

## SCHEDULE

### THE JUDICIAL COMMITTEE (DEVOLUTION ISSUES) RULES 1999

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## PART I

### GENERAL

#### Application

**1.1.**—(1) These rules apply to proceedings in the Judicial Committee of the Privy Council as follows.

- (2) Parts I, II and V apply to proceedings under the Scotland Act 1998<sup>(1)</sup>.
- (3) Parts I, III and V apply to proceedings under the Government of Wales Act 1998<sup>(2)</sup>.
- (4) Parts I, IV and V apply to proceedings under the Northern Ireland Act 1998<sup>(3)</sup>.

#### Interpretation

**1.2.**—(1) In these rules, unless the context otherwise requires—

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(1) 1998 c. 46.  
(2) 1998 c. 38.  
(3) 1998 c. 47.

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“appendix” means an appendix prepared pursuant to rules 5.21, 5.22 and 5.57;

“Board” means a Board of the Judicial Committee comprising a quorum (or more) of members of the Committee;

“Case” means a succinct written statement of a party’s argument prepared in accordance with rules 5.30, 5.31 and 5.56;

“counsel”, in relation to any proceedings, includes any person with a right of audience before the Judicial Committee in those proceedings;

“court” includes a tribunal;

“judgment” includes decree, order, sentence, decision, determination or declaration of any court, judge or judicial officer;

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

“Law Officer” means the Attorney General, the Lord Advocate, the Advocate General for Scotland or the Attorney General for Northern Ireland;

“Registrar” means the Registrar of the Privy Council;

“Registry” means the Registry of the Judicial Committee, Downing Street, London SW1.;

“solicitor” includes a London agent;

“statement” means a statement of facts and issues prepared pursuant to rule 5.20.

(2) Where by these rules any step is required to be taken in connection with proceedings in the Judicial Committee, whether in the way of lodging a document, entering an appearance, lodging security, or otherwise, such step shall be taken in the Registry.

(3) Where a party is acting in person in any proceedings references in these rules to that party’s counsel or solicitor shall, except in rule 5.14(2), be construed as references to that party in person

### **Lodgement and service**

#### **1.3 .**

(1) Documents need not be lodged personally but may not be lodged by facsimile transfer (“fax”), nor may service on a party be effected by fax unless and then only to the extent that that party has indicated that he is willing to accept service by that means. Notifications sent by fax should be followed by dispatch of the original to the recipient.

(2) Where under these rules a petition or reference is to be lodged and served on another party the original petition or reference that is lodged shall be endorsed with a signed certificate of service accompanied by an affidavit of service.

### **Conduct of litigation in the Judicial Committee**

**1.4.—**(1) Notwithstanding the Order in Council of 6th March 1896 relating to the admission of proctors, solicitors and agents to practise before the Privy Council, any person who has a right to conduct litigation in any of the superior courts of England and Wales, Scotland or Northern Ireland may conduct litigation in the Judicial Committee and no declaration or enrolment shall be required.

(2) Solicitors outside London may appoint London agents. Any additional costs incurred as a result of a decision not to do so may be disallowed on taxation.

### **Mode of addressing petitions and references**

**1.5** All petitions, references and notices of motion shall be addressed to the Judicial Committee.

### **Appearance by petitioner**

**1.6** A person who lodges a reference, or a petition of appeal shall also lodge a completed appearance form but shall not be required to pay any separate fee therefor.

## **PART II**

### **PROCEEDINGS UNDER THE SCOTLAND ACT 1998**

#### **Interpretation of Part II**

**2.1** In this Part, except where the context otherwise requires, references by number to sections and to paragraphs of Schedule 6 are references to those provisions of the Scotland Act 1998(4).

#### **References under section 33**

**2.2.**—(1) A reference by a Law Officer to the Judicial Committee under section 33 shall be made by—

- (a) lodging the reference, and
- (b) serving a copy on the other Law Officers,

within the time limits specified in section 33(2).

(2) The reference shall state—

- (a) the question to be determined with respect to the Bill to which the reference relates,
- (b) whether it applies to the whole Bill or to a provision of it.

(3) The reference shall have annexed to it a copy of the Bill to which it relates.

(4) In this and the next two rules “Law Officer” does not include the Attorney General for Northern Ireland.

**2.3** Any Law Officer (other than the one making the reference) who wishes to participate in the proceedings shall within 14 days of service of the reference on him enter an appearance and serve notice of having done so on the other Law Officers; and he shall thereupon become a respondent to the proceedings.

**2.4.**—(1) The Law Officer making the reference shall, within 14 days of lodging it, lodge a Case with respect to the question referred.

(2) The referring Law Officer’s Case shall include a copy of any statement made in relation to the Bill in accordance with section 31 and any relevant extracts from the Official Report of proceedings in the Parliament.

(3) Any other Law Officer who is participating in the proceedings shall lodge a Case with respect to the question referred within 14 days of entering an appearance.

#### **References under paragraph 34 of Schedule 6**

**2.5.**—(1) A reference by a Law Officer to the Judicial Committee under paragraph 34 of Schedule 6 shall be made by lodging the reference and serving a copy on the other Law Officers.

(2) The reference shall state the question to be determined.

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(4) 1998 c. 46.

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(3) In a case to which paragraph 35 of Schedule 6 applies the reference shall be accompanied by a certificate that paragraph 35(2) has been complied with.

**2.6** Any Law Officer (other than the one making the reference) who wishes to participate in the proceedings shall enter an appearance within 14 days of service of the reference on him and serve notice of having done so on the other Law Officers; and he shall thereupon become a respondent to the proceedings.

**2.7.—**(1) Each party to the proceedings shall lodge a Case with respect to the question referred.

(2) The Law Officer making the reference shall lodge his Case within two months of lodging the reference, and each respondent shall lodge his Case within two months of entering an appearance.

### Reference by courts

**2.8.—**(1) A reference to the Judicial Committee under paragraph 10, 11, 22, 30, 32 or 33 of Schedule 6 shall be made by lodging the reference.

(2) The court lodging the reference shall serve copies of it on the parties and on any Law Officer who is not already a party and who has a potential interest in the proceedings.

