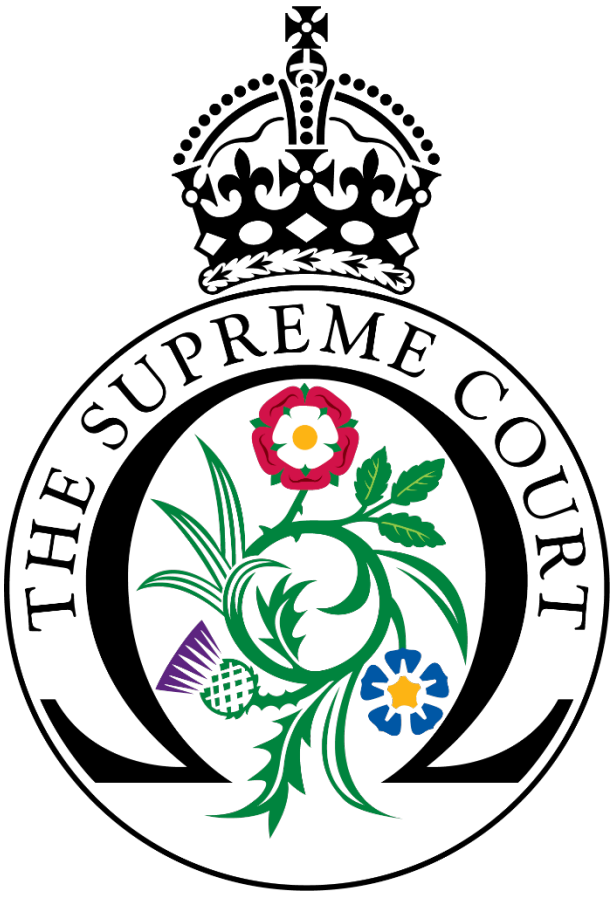

THE SUPREME COURT OF THE UNITED KINGDOM

PRACTICE DIRECTIONS

November 2024

Practice Direction P – The Case Management Portal

General

P.1 This Practice Direction concerns the case management portal. The portal is the external facing online website established and operated by the Supreme Court. It enables the parties and their legal representatives to file applications, appeals and other documents with the Registry, to serve those documents on other parties involved in the appeal and to communicate with the Registry and with each other. Parties can also use the portal to pay any fees that are due before the party can commence or participate in the appeal (as to fees see the Guidance on the Court's website and paragraphs 2.26 onwards of Practice Direction 2). The portal enables them to track the progress of their appeal whenever they wish.

Introduction of the portal

P.2 The portal will be brought into operation on 2 December 2024 when the new Supreme Court Rules 2024 come into effect. Litigants are expected to make all applications to the Court for permission to appeal and to file appeals where the permission of the Court is not required via the portal if the application or appeal is commenced on or after the portal comes into operation.

P.3 As well as appeals from the courts of the United Kingdom jurisdictions, the Court also hears references under various enactments. This Practice Direction applies equally to proceedings brought under the Court's devolution reference jurisdiction (as to which see Practice Direction 10).

Some key concepts

P.4 The portal operates through litigants or their representatives becoming registered users by creating individual **accounts** on the portal and by a **case file** being created on the portal to which they have access.

P.5 **Portal accounts:** A portal account is created in the name of an individual. Any person working in a firm of solicitors or in a set of barristers' chambers and any litigant in person or a person helping him or her can open an account on the portal in his or her name. To create an account a user must provide a name, an email address and a password. Each person with an account becomes a **registered user** of the portal. There is no fee for creating an account on the portal.

P.6 A registered user can open a **case file** for a particular appeal or reference on the portal. Once opened, that case file is thereafter controlled by the Registry. Other parties to the case who are registered users can gain access to the case file from their own accounts. The case file is where all activities regarding an appeal or reference take place, including uploading documents, making procedural applications and communicating

with the other parties and with the Registry. There is no limit to the number of case files that can be opened by a registered user or which that registered user can access using their account.

P.7 The concept of **service** and **serving** documents on parties is different in the portal from conventional service used up till now. "Service" via the portal does not require the serving party to send the document directly by email to the other parties as presently happens. Instead, the document which needs to be served is uploaded in electronic form by the serving party into the relevant case file on the portal and stays within the portal. Each time a new document is uploaded to the portal (such as a procedural application or a letter to the Registry) the portal will send out an alert by email to the nominated account holders for the parties. The other parties can then log on to the portal to see what new event has occurred and they will have access to any new document that has been filed. **Filing** and service have accordingly become functionally identical – service does not require any step beyond uploading to the portal (which itself constitutes filing). Because each registered user will have nominated the email addresses to which notifications from the portal are sent concerning that appeal, the use of the portal ensures that documents and messages will get through to the correct recipient for each party at each stage.

P.8 If a notification relating to an uploaded document is sent to a party in this way, the document is taken to be served on the party:

a. If the document was uploaded during the office hours when the Registry is open and the email notification is sent during those office hours, it is taken to have been served on the party on the day the email was sent; or

b. if the document was uploaded outside those hours and the email notification sent outside those hours, it is taken to have been served on the next business day after the email was sent.

c. The Registry closes at 5pm London time on weekdays. Parties should file their documents by that time on the relevant day even if they are in a different time zone. If the parties are in a different time zone from the Registry or in different time zones from each other, they should liaise as to what the deadline will be for service between them and inform the Registry as to what they have agreed.

P.9 If the portal is undergoing planned or unplanned maintenance downtime, the period during which it is not functioning will be left out of account when calculating the time during which a step must be taken.

P.10 Any requirement in the Rules or these Practice Directions to file a declaration of service may be satisfied by service through the portal.

P.11 The portal is separate from the Court's public website. There will be a link to the portal on the website but the information on a portal case file is only available to the account holders nominated by the parties to the case and to the Registry.

P.12 Users of the portal are required to check the email address they have provided to the portal regularly for administrative communications so that they can be alerted to case updates. The Court will not send additional updates or reminders to parties. It is recommended that parties ensure that the portal email address noreply@supremecourt.uk is recognised by their system to ensure that notifications are not blocked by their spam filter.

P.13 Where reference is made in this Practice Direction to a party doing something, that includes a representative acting on the party's behalf.

P.14 Introductory videos on how to use the Portal are available on the Court website.

Who should use the portal?

P.15 Parties who are legally represented are required to use the portal if they want to bring an appeal or take part in an appeal (Rule 4). This applies whether the party is the appellant, respondent or an intervener. All firms of solicitors and all barristers are therefore expected to have the ability to file, serve, be served, communicate with the Court and track appeals in which they are involved using the portal.

P.16 Litigants in person may participate in the appeal via more conventional means of communication. They should read the Court's guidance for litigants in person https://www.supremecourt.uk/procedures/practical-guidance-for-litigants-in-person.html. However, all litigants are strongly encouraged to use the portal for their involvement in the proceedings. The portal is designed to be accessible and easy to use, guiding the litigant through the process and explaining at each stage what needs to be done. It can be accessed via any internet-enabled device using an ordinary internet connection and using any email address. It can be used by people overseas as well as those in the United Kingdom.

P.17 Litigants starting an appeal outside the portal, can join the portal at any stage. Once a litigant in person has signed up to the portal for a particular appeal, he or she must continue to use the portal until that appeal is finally completed. If there are good reasons why he or she are unable to do so, they should contact the Registry.

P.18 The advantages of using the portal are that it provides a secure and convenient way for the parties to progress their appeal so that all those involved can have access to the same documents. The intention is that use of the portal will not only replace the provision of hard copies of documents or bundles to the Court and the other parties but also remove the duplication of electronic copies of the same document being emailed several times to the Registry or to different parties during the course of the appeal.

Documents such as the grounds of appeal, or the judgments and orders of the courts below will be uploaded to the portal at the start of the appeal and will remain there to be viewed or downloaded by all those involved in the appeal without the need for them to be sent round at any later stage (except when they form an element in the key documents or main hearing bundles).

P.19 Where one party, for example, the appellant is a non-portal party and the respondent is a portal party, the Registry will usually create a portal case file and enter the necessary data on behalf of the appellant so that the portal party respondent can, so far as possible, manage the case via the portal receiving notifications and filing documents online. The Registry will ensure that the non-portal party receives any documents, orders or directions that arise in the case.

P.20 The Registry staff will provide guidance and assistance to litigants or their representatives who are using the portal for the first time.

Opening an account on the portal

P.21 Once the portal becomes operational, users can sign up to the portal by opening an account. The home page of the UKSC website has a button called "PORTAL" which will take users to the account registration page.

