

## SCHEDULE

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

#### PART V

#### COMMON RULES

##### 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.