(3) For the purposes of this rule and rules 2.10, 2.11 and 2.12 Law Officers shall be regarded as having a potential interest as follows—

- (a) where the reference or appeal is from a court in Scotland or from the House of Lords in Scottish proceedings, the Lord Advocate and the Advocate General;
- (b) where the reference or appeal is from a court in England and Wales or from the House of Lords in proceedings that originated in England and Wales, the Attorney General and the Lord Advocate;
- (c) where the reference or appeal is from a court in Northern Ireland or from the House of Lords in proceedings that originated in Northern Ireland, the Attorney General for Northern Ireland and the Lord Advocate.

**2.9.—**(1) The reference shall set out the following—

- (a) the question referred;
- (b) the addresses of the parties;
- (c) the name and address of the person who applied for or required the reference to be made;
- (d) a concise statement of the background to the matter including—
  - (i) the facts of the case, including any relevant findings of fact by the referring court or lower courts; and
  - (ii) 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 Scotland Act 1998(5);
- (f) the reasons why an answer to the question is considered necessary for the purpose of disposing of the proceedings.

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

**2.10.—**(1) Any party to the proceedings in the court making the reference who intends to participate in the proceedings in the Judicial Committee shall within 14 days of service of the copy reference on him—

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(5) 1998 c. 46.

- (a) enter an appearance; and
  - (b) give notice to the other parties that he has done so.
- (2) Any party who does not intend to participate shall give notice in writing to the Registry and the other parties accordingly.
- (3) Where notice has to be given under this rule it shall also be given to any Law Officer who is not already a party and who has a potential interest in the proceedings.

**2.11.**—(1) Any Law Officer who is not already a party to the proceedings may intervene in the proceedings on the reference by taking the steps specified in paragraph (2) below within 14 days; and he shall thereupon become a party to the proceedings or the reference.

- (2) The steps are—
- (a) entering an appearance; and
  - (b) giving notice of having done so to the parties, the Law Officers with a potential interest (as defined in rule 2.8(3) above) and, in the case of a reference under paragraph 33 of Schedule 6, the court making the reference.

## **Appeals**

**2.12.**—(1) A person who desires to appeal to the Judicial Committee—

- (a) under paragraph 12 of Schedule 6, or
- (b) having obtained the necessary leave to appeal from the court appealed from, under paragraphs 13, 23 or 31 of Schedule 6,

shall lodge a petition of appeal within six weeks of the date on which the order appealed from was made or leave to appeal was granted, as the case may be.

(2) A person who desires to appeal to the Judicial Committee under paragraphs 13, 23 or 31 of Schedule 6, having obtained special leave to appeal from the Judicial Committee, shall lodge a petition of appeal within 14 days of the grant of special leave.

(3) The appellant shall serve a copy of the petition on all the other parties and on any Law Officer who is not already a party and who has a potential interest in the proceedings.

(4) Any Law Officer who is served with a copy of a petition of appeal under this rule may intervene in the proceedings on the appeal in the Judicial Committee if within 14 days of service of the petition on him he enters an appearance and gives notice of having done so to the parties; and he shall thereupon become a respondent to the appeal.

## **PART III**

### **PROCEEDINGS UNDER THE GOVERNMENT OF WALES ACT 1998**

#### **Interpretation of Part III**

**3.1** In this Part, except where the context otherwise requires, references by number to paragraphs are references to the paragraphs so numbered in Schedule 8 to the Government of Wales Act 1998(6).

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(6) 1998 c. 38.

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### **References under paragraph 31(1)**

**3.2.—**(1) A reference by the Attorney General or the Assembly of a devolution issue to the Judicial Committee under paragraph 31(1) shall be made by lodging the reference and serving a copy on the other (“the respondent”).

(2) The reference shall state the question to be determined.

(3) In a case to which paragraph 31(2) applies the reference shall be accompanied by a certificate that paragraph 31(2)(a) has been complied with.

**3.3** The respondent shall within 14 days either—

- (a) if he intends to participate in the proceedings, enter an appearance; or
- (b) if not, give notice to the Registry to that effect;

and notify the originating party accordingly.

**3.4.—**(1) The originating party and (if participating in the proceedings) the respondent shall each lodge a Case with respect to the question referred.

(2) The originating party shall lodge his Case within two months of lodging the reference and the respondent shall lodge his Case within two months of entering an appearance.

### **References by courts**

**3.5.—**(1) A reference to the Judicial Committee under paragraph 10, 18, 19, 27, 29 or 30 shall be made by lodging the reference in the Registry.

(2) The court lodging the reference shall serve a copy of it on—

- (a) the parties;
- (b) the Assembly, if it is not already a party; and
- (c) the relevant Law Officer, if he is not already a party.

(3) In this rule and in rules 3.7, 3.8 and 3.9 “relevant Law Officer” means—

- (a) where the reference or appeal is from a court in England and Wales or from the House of Lords in proceedings that originated in England and Wales, the Attorney General;
- (b) where the reference or appeal is from a court in Scotland or from the House of Lords in Scottish proceedings, the Advocate General for Scotland;
- (c) where the reference or appeal is from a court in Northern Ireland or from the House of Lords in proceedings that originated in Northern Ireland, the Attorney General for Northern Ireland.

**3.6.—**(1) The reference shall set out the following:

- (a) the question referred;
- (b) the addresses of the parties;
- (c) the name and address of the person who applied for or required the reference to be made;
- (d) a concise statement of the background to the matter including—
  - (i) the facts of the case, including any relevant findings of fact by the referring court or lower courts; and
  - (ii) 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 Government of Wales Act 1998(7);
  - (f) the reasons why an answer to the question is considered necessary for the purpose of disposing of the proceedings.
- (2) All judgments already given in the proceedings shall be annexed to the reference.

**3.7.**—(1) Any party to the proceedings in the court making the reference who intends to participate in the proceedings in the Judicial Committee shall within 14 days of service of the copy reference on him—

- (a) enter an appearance; and
- (b) give notice to the other parties that he has done so.

(2) Any party who does not intend to participate shall give notice in writing to the Registry and the other parties accordingly.

(3) Where notice has to be given under this rule, it shall also be given to the relevant Law Officer and the Assembly even if they are not parties.