P.22 Users only need to set up a portal account once. They can manage all the appeals they are involved in through the same account. If a litigant or their representative is not already registered with the portal, then registering by opening an account will be the first step they take when they become involved in an appeal.

P.23 Every account has a single email address associated with it. That email address can either be an existing email address used by that person or a new address created especially for this purpose. For example, a firm may choose to register an account using a specially created email address for that case such as DonoghuevStevenson@bigfirm.com. It is important that the email address associated with the account is one which is regularly monitored so that information which relates to any particular case arriving at that address will be picked up and a response given promptly if required.

P.24 An account holder may wish to set up automatic forwarding from the account's email address so that when that account is nominated a particular case file a notification received from the portal in relation to that case will be forwarded to more people either inside or outside the firm who are involved in the case. It is the responsibility of the registered user to ensure the account remains secure and that no unauthorised person gains access to it.

Opening a case file on the portal

P.25 In order to start an application on the portal, for example, seeking permission to appeal, the litigant or the person representing the litigant will need to become registered as a user on the portal by opening an account. That user can then log in to the account and click on the button for filing a case. The portal will then prompt the user to open a case file for a particular set of proceedings.

P.26 Each party can nominate three registered users to gain access to the case file. The registered user opening the case file does not have to be one of that party's three nominated account holders. For example, the opening of the case file may be delegated within the firm to an administrative assistant who will be a registered user but who will nominate three different accounts to be the accounts for that party to the case. These three nominated account users will receive any notifications which are generated in that case file. The Registry will check the nominated email addresses, notify those email addresses that they have been nominated and then add them to case file for that party.

P.27 If there is no existing portal account linked to the nominated email addresses, the user will be sent an email inviting the user to register on the portal. If the user has already created an account, the new case file will be listed on the home page. When the user logs in to the portal and clicks on "My cases" the user will find the new case file available and can manage involvement in the case from then on.

P.28 The nominated accounts and their associated email addresses can change during the course of the case so that they are the most relevant to the stage which the proceedings have reached. For example, at the start of the case, the appellant's legal representative may choose to have the account of the partner in the firm, the account of the associate solicitor and the account of the paralegal working with them on the case as the three nominated accounts for that party. Any notifications about the case will then be sent to the email address for each of those accounts. Once the case reaches the listing stage, they may choose temporarily to substitute a portal account held by the clerk for the barristers who are going to appear at the hearing instead if the paralegal's account. Then when listing has been completed and the hearing date approaches, the party may decide that the senior and junior barristers' email accounts should be nominated instead of the partner's and associate's accounts so that counsel receive notifications about the case.

P.29 If the party instructs a new firm of solicitors part way through the case, the outgoing representative will apply via the portal to come off the record and the new firm will come onto the record. The new firm should link their own accounts to the case file in substitution for the accounts of the outgoing firm.

P.30 The portal has two channels for communicating with the Registry. Most documents uploaded to the portal and most letters sent via the portal will use the public communication channel. This means that they will be available to be viewed and downloaded not only by the Registry but also by the other account holders linked with

that case file. However, there is also a private or confidential channel for communicating with the Registry and documents uploaded via this channel will not be able available to the other parties. Rule 9(3) gives some examples of the kinds of documents that can be sent via the private channel. These include not only confidential matters such as financial information related to fee remission or requests for anonymity but also routine matters which will be of no interest to the other parties.

Making an application: providing information

P.31 Once the case file is opened, the portal user can start the process of making an application. This process involves filling in the answers to questions presented in boxes on the screen and also uploading copies of specified electronic documents.

P.32 The user does not have to complete the application in a single session; the user can save the information already entered online and come back to complete the application later. The portal will also enable the user to download and save as a separate electronic document or print out the information provided so far and the boxes that remain to be completed. This means the users can draft their responses outside the portal or in hard copy and then paste that information into the portal boxes when they are ready to do so.

P.33 The first step is to choose whether the case is an appeal in the Supreme Court or the Judicial Committee of the Privy Council. The user then chooses the option "making an application for permission to appeal". The screen will then display the four stages involved in making an application for permission: (a) completing the information about the application; (b) providing information about the parties; (c) uploading documents; and (d) making payment.

P.34 The user completes the boxes presented on screen with the information required. This is broadly the same information that was required to complete the different boxes on the Form 1 previously used by the Supreme Court. It includes (a) the details of the party appealing including legal representatives' names and contact details, (b) the details of the parties responding to the appeal and (c) a description of the decision being appealed. The portal will also ask questions which will assist the Registry to ascertain the Court's jurisdiction to determine the appeal.

P.35 The portal presents boxes asking the party to indicate whether that party is seeking an anonymity order. The party can provide information about an anonymity order made by the court below or, if no such order was made previously, the party can explain why the party is seeking such an order now. This stage will also enable the party to ask for the appeal to be expedited or for an extension of time. It will also ask for other information about the nature of the appeal, for example whether the appellant is seeking a declaration of incompatibility under the Human Rights Act 1998 or inviting the Court to

depart from assimilated case law within the meaning of the European Union (Withdrawal) Act 2018.

P.36 The user must then complete boxes on screen which provide: (a) a summary of the case; (b) the keywords which will enable someone searching the website to find the case; and (c) a short chronology. The party should not include confidential information in these boxes. The information in these boxes will be used by the Registry staff to draft the information which will appear on the Court's public website about the case.

P.37 Stage 2 is for the user to enter information about the parties to the proposed appeal. This includes entering information about the appellant making the application itself as well as information about other appellants and information about the respondent(s).

P.38 There may be more than one appellant who wish to be treated as a single person so far as the portal is concerned. For example, a husband and wife or a company and its subsidiary maybe the First and Second Appellants. If they are represented by the same legal representative and there are no potential conflicts of interest between them, they can operate the case file as a single person with one set of three accounts (see paragraph 8.11 of Practice Direction 8). They will then only have to pay one issuance fee.

P.39 If there are other appellants who are represented by different law firms, those solicitors will need to open their own case file for the appeal on behalf of that party. They will pay a separate fee and have their own three nominated registered user accounts. The two case files will then be linked. There must be two linked case files, even if they are appealing against the same judgment of the Court of Appeal, for example because the Court of Appeal heard appeals from two different first instance judgments.

P.40 The name of counsel acting for the appellant, if known, can also be provided at this stage (although counsel do not need to be added as one of the three nominated accounts).

P.41 An appellant must provide information about the respondents in so far as the appellant knows that information. Usually, the appellant will know which firm acted for the respondent in the court below and will be able to provide the contact email address for the respondent that was used to communicate with them during the earlier stages of the proceedings. That is the contact information that the Registry will use to check whether that email address is already associated with a registered user on the portal. If it is, then the Registry will contact the potential respondent via the portal to alert them to the opening of the case file. If that email address is not associated with a registered user, the Registry will email that person and invite them to open an account on the portal. Where there are multiple respondents but they are represented by the same solicitor and there is no potential for a conflict of interest between them an applicant should consult

the guidance on the Court's website as to when it is possible to input a single party on the case file and pay a single fee.

Making an application: uploading supporting documents

P.42 The party making the application must also have electronic versions of the documents that the user will be asked by the portal to upload. These documents are listed in Rule 13(4) and are: (a) the order of the court below against which the appellant seeks permission to appeal, (b) the judgment of the court below to which the order gives effect, (c) the order of the court below refusing permission to appeal to the Court, (d) the grounds of appeal for which the appellant seeks permission to appeal, (e) a precis of the factual background of the case and a chronology of proceedings, (f) the order of the first instance court (if different) which was challenged in the court below, and (g) the judgment of the first instance court (if different).

P.43 Please see Practice Direction 3 for further details regarding these documents. See also the Guidance on the Court's website about "Electronic Papers".

P.44 Any document which is filed using the portal must be in PDF format (or in Excel format if appropriate) unless the Court directs otherwise or unless the document is a draft order, in which case it should be in "Word" format. The file must not exceed 50 (fifty) megabytes or such other limit that may be specified by the Court.

P.45 The portal will invite the user, for example, to upload the Grounds of Appeal. The document uploaded in response to that request will be referred to within the portal as the Grounds of Appeal, whatever the name of the document uploaded. However, it will be helpful to those using the case file if the title given to the e-document by the party uploading it is informative about the nature of the document, so that it is called "CaseName-Grounds.pdf", "CaseName-CAjudgmt.pdf" etc., rather than "Doc1.pdf" "Doc2.pdf" etc.

