, or where the circumstances in paragraph 14.5.5 apply, the means of submitting electronic documents is to email Registry.Documents larger than 10MB should be submitted via SharePoint see the Annex to this Practice Direction(2).

14.3.2 While the quality of scanned documents that are incorporated into the bundles is important, they should not be scanned at such a high quality as to increase the size of the bundle beyond reasonable levels. As a guide; an average page to file size ratio of approximately 35 kb per page is considered reasonable. On this basis a bundle of 2,500 pages should be around 90 Mb in size. Additionally bundles should not exceed 700 Mb in total, pdf compression should be used where necessary(3).

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General provisions

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

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

14.4.3 If a transmission is received after 4pm -

a. the transmission will be treated as received; and

b. any document attached to the transmission will be treated (if accepted) as filed, on the next day the Registry is open.

14.4.4 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.

14.4.5 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.

14.4.6 If a document transmitted electronically requires urgent attention, the sender should contact the court by telephone(4).

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

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Format of electronic documents for the hearing

14.5.1 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 first document 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.

14.5.2 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.

14.5.3 Unless otherwise directed or permitted by the Registrar, core volumes and ~~volumes of~~the 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 Electronic bundle guidelines section of The Supreme Court website (5).

14.5.4 Pdf documents that comprise the core volumes(6) and ~~volumes of~~the authorities and otherwise filed with the Court must be converted to pdf from their original electronic versions rather than scanned as images. Where documents are only available in hard copy and have to be scanned, the resultant pdf files must(7) be subjected to a process of optical character recognition (OCR). This is to enable the documents to be text searchable and annotatable by the Court.Please see the example core volume and accompanying instructions on the Electronic bundle guidelines section of The Supreme Court website (8).

14.5.5 Where electronic core volumes or other individual documents exceed 10 megabytes in size they must be submitted through the Court's SharePoint system (9).

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

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Hypertext linking within documents

14.6.1 The Supreme Court directs(10) parties to employ hypertext links within documents. In particular, it would be helpful if hypertext links were introduced at the time the core volumes are produced to link:

1. the statement of facts and issues to documents in the appendix,
2. written cases to documents in the appendix and to the authorities,
3. cases to the relevant law reports and to the index of authorities.
4. from the bundle index to the relevant documents within the bundle(11).

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

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Special directions

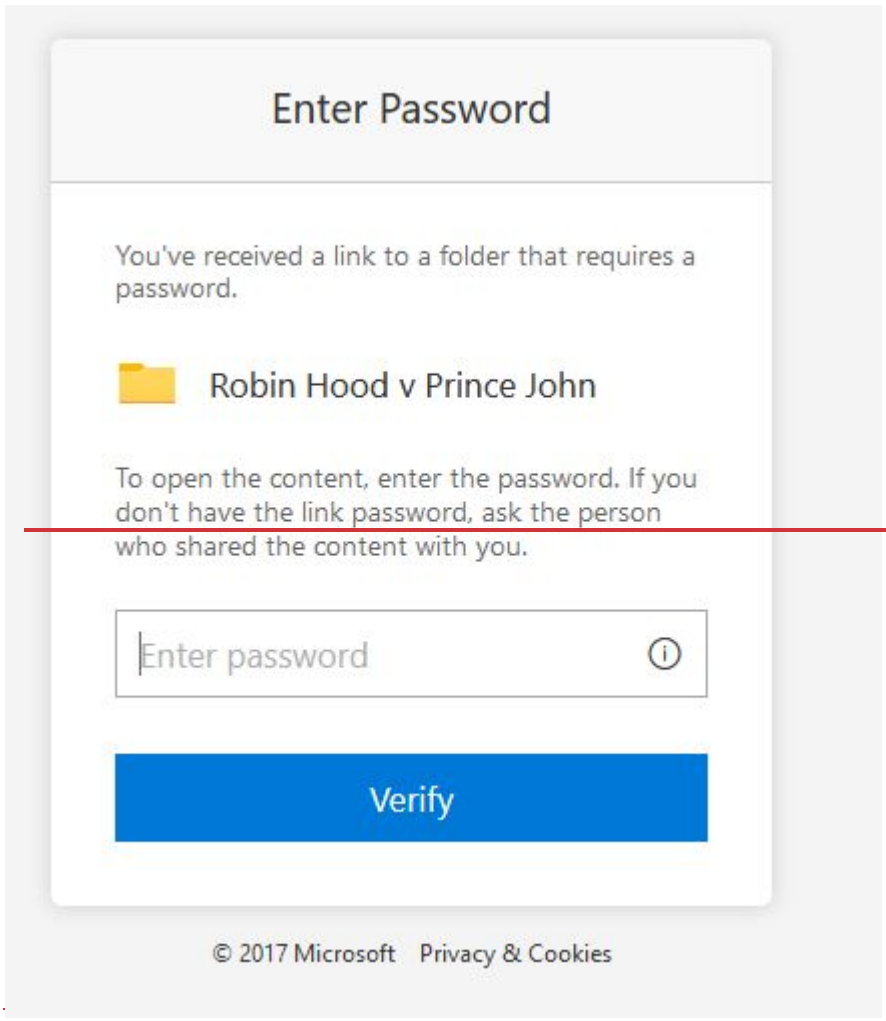
14.7 The Registrar may give special directions for the filing of electronic documents to meet the requirements of particular cases or by way of experiment.