**3.8.**—(1) Unless they are already parties to the proceedings, the Assembly and the relevant Law Officer may intervene in the proceedings on the reference in accordance with this rule; and he shall thereupon become a party to the proceedings on the reference.

- (2) The intervener shall within 14 days of service of the copy reference on him—
- (a) enter an appearance; and
  - (b) give notice of the fact to the parties, to the other person who may intervene under this rule and, in the case of a reference under paragraph 30, to the court making the reference.

## Appeals

- 3.9.**—(1) A person who desires to appeal to the Judicial Committee—
- (a) under paragraph 20, or
  - (b) having obtained leave to appeal from the court appealed from, under paragraphs 11, 21 or 28,

shall lodge a petition of appeal within six weeks of the date on which the order appealed from was made or leave to appeal was granted, as the case may be.

(2) A person who desires to appeal to the Judicial Committee under paragraphs 11, 21 or 28, having obtained special leave to appeal from the Judicial Committee, shall lodge a petition of appeal within 14 days of the grant of special leave.

(3) The appellant shall serve a copy of the petition on all the other parties and, if not already a party, on the Assembly and the relevant Law Officer.

(4) Unless already a party to the proceedings, the Assembly and the relevant Law Officer may intervene in the proceedings on the appeal in the Judicial Committee if within 14 days of service of the petition on him he enters an appearance and gives notice of the fact to the parties and the other person with a right to intervene under this rule; and he shall thereupon become a respondent to the appeal.

## PART IV

### PROCEEDINGS UNDER THE NORTHERN IRELAND ACT 1998

#### Interpretation of Part IV

**4.1.**—(1) In this Part, except where the context otherwise requires, references by number to sections and to paragraphs of Schedule 10 are references to those provisions of the Northern Ireland Act 1998(8).

(2) Where the First Minister and, deputy First Minister have made a determination under paragraph 36 of Schedule 10, references in this Part to the First Minister and the deputy First Minister shall, in relation to proceedings specified in the determination, be construed as references to the Minister or Northern Ireland department so specified.

#### References under section 11

**4.2.**—(1) A reference by the Attorney General for Northern Ireland to the Judicial Committee under section 11(1) shall be made—

- (a) by lodging the reference; and
- (b) serving copies and giving notice of it in accordance with paragraph (3) below;

within the time limits specified in section 11(2).

(2) The reference shall state the question to be determined with respect to the Bill to which the reference relates and shall have annexed to it—

- (a) a copy of the Bill; and
- (b) a copy of the section 9 statement.

(3) A copy of the reference shall be served on each of the following—

- (a) the First Minister;
- (b) the deputy First Minister; and
- (c) if the section 9 statement was made by another Minister, that Minister;

and written notice of the reference, together with a copy of it, shall be given to the Presiding Officer.

(4) In this rule “section 9 statement” means the statement made pursuant to section 9 in relation to the Bill to which the reference relates.

(5) In this and the next rule “Law Officer” does not include the Lord Advocate.

**4.3** If the First Minister and the deputy First Minister (acting jointly) or any Law Officer (other than the Attorney General for Northern Ireland) wishes to participate in the proceedings he shall within 14 days of service of the reference on him enter an appearance and serve notice of having done so on the Attorney General for Northern Ireland; and any person entering an appearance in accordance with this rule shall thereupon become a respondent to the proceedings.

**4.4.**—(1) The Attorney General for Northern Ireland shall, within 14 days of lodging the reference, lodge a Case setting out his legal arguments with respect to the question referred.

(2) Any other person who has become a respondent to the proceedings in accordance with rule 4.3 shall lodge a Case setting out his legal arguments within 14 days of entering an appearance.

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(8) 1998 c. 47.

### **References under paragraph 34 of Schedule 10**

**4.5.**—(1) A reference to the Judicial Committee under paragraph 34 of Schedule 10 shall be made by lodging a reference and serving copies in accordance with paragraph (3) below.

(2) The reference shall state the question to be determined.

(3) In a case to which paragraph 35 of Schedule 10 applies, the reference shall be accompanied by a certificate that paragraph 35(2) has been complied with.

(4) Copies of the reference shall be served—

(a) where the reference is made by a Law Officer, on the other Law Officers mentioned in paragraph 34 of Schedule 10 and on the First Minister and the deputy First Minister;

(b) where the reference is made by the First Minister and, deputy First Minister acting jointly, on all the Law Officers mentioned in paragraph 34 of Schedule 10.

**4.6** If a person on whom a copy of a reference must be served pursuant to rule 4.5(4) wishes to participate in the proceedings he shall enter an appearance in the Registry within 14 days of service of the reference on him and serve notice of having done so on all the other such persons and on the person making the reference; and any person entering an appearance in accordance with this rule shall thereupon become a respondent to the proceedings.

**4.7.**—(1) Each party to the proceedings shall lodge a Case with respect to the question referred.

(2) The person making the reference shall lodge his Case within two months of lodging the reference, and each respondent shall lodge his Case within two months of entering an appearance.

### **References by courts**

**4.8.**—(1) A reference to the Judicial Committee under paragraph 9, 19, 28, 29, 32 or 33 of Schedule 10 shall be made by lodging the reference.

(2) The court lodging the reference shall serve copies of it on the parties, on the First Minister and the deputy First Minister and on any Law Officer who is not already a party and who has a potential interest in the proceedings.

(3) For the purposes of this rule and rules 4, 10, 4.11 and 4.12 Law Officers shall be regarded as having a potential interest as follows:

(a) where a reference or appeal is from a court in Northern Ireland or from the House of Lords in proceedings that originated in Northern Ireland, the Attorney General for Northern Ireland and the Attorney General;

(b) where the reference or appeal is from a court in England and Wales or from the House of Lords in proceedings that originated in England and Wales, the Attorney General;

(c) where the reference or appeal is from a court in Scotland or from the House of Lords in Scottish proceedings, the Attorney General for Northern Ireland and the Lord Advocate.