Confidentiality

P.46 For each document uploaded into the case file by a registered user, there will be a choice of three options. The upload can state that the document is confidential and that either a confidentiality order has been made or the party will be seeking such an order. Secondly, it can state that the version of the document uploaded has been redacted so that it does not contain any confidential information and thirdly it can state that the document is not confidential and has not been redacted. If either of the first two options apply, the party must explain in the box provided the reasons for restricting access to the document from one or more other parties. The Registry will usually ask the party to upload a non-redacted version in the confidential part of the portal and upload the redacted version in which the confidential material has been blocked out to be made available for all the parties to see. This exercise is separate from the consideration of what material should be published on the Court's website under Rule 42.

P.47 Arrangements for the delivery and handling of **closed or sensitive material** within the meaning of the Justice and Security Act 2013 are separate from the arrangements for confidential material. Such material should not be uploaded to the portal. Parties wishing to provide closed or sensitive material as part of their application should contact the Registry to make appropriate arrangements outside the portal.

Payment for the application and submission of application

P.48 Once the information has been entered on the portal case file and the necessary documents uploaded, the applicant must pay the fee for the application.

P.49 The portal enables online payment of fees. Online payment can be made by credit card (Visa or Mastercard), debit card or bank transfer. The portal contains a facility for making electronic payment within the portal using a credit or debit card. Payment by bank transfer must be made before finalising any filing via the portal. Payment by card may be made in the portal.

P.50 If paying via bank transfer, the party will enter an appropriate reference code when instructing the bank to make the payment. This reference then appears as the identifier on the Registry's bank statement next to the incoming payment when it arrives in the Registry's account. The party will then notify the Registry via the portal as to the transfer date, the amount of the payment and the reference that has used before submitting the application. The Registry will then be able to match up the payment reference with the case file. Applications cannot be filed until payment has been either made or confirmed. For payments that need to be made once the appeal is underway, the party should use the Case ID number as the reference.

P.51 Parties are also able to apply for Help with Fees via the portal. Guidance about this is contained in paragraph 2.26 onwards of Practice Direction 2. This will require evidence as to the party's means to be uploaded. This can be uploaded via the private channel: see Rule 9(3). Fee remission will be considered by the Registrar and the decision communicated via the portal.

P.52 Once payment has been received by the Registry the portal will enable the party to file the application. The party will be able to download and save or print out a hard copy of the application as filed. A party should do this promptly after filing.

Approval and issue of application

P.53 Once an appellant has filed the application, the Registry will check that the filing is in order. The Registry may contact the party and ask for a revised document and for it to be uploaded again if the document has been scanned and saved upside down or is otherwise illegible or incomplete. The Registry will state the time within which this remedial action must be taken. If no action is taken within 30 days the filing will automatically lapse, the case will close and any fees paid will be refunded.

P.54 Once the portal pages have been completed satisfactorily, the correct documents uploaded and the fee paid, the Registry may issue the application for permission and direct the appellant to serve it: see Rule 13(8). The case will then be issued with a Case ID Number which will be the unique identifier for that case throughout its life. Case numbers will include the year of issue and then be numbered consecutively as they are issued from the start of the calendar year. If there is a linked case file, for example, opened by another appellant with separate legal representation or by a respondent cross-appealing, the Case ID will be the same as for the first case file opened with the suffix "A" so that it is clear from the Case ID numbers that they are linked appeals.

P.55 Once an application for permission has been issued by the Registry, the portal will send a notification to the three account users nominated by that party. That notification will state the date and time of the issue of the application, confirming that the application has been issued. The users must then log into the case file and download the application as a pdf document and save it locally or print it out, depending on how they plan to serve the application on the other parties. They should do this promptly to ensure they have a record of the document as issued because documents on the portal are "live" and after an initial 72 hour period in which no changes can be made, the document might be amended.

P.56 The issue of the application does not mean that the Court has jurisdiction to hear the appeal. The procedure for the Court to determine whether it has jurisdiction to hear the appeal is explained in Rule 13. The kinds of decisions which cannot be challenged in the Supreme Court are explained in PD 1 (see in particular paragraph 1.28 onwards for civil appeals) and Practice Direction 12 (Criminal proceedings).

Amendment of documents

P.57 It is not possible to amend a document once filed electronically. Amendments must be made by filing an amended document and seeking permission: see Rule 33(5).

Service of an application for permission to appeal or a notice of appeal

P.58 Generally, all service of documents will take place via the portal. However, Rule 14 stipulates that the service of the application for permission to appeal, once it has been issued by the Registry, must be served by non-portal service. The same applies to the service of a notice of appeal where there has been no application for permission: see Rule 21. The permitted methods of non-portal service are specified in Rule 8(3). These exceptions to portal service are necessary because the respondents to the appeal may not yet be registered users or if they are registered users, may not be aware that the case file in this appeal has been opened.

P.59 Once non-portal service has been carried out, the appellant must make a declaration of service on the portal in that case file. This requires the appellant to access the case file through one of the nominated accounts, click on the option "lodging service"

and complete the information about how each other party was served. By this stage, the appellant may be aware that the information about the contact person for the respondent entered at the earlier application stage is incorrect because, for example, that person has recently left the firm, or the respondent has changed legal representation. In the declaration of service, the appellant will be able to enter the correct information and explain why this has changed.

P.60 The Registry will then be able to contact the new representative for the respondent and ensure that the account using that email address is added to the case file. If the email address entered by the appellant in the declaration of service as the appropriate address for the respondent is an address which is already associated with an account on the portal, the portal will send a notification to that email address inviting the account holder to log on to the portal. If the email address is not currently associated with a portal account, the Registry will send an email to that address inviting the person to register as a portal user using that email address, or any other email address that is preferred.

P.61 Each party can see, but cannot change, the user accounts nominated by other parties to the appeal as the three accounts linked to each of the other parties.

Responding to an application for permission or to an appeal

P.62 Once the respondent is served with the application for permission or with the notice of appeal via non-portal service, the respondent will need to be a registered user to respond to the appeal. The documents served on the respondent by the appellant will give the respondent the name of the appeal. When the user logs in to the relevant portal account and clicks on “My cases” the new case file will be available and can be managed from then on. The respondent can identify the case from the Case ID number and name given in the application which will have been served by non-portal means. The user can then nominate the three account users to receive notifications on behalf of the respondent for this case.

P.63 Even if the appellant is a non-portal party, the Registry will open a case file, enter the necessary information and upload copies of the relevant documents so that the respondent can manage the case via the portal so far as possible.

P.64 Once the respondent has gained access to the case file, the portal will allow a response to the application be filed. A respondent who is served with an application for permission to appeal and who wishes to oppose the grant of permission must file a notice of objection via the portal in accordance with Rule 15. Similarly, a respondent who is served with a notice of appeal under Rule 21, must serve a notice of acknowledgement of service under Rule 22 if they wish to participate in the appeal.

P.65 Respondents served with an application who do not respond to the appeal, will not be notified of the progress of the appeal and will not be able to participate in the appeal. The application will proceed in their absence and will be determined by the Court.

P.66 Once the respondent has completed the relevant pages on the portal in the case file and paid any fee required, the appellant will be notified of the respondent's action and will thereafter communicate with the respondent via the portal. Where the respondent does not become a portal party those documents must be filed by conventional, non-portal means. The appellant will therefore know how to communicate with each respondent as the appeal progresses.

Interveners and cross-appeals

P.67 The process described above also applies in relation to interveners in the proceedings (see Rules 16, 24 and 25). A third party who wishes to make submissions supporting or opposing the grant of permission to appeal under Rule 16 must file an application to intervene using their own account on the portal. The information provided will enable the Registry to associate this application with the case file opened for the parties and to ensure that the parties have access to the submissions made. If permission to appeal is refused, the intervener's application file will no longer be needed and will be closed. If permission is granted and the intervener wishes to be involved in the case, they need to apply to be an intervener in the appeal under Rule 24. The intervener can then make a fresh application to intervene via the portal. If the application to intervene is successful, the intervener will be added as a party to the main case file and the intervention application will be closed.

P.68 A respondent who wishes to cross-appeal, should file a notice of acknowledgment and must also open a separate case file acting as an appellant. That case file will remain separate from the appellant's case file and a filing fee and all further applicable fees will be payable in this new case file. They will be managed as two cases but the Case ID number of the cross-appeal will show that they are linked. The two cases will be managed together but an action taken in one case file will not automatically be made in the other – the appellant and the cross-appealing respondent will need to ensure that the two case files remain up to date with the current stage of the proceedings and that applications made in one appeal which need also to apply to the cross-appeal are made in the cross-appeal as well.

Subsequent steps in the proceedings

P.69 The Rules provide for many different stages of the appeal including the making of procedural applications (Rule 33). Such applications may request, for example, that the appeal be expedited, or may apply for security for costs or for an appeal to be withdrawn.

