

# THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

## PRACTICE DIRECTION 7

### MISCELLANEOUS MATTERS including

### APPLICATIONS, DOCUMENTS, FORMS AND ORDERS

#### Applications

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

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

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

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

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

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

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

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

## Documents

### *Preparation*

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

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

### *Number of documents required*

7.2.3 The following table shows the numbers of documents usually required for the hearing of an appeal. 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 agents concerned, and on the special circumstances of each appeal. Copies for the use of the party originating the documents are not included in the numbers indicated.

The appellants must provide:

<b>Document</b>	<b>For Registry</b>	<b>For other side</b>
Notice of appeal	Original and 3 copies on filing	One on service
Statement of facts and issues	Original and 12 copies	As arranged
Case	Original and 12 copies no later than five weeks before the hearing	As arranged on exchange
The Record	Original and 12 copies	As arranged
Authorities	10 no later than two weeks before the hearing	As arranged
Documents held in readiness at hearing (if any)	10	At least three

The respondents (and any interveners) must provide:

<b>Document</b>	<b>For Registry</b>	<b>For other side</b>
Case	Original and 12 copies no later than three weeks before the hearing	As arranged on exchange
Respondents' additional documents (if any)	10	As arranged

### ***Form of documents***

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

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

For the Record: see Practice Direction 5 paragraphs 5.1.3

For Cases: see Practice Direction 6 paragraph 6.3.1

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

### ***Disposal of documents***

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

### **Forms**

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

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

Form 1            Application for permission/notice of appeal

Form 2            Application form

Form 3            Notice of objection/acknowledgement by respondent

### **Orders**

#### ***Draft order***

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

#### ***Final order***

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

## **Cross-appeals**

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

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

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

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

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

7.5.6 In a cross-appeal, the cases on the original appeal must be filed 5 weeks before the hearing. The cross-appellants' case for the cross-appeal must be filed 3 weeks before the hearing as part of their reply to the original appellants' case. The original appellants/cross-respondents may reply to the case for the cross-appeal in their supplemental case.

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

## **Death of a party**

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

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

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

## **Dispute between parties settled**

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

## **Exhibits**

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

## **Fees and security for costs**

7.9.1 Fees are payable in the amounts set out in column 2 of the table in the Appendix to the Rules on the occasions described in column 1; this table is reproduced at Annex 2 to this Practice Direction. Fees are payable on the taking of the step for which a fee is provided **not** at the conclusion of the proceedings. Payments of fees and deposits of security money may be made in cash or by banker's draft or cheque. If an appellant wishes to pay in cash, the Registry may only accept cash up to £10,000, in order to comply with money laundering regulations. Drafts and cheques for fees must be made payable to 'Judicial Committee Fees Account'. Drafts and cheques for security money must be made payable to 'Judicial Committee Security Fund Account'. For financially assisted persons see rule 38 and paragraph 7.12.1-7.12.3.

## **Interveners**

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

## **New Submissions**

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

## **Financially assisted persons**

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

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

7.12.2 Where a certificate has effect in relation to an appellant, the appellant will be entitled to remission or reduction of any liability for fees and costs and will not be required to give security for costs.

7.12.3 Any certificate under rule 38 has effect in relation to an appellant until it is withdrawn by the Registrar; and the Registrar may withdraw a certificate in relation to an appellant if—

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

### **Specialist advisers**

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

### **Stay of execution**

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

### **Transcription**

7.15.1 See paragraph 6.5.6 of Practice Direction 6 for transcriptions.

### **Withdrawal of appeals and applications**

7.16.1 Attention is drawn to the provisions of rule 33.

#### ***Applications for permission to appeal***

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

#### ***Appeals***

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

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

## ANNEX 1

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

ANNEX 2  
Fees payable in the Judicial Committee

<i>Column 1</i> <i>Number and description of fee</i>	<i>Column 2</i> <i>Amount of fee</i>
1 On filing an application for permission to appeal —	£ 150
On filing notice under rule 17(1) —	£ 70
On filing a notice of appeal —	£ 70
2 On filing a notice of objection by a respondent	£ 70
On filing an acknowledgement by a respondent	£ 70
3 On filing an incidental application	£ 100
On filing a notice of objection to an incidental application	£ 70
On filing an application to appeal the Registrar's decision	£ 100
4 On filing a case	£ 370
5 On request for a copy of a document	
(a) for ten pages or less	£ 5
(b) for each subsequent page	50 p
6 On filing a request for an assessment of costs	2.5% of the sum claimed + 2.5% of sum allowed
7 On an appeal against a decision made on an assessment of costs	£ 150
8 Certified documents	£ 20