**4.9.**—(1) The reference shall set out the following:

(a) the question referred;

(b) the addresses of the parties;

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

(d) a concise statement of the background to the matter including—

(i) the facts of the case, including any relevant findings of fact by the referring court or lower courts;

(ii) the main issues in the case and the contentions of the parties with regard to them;

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- (e) the relevant law, including the relevant provisions of the Northern Ireland Act 1998(9);
  - (f) the reason why an answer to the question is considered necessary for the purpose of disposing of the proceedings.
- (2) All judgments already given in the proceedings shall be annexed to the reference.

**4.10.**—(1) Any party to the proceedings in the court making the reference who intends to participate in the proceedings in the Judicial Committee shall within 14 days of service of the copy reference on him—

- (a) enter an appearance; and
- (b) give notice to the other parties that he has done so.

(2) Any party who does not intend to participate shall give notice in writing to the Registry and the other parties accordingly.

(3) Where notice has to be given under this rule it shall also be given to the First Minister and the deputy First Minister and to any Law Officer who is not already a party and who has a potential interest in the proceedings.

**4.11.**—(1) The First Minister and the deputy First Minister (acting jointly) and any Law officer who is not already a party to the proceedings may intervene in the proceedings on the reference by taking the steps specified in paragraph (2) below within 28 days of service of the copy reference on him; and he shall thereupon become a party to the proceedings on the reference.

(2) The steps are—

- (a) entering an appearance; and
- (b) giving notice of having done so to the parties, the Law Officers with a potential interest (as defined in rule 4.8(3) above) and, in the case of a reference under paragraph 33 of Schedule 10, the court making the reference.

## Appeals

**4.12.**—(1) A person who desires to appeal to the Judicial Committee—

- (a) under paragraph 30 of Schedule 10, or
- (b) having obtained the necessary leave to appeal from the court appealed from, under paragraphs 10, 20 or 31 of Schedule 10,

shall lodge a petition of appeal within six weeks of the date on which the order appealed from was made or leave to appeal was granted, as the case may be.

(2) A person who desires to appeal to the Judicial Committee under paragraphs 10, 20 or 31 of Schedule 10, having obtained special leave to appeal from the Judicial Committee, shall lodge a petition of appeal within 14 days of the grant of special leave—

(3) The appellant shall serve a copy of the petition on all the other parties, on the First Minister and the deputy First Minister and on any Law Officer who is not already a party and who has a potential interest in the proceedings.

(4) The first Minister and the deputy First Minister (acting jointly) and any Law Officer who is served with a copy of a petition of appeal under this rule may intervene in the proceedings on the appeal in the Judicial Committee if within 14 days of service of the petition on him he enters an appearance and gives notice of having done so to the parties; and he shall thereupon become a respondent to the appeal.

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(9) 1998 c. 47.

## PART V COMMON RULES

### Chapter 1

#### Special leave to appeal

**5.1.**—(1) Special leave to appeal to the Judicial Committee may be sought only if leave to appeal has been applied for and refused by the court below.

(2) The provisions of this chapter apply, with necessary modifications, to petitions for special leave to cross-appeal as they apply to petitions for special leave to appeal.

#### **Time limits**

**5.2.**—(1) A petition for special leave to appeal shall be lodged within 28 days of the date on which the judgment appealed from was made.

(2) A petition lodged after the prescribed time limit has expired must state that it is out of time.

(3) A petition for special leave to appeal out of time shall first set out the reasons why the petition was not lodged within the time limit. The reasons should not normally exceed a paragraph in length.

(4) A petition for special leave to appeal lodged more than three months after the date of the judgment appealed from will be allowed only in exceptional circumstances.

#### **Form of petition**

**5.3.**—(1) A petition for special leave 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 special leave to appeal should be granted; and
- (c) not normally be accompanied by supporting documents except those specified in rule 5.7(1).

(2) Amendments to existing petitions and supplementary petitions will be allowed only in exceptional circumstances.

**5.4** Petitions must be—

- (a) set out in numbered paragraphs; and
- (b) signed by the petitioners or their counsel or solicitors.

**5.5** In any petition where in the courts below the title used for the proceedings has been such as to conceal the identity of any person this fact should be clearly drawn to the attention of the Registry at the time the petition is lodged, so that the title adopted in the Judicial Committee may take due account of the need to protect the identity of the person in question.

#### **Service of petition**

**5.6** A copy of the petition must be served on the respondents.

#### **Lodgement of petition**

**5.7.**—(1) The original and six copies of the petition must be lodged in the Registry, together with seven copies of each of the following—

- (a) the order appealed from;

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- (b) the judgment appealed from; and
  - (c) if separate, the order of the court below refusing leave to appeal to the Judicial Committee.
- (2) If the judgment and orders are not immediately available, the petition should be lodged in time and the judgment and orders lodged as soon as possible thereafter.

#### **Entry of appearance by respondent**

**5.8.**—(1) A respondent who intends to participate in the proceedings in the Judicial Committee shall enter an appearance to a petition for special leave within 14 days of receiving service of it and inform the petitioner he has done so.

(2) A respondent who intends to take no part in the proceedings before the Judicial Committee should notify the Registry in writing of that fact.

(3) Communications from the Registry concerning the petition will be sent only to those who have entered an appearance.

#### **Reference of petition to a Board**

**5.9** On presentation to the Judicial Committee a petition for special leave to appeal will be referred to a Board.

#### **Additional papers for use by the Board**

**5.10.**—(1) The following additional papers must be lodged within 7 days of lodgement of the petition—

- (a) seven copies of the order of the court of first instance;
- (b) seven copies of the judgment (if any) of the court of first instance.

No other papers are required, and documents other than those listed above and in rule 5.7(1) will not normally be received.

(2) Where the necessary papers are not lodged within three months of presentation of the petition, and no good reason for such failure is given, the petition may, at the direction of the Registrar, be referred to the Board without the papers.

#### **Submissions in writing and disposal without a hearing**

**5.11.**—(1) If a petition is admissible, the Board will consider whether or not special leave to appeal should be granted and may—

- (a) refuse special leave at that stage without a hearing; or
- (b) invite any or all of the parties to lodge submissions in writing on such matters connected with the petition as may be specified.