P.70 Parties can make all such applications via the portal. Parties can at any point in the appeal choose the relevant application from a menu of options on the portal. The party

will then be taken by the portal to a series of boxes which will ask for the information needed to make that application and will ask also for any documents needed to be uploaded to the portal. If the application is filed via the portal then it will be automatically served on the other parties to the appeal via the notification process.

Hearing bundles

P.71 Rules 27, 28 and 29 of the Rules provide for the content and filing of the documents that the parties must prepare for the appeal hearing and for the bundles which will be used by the Justices and the parties to the appeal. Guidance on how these should be prepared is given in Practice Directions 5 and 6.

P.72 Where the party filing these documents is a portal party the documents should be uploaded as electronic files to the portal case file. Appellants are advised to consult the up to date "Electronic papers guidance" on the Board's website for information about how to present documents such as the need for bookmarking, hyperlinks, maximum document upload etc.

P.73 Apart from the key documents bundle (see Rule 28) there is no requirement either to provide hard copies of the documents to the Registry or to the other parties or to email the documents to the Registry or other parties. The Justices and the other parties will access the documents and the bundles via the portal. A party who wishes to download or print out the documents or bundles will be able to do so.

Orders made in appeals managed via the portal

P.74 The Rules specify when the Court will issue orders, for example, orders granting or refusing permission to appeal (Rule 17(5)), orders disposing of the appeal (Rule 32) and orders as to costs (Rule 53).

P.75 An order made by the Court will be uploaded to the portal, a notification will be placed on the portal case file and a notification will be sent by email to the portal parties to the appeal alerting them to this event. The orders themselves will not be emailed or sent to the parties. They can be downloaded as pdf files and printed out by the party.

Case Management Portal Maintenance

P.76 The portal enables parties to issue proceeding and file documents online all year round, including weekends and bank holidays, except where there is planned "downtime": as with all electronic systems, there will be some planned periods for system maintenance and upgrades when the portal will not be available. If the portal is undergoing planned or unplanned maintenance downtime, the period during which it is not functioning will be left out of account when calculating the time during which a step must be taken.

Practice Direction 1: General note and the jurisdiction of the Supreme Court

The Supreme Court - general note

1.1 The Supreme Court of the United Kingdom ("the Court") was established by Part 3 of the Constitutional Reform Act 2005 ("the 2005 Act"). Its jurisdiction corresponds to that of the House of Lords in its judicial capacity under the Appellate Jurisdiction Acts 1876 and 1888 (which were repealed) together with devolution matters under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006, which were transferred to the Court from the Judicial Committee of the Privy Council. The jurisdiction of the Court is principally defined by section 40 of, and Schedule 9 to, the 2005 Act (as amended). Since its establishment in 2009, a number of additional jurisdictions have been conferred on the Court by primary legislation.

1.2 Under section 45 of the 2005 Act, the President of the Court has, in compliance with the requirements in section 45 of the Act, made the Supreme Court Rules 2024 ("the Rules") published as S.I. 2024/949. The Rules, which come into force on 2 December 2024 and replace the Supreme Court Rules 2009, apply to civil and criminal appeals to the Court, and to appeals and references under the Court's devolution and assimilated law jurisdiction.

1.3 The overriding objective of the Rules is to secure that the Court is accessible, fair and efficient. The President of the Court has issued these Practice Directions to supplement the Rules and to provide general guidance and assistance to parties and their legal representatives.

1.4 Rule 62 of the Rules makes transitional arrangements for appeals and applications which were filed before the new Rules came into effect. Unless the Court or the Registrar directs otherwise, the Supreme Court Rules 2009 continue to apply to: (a) any appeals proceeding before the Rules came into effect; and (b) applications for permission to appeal and notices of appeal filed before the new Rules came into effect.

1.5 The jurisdiction of the Court is summarised in this Practice Direction.

Jurisdiction

Criminal appeals

1.6 The jurisdiction of the Court to hear criminal appeals is set out in detail in Practice Direction 12 (including the time limits for applying for permission to appeal). The following is a high-level summary.

England and Wales

1.7 Appeals to the Court in criminal proceedings in England and Wales are principally regulated by sections 33 and 34 of the Criminal Appeal Act 1968 and sections 1 and 2 of

the Administration of Justice Act 1960 (as amended). All such appeals may be made at the instance of the accused or the prosecutor. Section 13 of the Administration of Justice Act 1960 (as amended) extends the scope of sections 1 and 2, with some qualifications, to appeals relating to contempt of court (civil or criminal). Sections 36 to 38 of the Criminal Appeal Act 1968 (as amended) contain ancillary provisions about bail, detention and attendance at appeal hearings.

1.8 Any appeal under these provisions requires the permission of the court below or the Court, which may be granted (except for a first appeal in a contempt of court matter) only if: (a) the court below certifies that a point of general public importance is involved; and (b) it appears to the court below or to the Court that the point is one which ought to be considered by the Court. Where the appeal is the first appeal in a contempt of court matter, certification is not required, and the Court will grant leave if it appears to the Court that the point is one which ought to be considered by the Court.

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

Northern Ireland

1.10 Similar provisions apply to appeals in criminal proceedings in Northern Ireland: see sections 31 and 32 of the Criminal Appeal (Northern Ireland) Act 1980 and section 41 of, and Schedule 1 to, the Judicature (Northern Ireland) Act 1978 (as amended). Appeals may be made at the instance of the accused or the prosecutor. Permission will only be granted if: (a) the court below certifies that a point of general public importance is involved; and (b) it appears to the court below or to the Court that the point is one which ought to be considered by the Supreme Court.

1.11 Section 34 of the Criminal Appeal (Northern Ireland) Act 1980 (as amended) permits the Court of Appeal to refer a point of law to the Court where, after an acquittal, the Director of Public Prosecutions for Northern Ireland has referred the point of law to the Court of Appeal.

Scotland

1.12 The High Court of Justiciary sitting as an Appeal Court is the final court of appeal in criminal proceedings in Scotland. As such, no appeal lies to the Court from criminal proceedings in Scotland except where an appeal concerns a devolution issue, compatibility issue, compatibility question or UNCRC compatibility issue as defined in paragraph 1 of Schedule 6 to the Scotland Act 1998, sections 288ZA and 288AB of the Criminal Procedure (Scotland) Act 1995, and section 31 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. For further detail see rule 44 and Practice Direction 10 (Devolution jurisdiction and compatibility issues and questions).

Courts-Martial

1.13 See sections 39 and 40 of the Courts-Martial (Appeals) Act 1968 (as amended) for appeals from the Courts-Martial Appeal Court.

Civil appeals

England and Wales

1.14 The key provision in relation to civil appeals in England and Wales is subsection (2) of section 40 of the 2005 Act:

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

1.15 This is subject to the restrictions described in paragraph 1.28 and 1.29 below. An application for permission to appeal must be made within 28 days from the date of the order of the court below refusing permission to appeal.

1.16 In cases involving civil contempt of court, an appeal may be brought under section 13 of the Administration of Justice Act 1960. Permission to appeal is required and an application for permission must first be made to the court below. If that application is refused, an application for permission to appeal may then be made to the Court. The application must be filed within 28 days, beginning with the refusal of leave by the court below, or, if later, the date on which that court gives reasons for that refusal. Permission to appeal to the Court is only granted if the court below certifies that a point of law of general public importance is involved in the decision and if it appears to that court or to the Court, as the case may be, that the point is one that ought to be considered by the Court. Where the court below refuses to grant the certificate required, an application for permission to appeal is not accepted for filing in the Court.

1.17 Where a person commits a contempt of the Supreme Court, for example, by disclosing the result of an appeal before the judgment is handed down, the Supreme Court can conduct a committal hearing. An appeal lies from any finding of contempt, and any punishment imposed, to a different panel of Justices.

Scotland

1.18 The scope of the appeals to the Court from Scotland in civil matters is set out under sections 27(5), 32(5), 40, 41, 42, 43 of the Court of Session Act 1988 as amended.

1.19 Under section 40 of the Court of Session Act 1988, an appeal lies to the Court against a "decision" of the Inner House of the Court of Session (the "Inner House") to the Court. An appeal under that provision requires the permission of the Inner House or, failing that, the Court.

1.20 What constitutes a decision of the Court of Session is set out in section 40(2) of the Court of Session Act 1988:

a. a decision constituting final judgment in any proceedings,

b. a decision in an exchequer cause,

c. a decision, on an application under section 29 of the Court of Session Act 1988, to grant or refuse a new trial in any proceedings,

d. any other decision in any proceedings if—

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

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

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

1.22 In the case of any other decision of the Inner House (i.e. other than those under section 40(2) of the Court of Session Act 1988), an appeal may be made to the Court only with the permission of the Inner House.