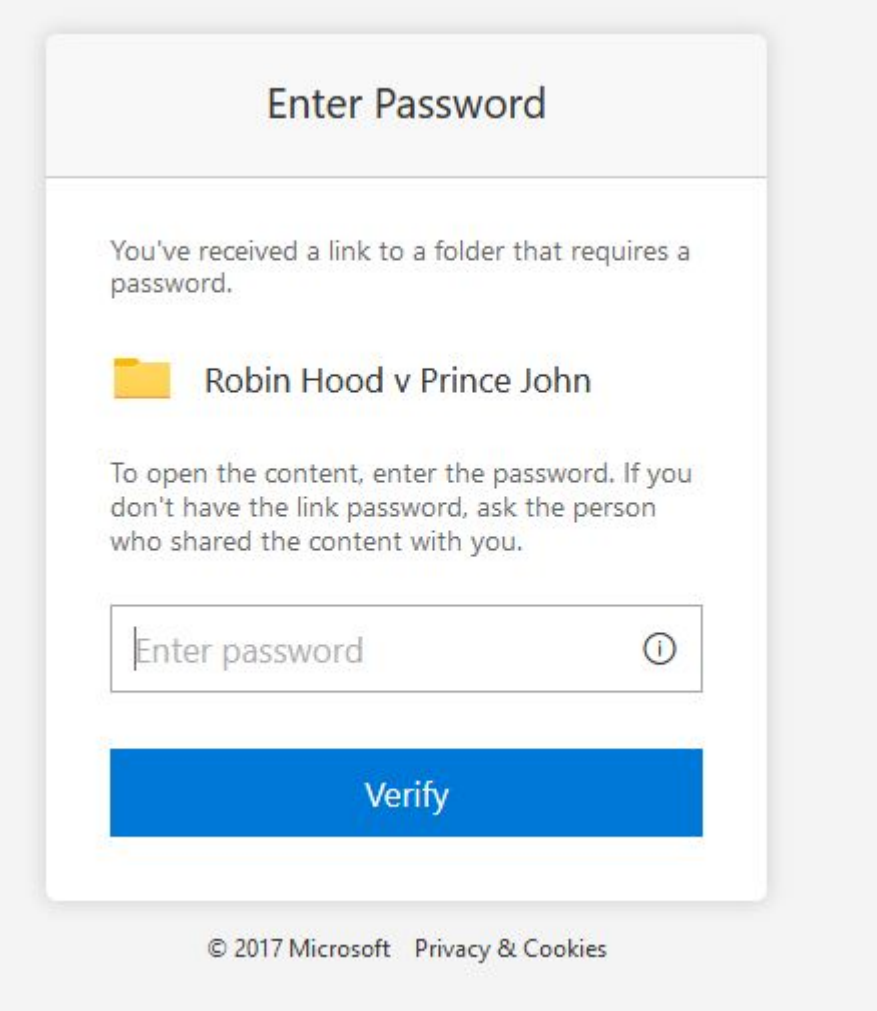
Annex to Practice Direction 14(12)

Filing papers electronically via SharePoint

When you have papers to lodge that are too large to email (over 10 MB) please contact the Registry to ask them to give you access to our upload area. They will ask you for an email address to which they will send access permissions and also agree a password for the folder they will create for you.