(2) Parties invited to lodge submissions will be informed of the date by which they may do so. Five copies should be lodged by that date. The Registry should be informed by the same date if no such submissions are to be made.

(3) Having considered the written submissions of the parties, the Board may either grant or refuse special leave to appeal without a hearing, and parties will be notified of that result.

(4) At any stage the Board may direct that the petition be referred for an oral hearing.

## **Oral hearing**

**5.12.**—(1) If a petition for special leave to appeal is referred for an oral hearing, the petitioner and all respondents who have entered an appearance will be notified of the date appointed for the hearing. Once referred for an oral hearing a petition may be listed at any time, possibly at short notice.

- (2) If counsel is briefed, the Registry must be notified of the name.
- (3) Only one counsel may be heard for each party.
- (4) Authorities may not be cited without the leave of the Board.

## Chapter 2

### Appeals

## **Petition for leave to present appeal out of time**

**5.13** Where an appeal is not lodged within the time allowed by these rules, a petition for leave to present an appeal out of time may be lodged. Such petition will be dealt with in accordance with rule 5.52.

## **Form of petition of appeal**

**5.14.**—(1) Petitions of appeal shall consist of numbered paragraphs and be endorsed with the name of the court appealed from, the full title and (if any) the Privy Council number of the appeal to which the petition relates, and the name and address of the petitioner or his solicitor.

(2) Where leave or special leave to appeal has been obtained, a petition of appeal must state when and by whom it was granted and be signed by the appellant or his counsel or solicitor. Where leave is not required a petition must be signed, and certified as reasonable, by two counsel.

## **Anonymity and reporting restrictions**

**5.15.**—(1) In any appeal where in the courts below the title used for the proceedings has been such as to conceal the identity of any person, this fact should be clearly drawn to the attention of the Registry at the time the appeal is lodged.

(2) Where in relation to any appeal the Judicial Committee has power to make an order restricting reporting of the appeal, parties should also consider whether it would be appropriate for the power to be exercised and must in any event inform the Registry if such an order has been made by a court below. A request for such an order should be made in writing, preferably on behalf of all parties to the appeal, as soon as possible after the appeal has been presented and not later than 14 days before the commencement of the hearing, citing the power under which it may be made.

## **Service of petition**

**5.16** A copy of the petition of appeal must be served on the respondent.

## **Presentation of petition of appeal**

**5.17** The original petition, and one copy, must be lodged.

## **Appearance by respondent**

**5.18.**—(1) A respondent who intends to participate in the proceedings before the Judicial Committee should enter an appearance to an appeal within 14 days of receiving service of the petition of appeal and notify the appellant in writing that he has done so.

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(2) A respondent who intends to take no part in the proceedings before the Judicial Committee should notify the Registry in writing of that fact.

(3) Communications concerning the appeal will be sent by the Registry only to those respondents who have entered an appearance.

### **Security for costs**

**5.19.**—(1) Where an appellant is required to give security for costs he shall do so by paying the appropriate sum into the Registry within 7 days of presentation of the petition of appeal.

(2) If all the respondents agree to security for costs being waived, the appellant may lodge a form of consent to a waiver signed by the respondents. Thereafter an order will be made releasing the appellant from the obligation to pay security. Consent must be lodged within 7 days of the presentation of an appeal.

(3) The following appellants shall not be required to give security for costs and no waiver is necessary:

- (a) an appellant who has been granted a legal aid certificate;
- (b) a Law Officer;
- (c) a Minister or department of the Government or of the Scottish Executive;
- (d) a Northern Ireland Minister or department;
- (e) the National Assembly for Wales.

### **Statement of facts and issues**

**5.20.**—(1) The appellant shall prepare and lodge a statement of the facts and issues involved in the appeal. The statement should if possible be a single document agreed between the parties. It should not contain material more appropriately included in a Case.

(2) Where the parties are unable to adopt an agreed statement, the respondent may prepare his own statement which should be appended to that of the appellant under the title “Respondent’s statement of facts and issues”.

(3) If the respondent neither agrees to a joint statement nor produces a statement of his own for attachment to the appellant’s statement, the appellant may lodge his statement with a certificate to the effect that the respondent has been offered an opportunity to join in preparation of the statement.

(4) The statement need not set out or summarise the judgments of the lower courts, nor set out legislative provisions, nor contain an account of the proceedings below.

### **Appendix**

**5.21.**—(1) The appellant shall also prepare and lodge an appendix containing documents used in evidence or recording proceedings in the courts below.

(2) The contents of the appendix shall if possible be agreed between the parties before lodgement.

### **Contents of appendix**

**5.22.**—(1) The appendix should contain only such documents, or such extracts from documents, as are clearly necessary for the support and understanding of the argument of the appeal.

(2) The appendix should not include—

- (a) any document which was not used in evidence or does not record proceedings relevant to the action in the court below; or



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- (b) transcripts of arguments in the courts below unless and to the extent that—
  - (i) any party relies on remarks by a judge; or
  - (ii) the arguments refer to facts which are admitted by all parties and as to which no evidence was called.
- (3) The appendix may consist of one or two parts. Part I should contain—
  - (a) formal originating documents;
  - (b) case stated (if any);
  - (c) judgments of the courts at first instance and on appeal together with copies of the orders of all courts;
  - (d) the relevant legislation;
  - (e) any crucial document on which the action is founded, such as a will, contract, map, plan etc., or the relevant extract from such a document.
- (4) Other documents should be included in Part II of the appendix.

#### **Documents in readiness at hearing**

**5.23** Any documents disputed between the parties, and any documents that are not included in the appendix but that may be required at the hearing, should be held in readiness and, subject to leave being given, may be introduced at an appropriate moment. Five copies are required. The other parties must be given notice of any documents that will be held in readiness at the hearing.

#### **Respondent's additional documents**

**5.24.**—(1) Where the appellant declines to include in the appendix any documents which the respondent considers necessary for their argument of the appeal, the respondent shall prepare and reproduce them (at his own cost, subject to any subsequent order for costs).

(2) The respondent's additional documents shall be produced in the same form as, and paginated consecutively with, the appendix.