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

1.24 Parties must first apply to the Inner House for permission to appeal to the Court. Under section 40A of the Court of Session Act 1988, an application to the Inner House for permission to take an appeal must be made:

a. within the period of 28 days beginning with the date of the decision against which the appeal is to be taken, or

b. within such longer period as the Inner House considers equitable having regard to all the circumstances.

1.25 If the Inner House refuses permission to appeal to the Court, an application to the Court for permission to appeal must be made:

a. within the period of 28 days beginning with the date on which the Inner House refuses permission for the appeal, or

b. within such longer period as the Court considers equitable having regard to all the circumstances.

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

Northern Ireland

1.27 The principal provisions relating to civil appeals from Northern Ireland are in section 42 of the Judicature (Northern Ireland) Act 1978 as amended by the 2005 Act. See also sections 43 (preserving leapfrog appeals), 44 (contempt) and 45 (habeas corpus), as amended.

Restrictions on the Court's jurisdiction in civil appeals

1.28 Section 40(6) of the 2005 Act provides:

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

1.29 The most important general restriction on rights of appeal is section 54(4) of the Access to Justice Act 1999. The effect of this provision is that the Court may not entertain any appeal against an order of the Court of Appeal refusing permission for an appeal to the Court of Appeal from a lower court. Note that Section 54 of the Access to Justice Act 1999 does not extend to Northern Ireland and the Civil Procedure Rules do not apply there, but the rule in *Lane v Esdaile* (see *Lane v Esdaile* [1891] AC 210) applies to Northern Ireland.

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

Restrictions on the Court's jurisdiction in England and Wales

1.31 There are other statutory restrictions on the Court's jurisdiction as regards appeals from England and Wales. The following are excluded from the Court's jurisdiction and are inadmissible -

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

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

c. applications brought by a person in respect of whom the High Court has made an order under section 42 of the Senior Courts Act 1981 (restriction of vexatious legal proceedings). It is open to such a person to seek to appeal the section 42 order itself if that order was the subject of an appeal to the Court of Appeal;

d. applications for permission to appeal from a decision of the Court of Appeal on any appeal from a county court in any probate proceedings (County Courts Act 1984 s 82).

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

f. applications for permission to appeal against the refusal by the Court of Appeal to reopen a previously concluded appeal or application for permission to appeal (Civil Procedure Rules, r 52.17).

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

1.32 The time limit for applying for permission to appeal in civil cases is set out in Practice Direction 2.

Leapfrog Appeals

1.33 Appeals in civil matters may exceptionally be direct to the Court under sections 12 to 16 of the Administration of Justice Act 1969, sections 14A to 14C of the Tribunals, Courts and Enforcement Act 2007, sections 37A to 37C of the Employment Tribunals Act 1996 and under sections 7B to 7D of the Special Immigration Appeals Commission Act 1997. These appeals are generally called "leapfrog appeals". See further Practice Direction 3 for guidance on bringing a leapfrog appeal.

1.34 Such appeals are permitted only if the relevant statutory conditions are satisfied and the Court grants permission. These generally require that a certificate has been granted by the trial judge stating that the statutory conditions are satisfied: see sections 12 to 16 of the Administration of Justice Act 1969, sections 14A to 14C of the Tribunals, Courts and Enforcement Act 2007, sections 37ZA to 37ZAC of the Employment Tribunals Act 1996 or sections 7B to 7D of the Special Immigration Appeals Commission Act 1997. A leapfrog appeal must be filed within one month from the date on which the certificate is granted.

1.35 The relevant statutory conditions are set out in section 12(3) and (3A) of the Administration of Justice Act 1969, section 14A(4) and (5) of the Tribunals, Courts and Enforcement Act 2007, section 37A(4) and (5) of the Employment Tribunals Act 1996 and section 7B(4) and (5) of the Special Immigration Appeals Commission Act 1997. Where the appellant pursues a leapfrog appeal to the Court, the appellant cannot at the same time pursue other grounds of appeal in the appellate court: see *Ceredigion County Council v Jones and others* [2007] UKHL 24.

Judicial review: civil matters

1.36 In England and Wales an application for permission to apply for judicial review is made to the Administrative Court (which is part of the King's Bench Division of the High Court). If the judge in the Administrative Court refuses the application without a hearing, an application can be made for the decision to be reconsidered at a hearing before that court. Where permission to apply for judicial review has been refused by the Administrative Court after reconsideration at an oral hearing, the applicant may appeal against the refusal of permission to the Court of Appeal. If such an appeal is successful, the applicant needs to be granted by the Court of Appeal both (a) permission to appeal against the Administrative Court's determination; and (b) permission to apply for judicial review.

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

1.38 Similar provisions apply in Scotland. Applications to the Court of Session's supervisory jurisdiction are made to the Outer House of the Court of Session (section 27B of the Court of Session Act 1988). Under section 27D of the Court of Session Act 1988, following an oral hearing at which the Outer House refuses permission for an application to the supervisory jurisdiction, an applicant may, within a period of 7 days, appeal to that refusal to the Inner House. If the Inner House also refuses permission, this can only be appealed to the Court with the Inner House's permission under section 40(3) of the Court of Session Act 1988 (see para 1.22 above).

1.39 Similar provisions also apply in Northern Ireland.

Human Rights

1.40 The Human Rights Act 1998 applies to the Court and issues under that statute will often arise on appeals to the Court. But the Human Rights Act 1998 does not confer any general right of appeal beyond those mentioned in this Practice Direction. As to declarations of incompatibility, see rule 43 and Practice Direction 9 (The Human Rights Act 1998).

Devolution Jurisdiction and Compatibility Issues and Questions

1.41 Devolution matters raise issues of constitutional importance as to the purported or proposed exercise of a function by a member of the Scottish Executive, a Minister in Northern Ireland or a Northern Ireland department or the Welsh Ministers or as to the legislative competence of the Scottish Parliament under the Scotland Act 1998, the Northern Ireland Assembly under the Northern Ireland Act 1998, and Senedd Cymru (or the Welsh Parliament) under the Government of Wales Act 2006.

1.42 Under these Acts, as amended by Part 2 of Schedule 9 to the 2005 Act, the Court has an appellate jurisdiction in proceedings for the determination of a devolution issue and special statutory powers to consider referred questions, including questions referred by the relevant law officer. As relates to Scotland, the Court also has a jurisdiction in respect of compatibility issues, compatibility questions and UNCRC compatibility issues, as defined in the Criminal Procedure (Scotland) Act 1995 and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. See rule 44 and Practice Direction 10 (Devolution jurisdiction and compatibility issues and questions).

References on assimilated case law

1.43 Section 6 of the Retained EU Law (Revocation and Reform) Act 2023 ("REUL 2023"), when commenced, will insert sections 6A, 6B and 6C into the European Union (Withdrawal) Act 2018 (the "EU Withdrawal Act").

- Section 6A will enable courts and tribunals to send a reference to the Court raising a point of law arising in relation to assimilated case law. Assimilated case law is case law which formed part of the United Kingdom's law because of the United Kingdom's membership of the European Union and which remains part of United Kingdom law by virtue of the EU Withdrawal Act.
- Section 6B of the EU Withdrawal Act will enable law officers to refer a question about a point of law about assimilated case law where proceedings before a court or tribunal have concluded without the court or tribunal itself making a reference to the Court under section 6A.
- Section 6C will provide for who needs to be notified if the Court is considering an argument raised by a party that the Court should depart from assimilated case law.

Although section 6 of REUL 2023 was due to be commenced on 1 October 2024, that commencement order was revoked on 18 September 2024: see the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving

Provisions) (Revocation) Regulations 2024 (SI 2024/976). As section 6 is not yet in force and the new sections 6A, 6B and 6C have not yet been inserted in the EU Withdrawal Act, the rules relating to these powers are therefore currently not operative.

1.44 The Court has a residual power to refer to the Court of Justice of the European Union questions relating to certain provisions in the EU-UK Withdrawal Agreement and the Protocol on Ireland/Northern Ireland. See rule 45 and Practice Direction 11. In accordance with section 6(1)(b) of the EU Withdrawal Act, it cannot otherwise refer any matter to the European Court.

The exercise of the Court's jurisdiction

1.45 Some of the powers of the Court may be exercised by a single Justice and by the Registrar. Rule 11 makes specific provision for procedural decisions. If any procedural question arises which is not dealt with by the Rules, the Court or the Registrar may adopt any procedure that is consistent with the overriding objective, with the 2005 Act and with the Rules: Rule 11(7).