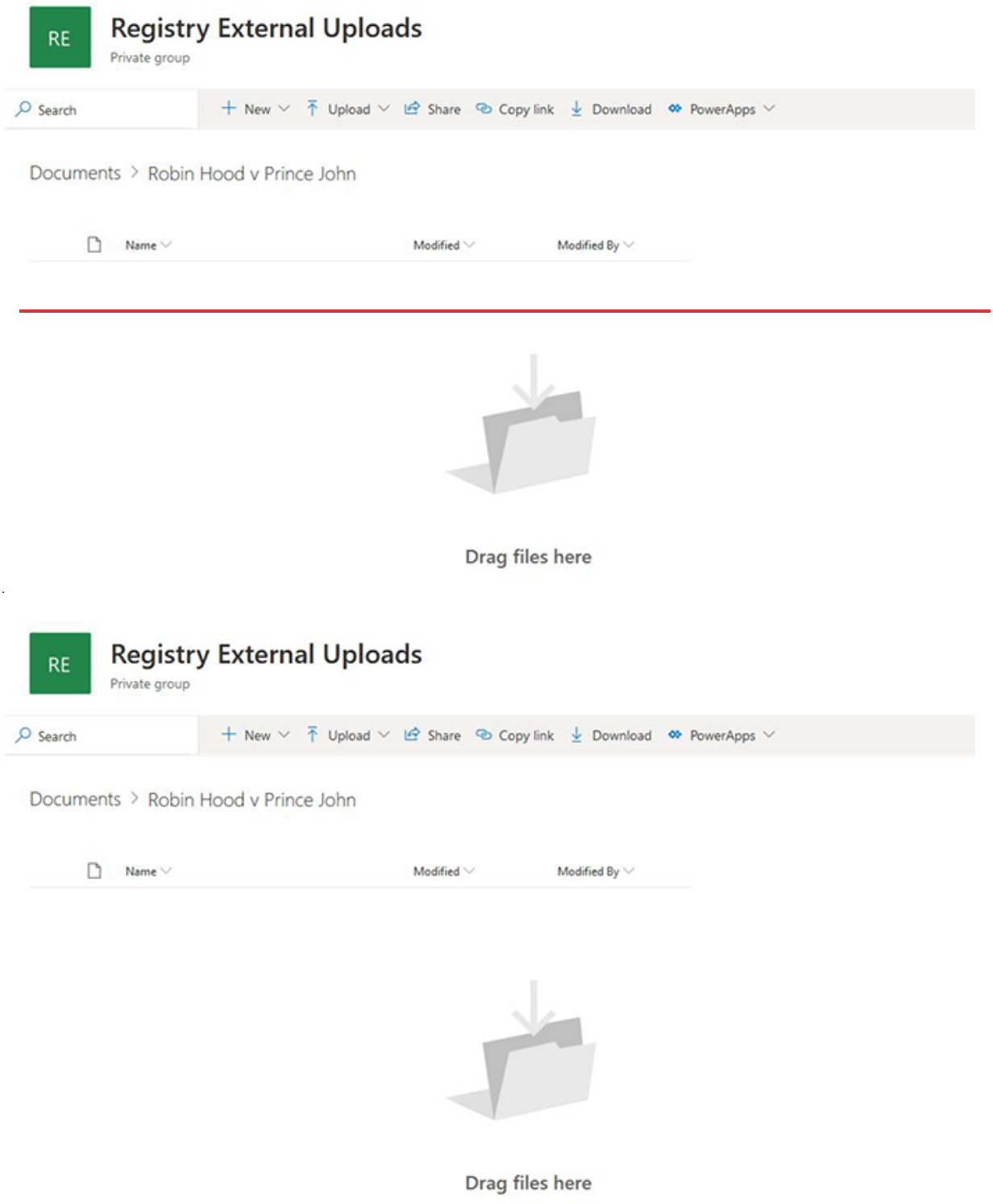
You will receive an email with a link that takes you to a page that looks like this:


Enter Password
You've received a link to a folder that requires a password.
Robin Hood v Prince John
To open the content, enter the password. If you don't have the link password, ask the person who shared the content with you.
Enter password
Verify
© 2017 Microsoft Privacy & Cookies



Pease enter the password you previously agreed with the Registry.

That will take to a page similar to the below.



Here you can upload your files either by clicking the upload button, or, if supported by your browser, you can drag and drop. Once you have finished uploading your files please inform Registry who will then take the files and close the access area. Should you need to lodge further papers you must request a fresh link.

***Important Note**

If you have an existing Office 365/SharePoint account on your system you may find it does not let you connect to our system. Rather than having to change your system settings we have learned that

copying the original link into an Incognito or Private Window within your web browser allows you access.

How to open an Incognito window in:

Internet Explorer

Firefox

Chrome

Edge

Footnotes

1. The provision of electronic versions of documents is not at present mandatory. Return to footnote 1
2. Amended Oct 2020 Return to footnote 2
3. Amended Oct 2020 Return to footnote 3
4. Amended Oct 2020 Return to footnote 4
5. Amended Jan 2012 Return to footnote 5
6. Amended Oct 2020 Return to footnote 6
7. Amended Oct 2020 Return to footnote 7
8. Amended Jan 2012 Return to footnote 8
9. Amended Oct 2020 Return to footnote 9
10. Amended Oct 2020 Return to footnote 10
11. Amended Oct 2020 Return to footnote 11
12. Amended Oct 2020 Return to footnote 12