#### **Scottish Record**

- 5.25** Appellants in Scottish appeals should include in Part I of the appendix—
- (a) in civil appeals the Record and Interlocutors; and
  - (b) in criminal appeals the indictment or complaint and Interlocutors.

#### **Time limit for lodging statement and appendix**

**5.26** The statement and appendix shall be lodged by the appellant within 28 days of lodging the petition of appeal.

#### **Lodgement**

**5.27.**—(1) The appellant shall deposit in the Judicial Committee seven copies of the statement, seven copies of Part I of the appendix and 15 copies of Part II of the appendix (if any).

(2) The respondent must also (where applicable) lodge seven copies of his additional documents if supplementary to Part I of the appendix (15 copies if supplementary to Part II of the appendix).

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### **Setting down for hearing**

**5.28** When lodging the statement and appendix the appellant shall apply to set the appeal down for hearing.

### **Allocation of time**

**5.29.**—(1) Within seven days of the setting down of the appeal each party shall notify the Registry of the time, in hours, that counsel consider necessary for each address which it is proposed should be made on behalf of that party.

(2) Subject to any directions that may be given at or before the hearing counsel will be expected to confine their submissions to the time indicated in their estimates.

(3) Amended estimates should be communicated to the Registry at once.

### **Appellant's and respondent's Cases**

**5.30.**—(1) Within 28 days after the setting down of the appeal, the parties shall each lodge seven copies of their Cases and give notice of having done so to the other parties.

(2) A Case should be a succinct statement of a party's argument in the appeal, omitting (though if necessary referring to) material contained in the statement of facts and issues and the appendix and confined to the heads of argument which counsel propose to submit at the hearing. It should consist of paragraphs numbered consecutively; and references by page and line to the relevant portions of the statement of facts and issues and the appendix shall as far as practicable be reproduced in the margin.

(3) If a party intends to invite the Judicial Committee to depart from one of its own decisions this intention must be clearly stated in a separate paragraph of the 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 the Case.

(4) All Cases shall conclude with a numbered summary of the reasons upon which the argument is founded, and must bear the signature of at least one counsel who has appeared in the court below or who will be briefed for the hearing before the Judicial Committee.

(5) Two or more appellants or respondents may, at their own risk as to costs, lodge separate Cases in the same appeal.

(6) No party to an appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his Case in accordance with this rule.

### **Separate Cases**

**5.31.**—(1) All the appellants must join if possible in one Case, and all the respondents must similarly join unless it can be shown that the interests of one or more of the respondents are distinct from those of the remainder. In the latter event the respondent first lodging his Case must give a certificate by letter in one of the following forms:—

- (a) "We, [acting for] the respondent(s) (*name particular parties*) certify that opportunity has been offered by us for joining in one Case to the respondent(s) (*name particular parties*) whose interests are, in our opinion, similar to those set out in the Case lodged by us."
- (b) "We, [acting for] the respondent(s) (*name particular parties*) certify that the interests represented in the Case lodged by us are, in our opinion, distinct from those of the remaining respondent(s)."

(2) When one of the foregoing certificates has been given, all remaining respondents wishing to lodge a Case must respectively petition to do so in respect of each of their separate Cases. Such petitions must be consented to by the appellant, and must set out the reasons for separate lodgement.

(3) Parties whose interests in the appeal are passive (*e.g.* stake-holders, trustees, executors etc.) are not required to lodge a separate Case but should ensure that their position is explained in one of the Cases lodged.

### **Exchange of Cases**

**5.32** As soon as all the Cases have been lodged, all parties shall exchange Cases. The number of Cases provided should be sufficient to meet the reasonable requirements of the other parties.

### **Bound volumes**

**5.33.**—(1) As soon as Cases have been exchanged, and in any event no later than 14 days before the proposed date of hearing, the appellant must lodge (in addition to the documents earlier lodged) eight bound volumes. Each should contain:—

- (a) the petition of appeal;
- (b) the petition of cross appeal (if any);
- (c) the statement of facts and issues;
- (d) the appellant's and respondent's Cases;
- (e) Part I of the appendix;
- (f) respondents' additional documents (if any and if supplementary to Part I of the appendix).

(2) To enable the appellant to lodge the bound volumes, the respondent must provide him with eight further copies of his Case and, where applicable, with eight further copies of the additional documents.

(3) The respondent should arrange with the appellant for the binding of such volumes as the respondent's counsel and solicitor may require.

### **Notice of Hearing etc.**

**5.34.**—(1) Once an appeal has been set down it may be called on at any time, possibly at short notice.

(2) The Registry must be informed as early as possible of the names of counsel briefed.

(3) Unless otherwise ordered upon application before or at the hearing, only two counsel shall be admitted to be heard on behalf of each party or intervenor.

### **Authorities**

**5.35.**—(1) At least 7 days before the hearing of the appeal solicitors for all parties should lodge a list or photocopies of the authorities and legislative texts (other than those included in Part I of the appendix) to be cited at the hearing.

(2) Lists should indicate by reference and photocopies by highlighting those particular passages of the authorities and legislative texts on which counsel rely.

(3) Where a case is not reported in the Law Reports or Session Cases, references to or copies of other recognised reports should be provided.

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### **Submissions as to costs**

**5.36.**—(1) If counsel wish to seek an order other than that costs be awarded to the successful party, submissions to that effect should be made at the hearing immediately after the conclusion of the argument.

(2) Leave may be given to a party to make submissions as to costs when a reserved judgment is delivered, provided that, at least two clear days before the judgment—

- (a) notice of intention to make submissions on costs is given in writing to the Registry; and
- (b) a copy of the submissions is sent to the other party or parties to the appeal.

(3) Where one party is legally aided and where, in the event of proceedings being decided in favour of the unassisted party, the unassisted party intends to apply for costs he shall—

- (a) make a submission to that effect under this rule; and
- (b) give the authority responsible for the grant of legal aid not less than seven days' notice of his intention to do so.

### **Judgment**

**5.37.**—(1) Where judgment is reserved, the Registrar shall in due course notify the parties of the day appointed for the delivery of judgment.

(2) One junior only of counsel for each party or group of parties who have lodged a Case is required to attend when judgment is delivered.