1.46 Except where Rule 11(2) applies (see paragraph 1.48), the powers of the Court under the following rules may be exercised by a single Justice or the Registrar without an oral hearing:

rule 6 (time limits)

rule 10 (non-compliance with Rules)

rule 36 (change of interest)

rule 37 (withdrawal of appeal)

rule 38 (advocate to the Court and assessors)

rule 39 (security for costs)

rule 40 (stay of execution)

rule 42 (redaction of material from published documents)

rule 44 (devolution jurisdiction and compatibility issues and questions).

1.47 The single Justice may direct an oral hearing or may refer the matter to a panel of (at least three) Justices to be decided with or without an oral hearing: Rule 11(3).

1.48 A contested application relating to one of the following must be referred to a panel of Justices (Rule 11(2)):

a. alleging contempt of the Court; or

b. in respect of a direction made under Rule 10 dismissing an appeal or debarring a respondent from resisting an appeal; or

c. for security for costs.

1.49 In a case of an alleged contempt, an oral hearing must be held. In other cases, the Registrar will normally make a decision without an oral hearing but may direct an oral hearing. The Registrar may also refer the matter to a single Justice (and paragraph 1.47 then applies) or to a panel of three Justices for decision.

1.50 A party who is dissatisfied with a decision of the Registrar may apply for that decision to be reviewed by a single Justice. Any application must be filed within 14 days of the Registrar's decision: Rule 11(5). A fee is payable and the procedure in paragraph 1.47 applies. See paragraph 7.1 of Practice Direction 7 for applications.

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

Practice Direction 2: The Registry of the Court

2.1 The Registry of the Court is situated on the ground floor of the building in Parliament Square which houses the Court. The staff of the Registry act under the guidance and supervision of the Registrar. The Registry of the Judicial Committee of the Privy Council is situated in the same room and the staff of that Registry are the same staff as those of the Court.

2.2 The postal address of the UK Supreme Court is:

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

The telephone numbers are:

020 7960 1991
020 7960 1992

2.3 The Registry public counter is open from 9am – 4.30pm (and 4.30 – 5pm by appointment*) except on bank holidays and for the week between Christmas and the New Year. Registry staff are available to answer telephone and portal queries from 9am to 5pm except on bank holidays and for the week between Christmas and the New Year

. *Appointments must be pre-booked and completed by 5pm.

2.3 The Registry is closed on:

a. Saturdays and Sundays;

b. during the Christmas vacation as advertised;

c. Bank Holidays in England and Wales under the Banking and Financial Dealings Act 1971; and

d. exceptionally, such other days as the Registrar may direct.

2.4 If you need to contact the Registry urgently at a time it is closed, you should email registrarsoutofhours@supremecourt.uk and the email will be forwarded to the Registrar. This email address should be used only in a case of real urgency. If possible, the party making the urgent application should have alerted the other parties to the appeal and the Registry in advance of the possibility of an urgent application being needed. Where an application is considered out of hours, the same application must be filed via the portal

and the application fee paid whether or not the application is granted. Litigants should note that if an urgent stay of an order made by the court below is sought, the application should be made first to that court and the email to the Registrar should record that such an application has been made and refused and provide the reasons given by that court for refusing to grant a stay.

2.5 Where a court deadline would otherwise fall on a day on which the Registry is closed, the deadline is extended to the next day on which the Registry is open (see Rule 6(4) and the Portal Practice Direction, P.8). Where a document is received on a business day at a time when the Registry is closed, the document will be taken to have been filed in time and the Registrar may give whatever consequential directions appear appropriate. If the portal is undergoing planned or unplanned maintenance downtime, the period during which it is not functioning will be left out of account when calculating the time during which a step must be taken.

2.6 The Registrar may refuse to accept any document which is illegible or does not comply with any provision in the Rules or any relevant practice direction. On refusing to accept a document, the Registrar will give whatever directions appear appropriate (see Rule 10).

2.7 The Registry will not issue an application for permission to appeal or other document unless:

a. all the required documents are supplied; and

b. the prescribed fee is paid or remitted pursuant to the help with fees scheme (see paragraphs 2.26 - 2.31).

Filing

2.8 A party who is legally represented must use the portal to file documents (Rule 4). The Portal Practice Direction explains how to use the portal. Litigants in person should also use the portal unless there is a specific reason why they are unable to do so. If a litigant in person cannot use the portal, he or she should contact the Registry to explain his or her position and the Registry will assist the litigant. A party who becomes a litigant in person during the course of an appeal because he or she ceases to be legally represented and who is no longer able to use the portal should similarly contact the Registry who will assist the litigant.

Time limits

2.9 Rule 12(1) provides that an application for permission to appeal must be made first to the court below and an application may be made to the Court only after the court below has refused to grant permission to appeal. Where an application is made to the

Court, the Rules provide for the following time limits to apply (subject to any particular provision in an enactment):

a. Except in leapfrog appeals, an application for permission to appeal must be filed within 28 days from the date of the order of the court below refusing permission to appeal.

b. In a case where permission to appeal is not required from the Court either because permission has been granted by the court below or because it is an appeal as of right, a notice of appeal must be filed within 42 days of the date of the order or decision of the court below: Rule 20. This period runs from the later of the order or decision of the court below against which the appellant appeals; or the order or decision of the court below granting permission to appeal, where such an order or decision has been made.

c. If an appellant has applied for public funding, the Registrar must be informed in writing within the original 28 or 42 day period that public funding has been applied for. The above periods may then be extended by the Registrar, having regard in particular to the promptness with which the party has made and the manner in which the party has pursued that application (see Rule 6(3)). The Registrar will carefully consider each case and recognises the importance of ensuring equal access to justice. It is expected that it will only be in exceptional cases that time limits will not be extended because of delays in obtaining public funding. The onus is on the parties seeking the extension of time to keep the Registry regularly updated as to the progress of their application for legal aid, and the Registry will assist with progressing the legal aid application where it can.

2.10 For time limits in leapfrog cases see paragraphs1.16 and 1.34 of Practice Direction 1.

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

2.12 The Justices or the Registrar may extend or shorten any time limit set by the Rules unless to do so would be contrary to any statutory provision (Rule 6). They may do so either on an application by one or both parties or without an application being made. An application for an extension of time may be granted after the time limit has expired.

Case name

2.13 Applications for permission to appeal and appeals carry the same title as in the court below. For reference purposes, the names of parties to the original proceedings

who are not parties to the appeal should nevertheless be included in the title: their names should be enclosed in square brackets. The names of all parties should be given in the same sequence as in the title used in the court below even if their roles are now reversed. If the party seeking to appeal to the Court was the unsuccessful respondent in the court below, the successful former appellant's (now proposed respondent's) name should still appear first in the case name with the description "(Respondent)" after it and the proposed appellant should appear below that described as "(Appellant)". The Registry staff will insert the case title of new cases into the portal, using the guidance in this Practice Direction.

2.14 Applications for permission to appeal and appeals in which trustees, executors etc. are parties are titled in the short form, for example Trustees of *John Black's Charity (Respondents) v. White (Appellant)*.

2.15 In any application or appeal concerning children or where in the court below the title used has concealed the identity of one or more parties to the proceedings, this fact should be clearly drawn to the attention of the Registry at the time of filing, so that the title adopted in the Supreme Court can take account of the need for anonymity. Applications involving children are normally given a title in the form *B (A Child).*

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

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

Service

2.18 Rule 8 sets out the rules governing service. Portal parties must serve documents on other portal parties via the portal. The only exception to this is for service of the application for permission to appeal and the notice of appeal, which must be served by non-portal service. The Portal Practice Direction explains how portal service works.

2.19 Non-portal parties must serve all other parties by way of non-portal service. Portal parties must also serve non-portal parties by way of non-portal service. Non-portal service can be carried out by any of the methods listed in Rule 8(3). Email can only be used as a method of non-portal service if the person to be served has agreed to accept service at that email address: Rule 8(3)(c). However, if the email address is one of those nominated on the portal by that party as one of the three accounts associated with that portal case file, then non-portal service can be effected where necessary by emailing a document to that email address. If a non-portal party is unable to use any of the specified methods for service, that party should contact the Registry for assistance.

2.20 A party may only use a delivery service for non-portal service if that delivery service provides for tracking and notifies the sender of the date on which the document is delivered to the addressee. A document served by a tracked delivery service is treated as served on the day on which it is delivered to the addressee, according to the notification provided by the delivery service to the sender (Rule 8(7)).

2.21 Non-portal service must take place within 7 days of a party filing the document or of the document being issued by the Court, whichever is the later (Rule 8(8)).