### **Bills of costs**

**5.38** Bills of costs for taxation shall be lodged within three months from the date of the final judgment or the decision of the Judicial Committee.

### **Taxation of costs**

**5.39.**—(1) All bills of costs under the orders of the Judicial Committee shall be taxed by the Registrar, or such other person as the Judicial Committee may appoint.

(2) The amount of costs which a party shall be entitled to cover shall be the amount allowed after taxation on the standard basis unless it appears to the Judicial Committee to be appropriate to order costs to be taxed on the indemnity basis.

(3) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

(4) On a taxation on the indemnity basis all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

(5) Any party aggrieved by a taxation may require the Registrar to review his decision.

(6) Any party aggrieved by the Registrar's review may appeal by notice of motion to the Judicial Committee.

### **Disposal of security money**

**5.40.**—(1) Where the appellant is ordered to pay the costs of the appeal, unless it is otherwise agreed between the parties, the respondent's costs are first satisfied, either in whole or in part, by direct payment to the respondent from money deposited under rule 5.19(1).

(2) If the total amount of the respondents' costs as allowed can be so satisfied any balance of the money in the Registry shall be remitted to the party who paid it in.

(3) If the respondent's costs are in part satisfied by such payment, the certificate of taxation which is forwarded to the respondent shall take account of the amount so paid.

(4) Where more than one bill of respondent's costs require payment by the appellant, and the money deposited as security is insufficient to satisfy all the bills, the money shall be divided between the bills in proportion to their amounts as allowed.

(5) Where the appellant is not ordered to pay the costs of the appeal, money paid by him under rule 5.19(1) shall be returned to him when the final order has been issued.

(6) If an appeal is withdrawn before setting down, or is dismissed for want of prosecution, or if the respondent fails to lodge a bill of costs within three months, the appellant may make written application to the Registrar for the return to him of money deposited. Such application must be accompanied by the written consent of all the respondents who have entered an appearance. If any respondent refuses consent, the appellant may send him a written demand that he lodge a bill of costs within 28 days from the date of such notice; and, if the Registrar is satisfied that such a demand was duly sent and, if the said respondent fails to lodge a bill of costs within the time specified, the money deposited shall be returned to the appellant.

## Chapter 3

### References

### **Presentation of reference**

**5.41.**—(1) A reference lodged in the Registry under these rules shall consist of numbered paragraphs and be endorsed with the title of the reference and the name and address of the person or court making the reference.

(2) The original reference must be—

(a) signed by the person making the reference or his counsel or solicitor, or, where the reference is by a court, by a judge or proper officer of the court; and

(b) lodged in the Registry together with—

(i) for references from courts, seven copies;

(ii) for other references, 15 copies.

### **Service of reference**

**5.42** Where the reference is by a court, service of the reference on the parties may be effected in any manner authorised by the rules of that court.

### **Lodgement of Cases**

**5.43.**—(1) Each party must lodge the following number of copies of his Case—

(a) where the reference is from a court, seven copies;

(b) for other references, 15 copies.

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(2) Where the reference is by a court, the parties shall lodge their Cases with 28 days after the appendix has been lodged.

### **Setting down for hearing**

**5.44** A reference shall be automatically set down for hearing when all the parties have lodged their Cases.

### **Automatic remission to referring court after judgment**

**5.45** Unless the Judicial Committee 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.

### **Application of other provisions of this Part**

**5.46.**—(1) Rules 5.18(3), 5.29, 5.30(2) to (6), 5.32, 5.34, 5.35, 5.37 and Chapter 4 shall apply, so far as applicable and with such modifications as are necessary, to references and documents originating references as they apply to appeals and petitions of appeal.

(2) In rules applied by this rule the term “appellant” shall be construed to mean the person making the reference or, as the case may be, the person who applied for or required the reference to be made.

(3) Where the reference is by a court—

- (a) rules 5.15, 5.21 to 5.27, 5.33, 5.36, 5.38 and 5.39 shall in addition likewise apply;
- (b) the appendix shall not include any material contained in the reference or its annex;
- (c) the terms “courts below” and “lower courts” and similar expressions shall be construed as meaning the court making the reference and the courts (if any) below that court.

## **Chapter 4**

### **Miscellaneous**

### **Legal aid**

**5.47.**—(1) A party to whom a legal aid certificate has been issued for the appeal must immediately lodge the certificate, or a copy of it, in the Registry.

(2) Where applicable an emergency certificate, and subsequent amendments, and the authority for leading counsel, must also be lodged.

(3) Where a prospective petitioner or appellant has applied for legal aid, the Registry and the other parties to the proposed petition or appeal must be informed in writing within the original time limit for lodging the petition. The period within which a petition may be lodged will then be extended to 28 days after the final determination of the legal aid application.

(4) Where a respondent to an appeal has applied for legal aid, the Registry must be informed within the original time limit for lodging the statement and appendix. That time limit will then be extended to six weeks after the final determination of the legal aid application.

(5) The person applying for legal aid must inform the Registry and the other parties in writing immediately the application is finally determined indicating the date of the determination.

(6) Where a legal aid certificate is granted, the date of final determination is the date of issue of the certificate. Where legal aid is refused the date of final determination is the date of issue of the letter of refusal.

## **Cross-appeals**

**5.48.**—(1) A petition of cross-appeal must be presented within six weeks of the presentation of the original appeal.

(2) 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 lodged in respect of both the original and cross-appeals.

(3) Documents in respect of both the original appeal and the cross-appeal should be included in one appendix. Lodgement of the statement and appendix, and setting down for hearing, are the responsibility of the original appellant.

## **References to the European Court of Justice**

**5.49.**—(1) An order by the Judicial Committee referring a question to the Court of Justice of the European Communities (“the European Court”) for a preliminary ruling may be made on its own motion at any stage of proceedings or on the application of a party by notice of motion before the hearing.

(2) The proceedings in which an order is made shall, unless the Judicial Committee otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it or the reference is withdrawn.

## **Consolidation and conjoinder**

**5.50.**—(1) Where the issues in two or more appeals are similar, they may be consolidated or conjoined to avoid, wherever possible, separate representations by counsel or any duplication in the submissions made.

(2) Applications to consolidate or to conjoin appeals and other incidental applications must be made by petition.