Supporting documents

2.22 See Practice Direction 3 for the documents which must be filed with an application for permission to appeal.

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

2.24 See Practice Direction 7 for guidance on documents which may need to be filed in support of a procedural application.

Fees and help with fees

2.25 The fees which are payable in the Court are prescribed by the Supreme Court Fees Order 2024 (SI 2024/148) ("the Fees Order"). Schedule 1 to the Fees Order sets out the fee that is payable for each procedural steps such as filing an application for permission to appeal, filing an application for permission to intervene and submitting a claim for costs. Rule 52 allows the Registrar to refuse to accept a document or to allow a party to take any step unless the relevant fee is paid.

2.26 In circumstances where a party would suffer financial hardship by the payment of fees, the requirement to pay fees may be waived. Schedule 2 to the Fees Order provides that fee remission depends on a person satisfying the disposable capital test and the gross monthly income test. The Schedule also explains how to calculate a person's disposable capital and gross monthly income. This process is referred to as "help with fees" or "fee remission".

2.27 The "help with fees" scheme is separate from legal aid or public funding. If a litigant has legal aid, then the Court's fees will be paid by the fund and the litigant does not need to apply for help with fees.

2.28 Para 14 of Schedule 2 to the Fees Order explains how to apply for remission of a fee. An application must be made at the time when the fee would otherwise be payable. It should be made using the form on the website. The litigant will need to upload the form and the documentary evidence in support of his or her application to the portal. The Court may then grant full or part remission of the relevant fee.

2.29 The fees payable in the Court are also set out in guidance on the Court's website.

2.30 Any fees paid will not be refunded, including where an application or other proceeding is withdrawn. Where an application for permission to appeal is declared inadmissible, the Registrar may authorise a refund of the fee paid.

Practice Direction 3: Applications for permission to appeal

General Information

3.1 Applications for permission to appeal should be commenced via the portal. The Portal Practice Direction explains how to use the portal. The Court has published guidance on its website called "Electronic papers" explaining the formatting requirements for documents to be uploaded to the portal.

3.2 Litigants in person should first use the online appeal eligibility checker accessible via the portal. This will help them determine whether an appeal lies to the Court. If it does, litigants in person are encouraged but not required to use the portal to commence their appeal. If litigants in person are not able to use the portal, they should contact the Registry which will assist them (see Practice Direction 2 for contact details).

3.3 Applications for permission to amend applications for permission to appeal are allowed where the Registrar is satisfied that this will assist the Appeal Panel and will not unfairly prejudice the respondents or cause undue delay. The application for permission to amend and the amendments must be served on the respondents (see paragraph 3.18).

3.4 If an application for permission to appeal:

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

b. seeks a declaration of incompatibility under the Human Rights Act 1998 or a strike down or incompatibility declarator under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;

c. asks the Court to depart from any assimilated case law or if the application relates to a decision where the court appealed from departed from any assimilated case law;

this should be stated clearly in the application and full details must be given.

3.5 The Supreme Court has not re-issued the House of Lords' Practice Statement of 26 July 1966 (Practice Statement (Judicial Precedent) [1966] 1 WLR 1234) which stated that the House of Lords would treat former decisions of the House as normally binding but that it would depart from a previous decision when it appeared right to do so. The Practice Statement is "part of the established jurisprudence relating to the conduct of appeals" and "has as much effect in [the Supreme] Court as it did before the Appellate Committee in the House of Lords": *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28 at paragraphs 24, 25.

Filing

3.6 Unless a party is a litigant in person, an application must be made on the portal and filed with the prescribed fee and supporting documents. For the relevant fee see the guidance on fees on the Court's website and Practice Direction 2.26 – 2.31.

3.7 An application for permission to appeal must be signed by the appellant or the appellant's legal representative. An electronic signature is acceptable. To comply with Rule 13(2), the appellant must upload the following documents via the portal at the time of making the application for permission to appeal:

a. the grounds of appeal for which the appellant seeks permission to appeal;

b. a precis of the factual background of the case, a chronology of proceedings and a record of how the courts below decided the issues raised by the proposed grounds of appeal;

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

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

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

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

3.8 The grounds of appeal should contain the appellant's formulation of the legal issue raised by each ground, a summary of the reasons why each ground has merit and why it raises an issue of general public importance justifying the grant of permission. The Court favours brevity and clarity. The grounds of appeal should not normally exceed 10 pages of A4 in size 12 font with 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left. The Registrar may reject any application where the grounds appear without adequate explanation (from counsel where instructed) to be excessive in length or where the application fails to identify the relevant issues. Irrespective of the outcome of the appeal, the costs of preparing a permission application which is considered to be unnecessarily long will not be recoverable. Applications which are not legible or which are not produced in the required format will not be accepted. Parties should bear in mind when preparing the precis of the factual background of the case that the judgments of the courts below will be available to the Justices and so do not need to be summarised.

3.9 Where issues that were considered and determined in the judgment of the court below are not being pursued on appeal, this should be made clear at the start of the precis and in the grounds of appeal. Where the applicant seeks permission to raise a ground of appeal which was not considered by the court below this should also be made clear at the start of the precis and the grounds should explain why the issue was not raised in the earlier proceeding and why the Court should consider the issue.

3.10 No other papers are required, although it would be useful for the Court if the parties also upload a copy of any unreported judgment cited in the application or in the judgment of the court below. Additional documents may not be accepted unless requested by the Appeal Panel. An appellant who wishes to provide documents other than those described above must give a detailed explanation as to why they are needed. The application for permission to appeal should include the neutral citation of the judgment appealed against, the references of any law report in the courts below, and subject matter catchwords for indexing (whether or not the case has been reported).

3.11 If the sealed version of the substantive order appealed against is not immediately available, the application should be filed within the required time limit with a draft of the order, and the sealed order filed as soon it is available. For the relevant time limits for filing an application for permission to appeal see paragraph 2.10 of Practice Direction 2.

3.12 In some cases, the appellant has been granted permission to appeal by the court below but wishes to apply to the Court for permission to appeal on additional grounds, either grounds for which permission was refused by the court below or new grounds that have not been raised before. In that situation, the appellant should file a notice of appeal under rule 20 in respect of the grounds for which permission was granted by the court below and also file a procedural application under rule 35 for permission to amend the notice of appeal to include the additional grounds. The appellant should not file an application for permission to appeal under rule 13. The procedure set out in rule 35(1) – (5) will then apply and the Court will determine whether permission to rely on the additional grounds should be granted.

Extensions of time

3.13 Where an appellant is unable to file the application within the time limit, an application for an extension of time must be made as part of the application for permission to appeal. The respondent's views on the extension of time should be sought and, if possible, those views should be recorded in the application. A prospective application for an extension of time for filing the permission to appeal application cannot be made even if it becomes clear to the litigant before the expiry of the 28 day time limit that it is not going to be possible to meet that deadline; the application should be made as part of the permission to appeal application. Respondents should bear in mind that under the Rules unnecessary disputes over procedural matters are discouraged. Respondents should not therefore oppose reasonable applications for extensions of time where an explanation is given.

3.14 A different procedure applies where the reason for the delay is that the appellant is waiting for a decision on an application for legal aid public funding. An appellant who has applied for public funding should notify the Court by logging on to the portal and clicking on the button "Ask a general question". This will enable the appellant to enter information about the case and the progress of the application for funding. This will in

turn enable the Registry to monitor the position and granted extensions of time as appropriate: see Rule 6(3) and paragraphs 2.10 and 2.13 of Practice Direction 2.

Issue

3.15 Once filed, the Registrar will review an application for permission to appeal. The Registrar may refuse to issue an application on the ground that (Rule 13(5)):

a. the Court does not have jurisdiction under section 40 of the Constitutional Reform Act 2005 to issue it;

b. it contains no reasonable grounds; or

c. it is an abuse of process.

3.16 Practice Direction 1 explains when the Court does and does not have jurisdiction under section 40 of the Constitutional Reform Act 2005.

3.17 Where the Registrar forms the provisional view that the appeal does not contain any reasonable grounds of appeal or that it would be an abuse of the process of the court to allow the appeal to go forward, the Registrar will notify the appellant of this and ask for submissions as to why permission should be granted before coming to a decision either to issue the application for permission or refuse permission. The Registrar may also ask the other proposed parties for their views.

3.18 Where the Registrar forms the view that the Court has no jurisdiction, she may ask for submissions from the Appellant or, if the position is clear, she may issue a decision refusing permission without asking for submissions.