(3) The petition should be signed by all the petitioners or their solicitors and must be submitted to the solicitors for all the other parties who have entered appearance for the endorsement of their consent. If consent is refused, the petition must be endorsed with a certificate that it has been served on the solicitor in question.

(4) If all parties consent to or join in the petition, one copy only of the petition should be lodged. If any party refuses consent, rule 5.52 shall apply.

## **Withdrawal of petitions and appeals**

**5.51.**—(1) Subject to the provisions of this rule—

- (a) a petition for special leave to appeal; or
- (b) an appeal;

may be withdrawn by giving notice in writing to the Registrar, copied to the respondent.

(2) Where the parties are agreed as to the terms on which the petition or appeal is to be withdrawn—

- (a) the notice to the Registrar should briefly indicate the terms of the agreement; and
- (b) the respondent shall confirm his agreement to the Registrar in writing.

(3) Subject to paragraph (4) below and to any agreement between the parties, the petitioner or appellant shall be liable to pay the respondent’s costs on the standard basis.

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(4) Any party who wishes to oppose the withdrawal of the appeal or petition, or who seeks terms for the withdrawal other than those provided for in this rule, may lodge a petition seeking some other order.

### **Incidental petitions and motions**

**5.52.—**(1) Unless the Registrar directs otherwise, incidental petitions (including any interlocutory petition which relates to a petition of appeal) shall be referred to a Board.

(2) The original and six copies of the petition must be lodged and a copy served on the other party.

(3) If an oral hearing is ordered the parties may apply to the Registrar to lodge affidavits and such other documents as they may wish. In addition to the original, six copies will be required. Copies of such documents must be served on the other parties not less than seven days before the hearing.

(4) This rule shall apply, with appropriate modifications, to notices of motion as it applies to incidental petitions.

### **New submissions**

**5.53** If, after the conclusion of the argument of 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 forthwith to the Registrar for leave 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 other parties to the appeal.

### **Interveners**

**5.54.—**(1) Except as otherwise provided by these rules, leave to intervene in proceedings is required and must be applied for by petition. The petition should be certified with the consent of the parties in the Case or, if consent is refused, the petition should be endorsed with a certificate of service on the parties. All petitions for leave to intervene, whether opposed by the parties or not, will be referred to a Board.

(2) References in these rules to a party and to a respondent shall be deemed to include a person intervening.

### **Preparation of documents**

**5.55.—**(1) Documents which are not clearly legible or which are not produced in the form specified will not be accepted by the Registry.

(2) All formal documents should be produced on good quality A4 paper, bound down the left hand edge and using both sides of the paper.

### **Form of statement and Case**

**5.56.—**(1) The statement and Case should be produced with letters down the inside margin. The outside margin should carry references to the relevant pages of the appendix.

(2) The front page of the statement should carry the references of every law report of the cause in the courts below. A head-note summary should be given, whether or not the cause has been reported.

(3) The front page of the statement should carry an indication of the time occupied by the cause in each court below.

(4) The statement should be signed by counsel on both sides, and their names clearly indicated. Where the statement is not agreed to by all parties it should be signed by counsel for the appellant and should indicate that the respondent has been given an opportunity to join in the statement.



- (5) Each party's Case should be signed by his counsel above their printed names.

### **Form of appendix**

**5.57.**—(1) The appendix should be bound with plastic comb binding, in limp board covers.

(2) All documents must be numbered and each part of the appendix must contain a list of its contents.

(3) Documents of an unsuitable size or form for binding with the other documents, such as maps or booklets, should be inserted in pockets at the back of the appropriate volume.

### **Form of bound volumes**

**5.58** The bound volumes should be bound in the same manner as the appendix. They should contain cut out indices for each of the items listed in rule 5.33(1), tabbed with the name of the document on the front sheet of each. The front cover should carry a list of the contents and the names of the solicitors for all parties. The short title of the cause and (if there is more than one volume) the volume number should be given on a strip affixed to the plastic spine. Each volume should include a few blank pages at either end.

### **Power to give directions and excuse compliance with rules**

**5.59.**—(1) The Registrar may give such directions in matters of practice and procedure as may be just and expedient and may for sufficient cause shown—

- (a) extend or abridge any time limit laid down by these rules;
- (b) excuse the parties from compliance with any of the requirements of these rules.

(2) If in the opinion of the Registrar it is desirable that any application for such direction or excusal should be dealt with by the Judicial Committee in open court he may direct the applicant to lodge, and to serve the opposite party with, a notice of motion returnable before the Committee.

(3) The Registrar may give directions as to the total length of time allowed for a hearing or the length of time each party shall be allowed for his oral argument. Parties will be expected to complete their submissions within the time allowed.

(4) Any party aggrieved by a decision by the Registrar to exercise or refuse to exercise his powers under these rules may appeal, by notice of motion, to the Judicial Committee.

### **Amendment of documents**

**5.60.**—(1) Any document lodged in connection with an appeal, petition or other matter pending before the Judicial Committee may be amended by leave of the Registrar.

(2) If the Registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open court, he may direct the applicant to lodge in the Registry, and to serve the opposite party with a notice of motion returnable before the Committee.

### **Fees**

**5.61.**—(1) The Council Office fees to be taken in proceedings to which these rules apply are set out in the Table below.

(2) The Registrar may direct that the appropriate fee must be paid at the time a chargeable step is taken.

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### Table of Fees

	£
<b>1. Lodging—</b>	75.00
(a) a petition for special leave to appeal	
(b) (b) a petition of appeal	60.00
(c) (c) any other petition or motion	45.00
(d) (d) a reference by a court	nil
(e) (e) any other reference	60.00
<b>2. Entering appearance—</b>	50.00
(a) in the case of a reference by a court	
(b) (b) in any other case	20.00
<b>3. Lodging Case</b>	180.00
<b>4. Lodging affidavit</b>	15.00
<b>5. Committee Report on appeal or reference</b>	45.00
<b>6. Original Order of the Judicial Committee</b>	30.00
<b>7. Office Copy of Committee Order</b>	10.00
<b>8. Taxing fee</b>	5% of the sum allowed.