Service

3.19 Once the application for permission has been issued by the Registry, the appellant must serve a copy of the application on every respondent and on any person who was an intervener in the court below. In accordance with Rule 14(2), service of the application must not be carried out through the portal and parties must use one of the non-portal methods specified in Rule 8(3). Appellants must bear in mind that according to Rule 8(8) the application must be served on the respondent within 7 days of being issued by the Court unless the Registrar has made a different direction. Further, the deemed date of service by first class post under the 2009 Rules has been removed so that the appellant must ensure that he or she uses a service method which enables him or her to prove when the application was served on the respondent. If the appellant uses a tracked delivery service, the appellant should consign the document to the courier promptly after it is issued to make sure that delivery to the respondent will take place within 7 days following the issue of the application by the Registry.

3.20 Once service has been carried out, the appellant must submit a declaration of service by completing the relevant pages on the portal. Alternatively, if the appellant is a non-portal party, he or she must file a certificate of service in accordance with Rule 8(5).

Objection by respondent

3.21 Each respondent who wishes to object to the application must, within 14 days after service, file notice of objection: Rule 15(1). This should be filed via the portal: see Portal Practice Direction. If a respondent is a litigant in person and is not able to use the portal, he or she should contact the Registry which will assist the respondent. For the relevant fee see the guidance on fees on the Court's website.

3.22 A notice of objection should:

a. set out briefly the reasons why permission to appeal should not be granted by reference to the threshold test for the grant of permission (see paragraph 3.31);

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

c. normally not exceed 5 pages of A4 size with size 12 font and 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left.

3.23 Once a notice of objection has been issued, the respondent must within 7 days serve a copy of the notice on the appellant, any other respondent and any person who was an intervener in the court below.

3.24 Where all the parties to the appeal are portal parties, service of the notice of objection must be effected through the portal: see the Portal Practice Direction. Where one of the parties is not a portal party, that party must be served by one of the methods specified in Rule 8(3). Parties should contact the registry to confirm how they will serve any non-portal parties. Respondents must bear in mind that according to Rule 8(8), the notice of objection must be served on the other parties within 7 days of being issued by the Court unless the Registrar has made a different direction. Further, the deemed date of service by first class post under the 2009 Rules has been removed so that the respondent must ensure that he or she uses a service method which enables him or her to prove when the application was served on the other parties. If the respondent uses a tracked delivery service, the respondent should consign the notice to the courier promptly after it is issued to make sure that delivery will take place within 7 days following the issue of the notice of objection by the Registry.

Anonymity and reporting restrictions

3.25 When the appellant completes the application for permission to appeal on the portal, he or she will be able to indicate whether an anonymity order is sought either for the appellant or for the opposing party to prevent the identification of that party. If the request for an anonymity order is made as part of the application for permission, there is no need for the requesting party to apply separately for an anonymity order and no additional fee is payable. It is important that the Registry is alerted as early as possible that either or both of the parties requires anonymity since a summary of the case will be placed on the Court's website promptly after the application is issued by the Registry. The request should also make clear whether the opposing party consents to the making of the order. If the opposing party objects to the making of the order, a summary of the reasons given for that objection should be included in the request. The parties should always inform the Registry if such an order has been made in the proceedings by a court below. In such cases the Registrar will then usually make a further order imposing reporting restrictions.

3.26 If an anonymity order is not requested as part of the application for permission, an application for such an order must be made to the Court by the party seeking anonymity and any objections to the making of such an order should be made via the portal as soon as possible after filing that application. In that situation, a separate application must be made by the person seeking anonymity and the appropriate fee must be paid.

3.27 In any application concerning children, the parties should consider whether it would be appropriate to apply for the Court to make an order under section 39 of the Children and Young Persons Act 1933 (reporting restrictions) (which was extended to Scotland by the Children and Young Persons (Scotland) Act 1963, s 57(3)).

3.28 Paragraphs 3.24 to 3.26 also apply to a request for an order under section 4 of the Contempt of Court Act 1981 (contemporary reports of proceedings).

Consideration on the documents

3.29 Applications for permission to appeal are considered by an Appeal Panel, consisting of three Justices. Applications are generally decided without a hearing.

3.30 The Appeal Panel decides first whether an application for permission to appeal is admissible (that is, whether the Court has jurisdiction to entertain the appeal). The Court's jurisdiction is summarised in Practice Direction 1. If the Appeal Panel determines that an application is inadmissible, it will refuse permission on that ground alone and not consider the content of the application. The Appeal Panel will provide short reasons for deciding that the application is inadmissible.

3.31 If the Appeal Panel decides that an application is admissible, Rule 17 provides that the Panel may then:

a. grant or refuse permission (see paragraph 3.32);

b. invite the parties to file written submissions as to the grant of permission on terms whether as to costs or otherwise (see paragraphs 3.33 - 3.35);

c. direct an oral hearing (see paragraphs 3.39 - 3.41).

3.32 Permission to appeal is granted for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Court at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal. An application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground. The Appeal Panel gives brief reasons for refusing permission to appeal. The reasons given for refusing permission to appeal should not be regarded as having any value as a precedent.

Further Submissions

3.33 As explained at paragraph 3.21, respondents may submit written objections giving their reasons why permission to appeal should be refused when they file a notice of objection in accordance with Rule 15. Exceptionally a respondent may be asked to file more fully reasoned objections by the Appeal Panel. In such circumstances further objections should be filed within 14 days of any invitation by the Appeal Panel to do so or such period as the Panel directs.

3.34 In certain circumstances the Appeal Panel may invite further submissions from the appellant in the light of the respondents' objections, but appellants are not otherwise permitted to comment on respondents' objections. Where the Appeal Panel proposes terms for granting permission, paragraph 3.37 applies.

3.35 Parties who are unable to meet the deadlines set out above must apply for an extension of time on the portal (unless they are non-portal parties, in which case they should contact the Registry).

Permission refused

3.36 If the Appeal Panel decides that permission should be refused, the parties are notified that the application is refused, and they can download a copy of the order recording the Panel's decision from the portal. There is no further right to appeal or review a refusal of permission to appeal by the Appeal Panel, and there is no right to request an oral hearing or fuller reasons.

Permission given outright

3.37 If the Appeal Panel decides that an appeal should be entertained without the need for any further submissions on the question of leave, it grants permission outright and

the parties can download a copy of the order recording the Panel's decision from the portal.

Permission given on terms

3.38 If the Appeal Panel is considering granting permission to appeal on terms, the Panel will propose the terms, and the parties have the right to make submissions on the proposed terms within 14 days of the date of the Panel's proposal. The Panel will then decide whether to grant permission (unconditionally or on terms). Prospective appellants who are granted permission to appeal subject to terms that they are unwilling to accept may decline to pursue the appeal. In an application for permission to appeal under the "leapfrog" procedure (see paragraphs 3.53 to 3.67, and Practice Direction 1, paras 1.3-1.35), prospective appellants who decline to proceed on the basis of the terms proposed by the Appeal Panel may instead pursue an appeal to the Court of Appeal in the usual way (see *Ceredigion County Council v Jones and others* [2007] UKHL 24).

Application referred for oral hearing

3.39 The Appeal Panel may direct that an application for permission to appeal is referred for an oral hearing. The Panel may direct the parties to make written submissions in advance as appropriate and will specify the time within which any such submissions should be filed and served on the other parties.

3.40 When an application is referred for an oral hearing, the appellant and all respondents who have filed notice of objection under Rule 15 are notified of the date of the hearing before the Appeal Panel. Parties may be heard before the Panel by counsel, by solicitor, or in person. If counsel are briefed, solicitors should ensure that the Registry is notified of their names. Only a junior counsel's fee is allowed on assessment (see Practice Direction 13).

3.41 Oral permission hearings usually last for 30 minutes. The Appeal Panel will normally give its decision orally at the end of the hearing and an order recording the decision will be available to be downloaded by the parties from the portal.

Interventions in applications for permission to appeal

3.42 Any person who was not a party in the proceedings below (and in particular (i) any official body or non-governmental organisation who seeks to make submissions in the public interest or (ii) any person with an interest in proceedings by way of judicial review) may make written submissions asking the Court to grant or dismiss an application for permission to appeal (see Rule 16). These submissions must be filed on the portal: see the Portal Practice Direction. Submissions should normally not exceed 5 pages of A4, with size 12 font and 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left.

3.43 Once the submissions are filed, a copy must be served on the appellant, every respondent and any person who was an intervener in the court below.

3.44 Any submissions which are made are referred to the Appeal Panel. Where the panel decides to take the submissions into account and grants permission to appeal, the person making them will be notified. If permission to appeal is granted, a formal application must be made under Rule 24 if the intervener wishes to intervene in the appeal. See Practice Direction 4 (Appellants, respondents and interveners).

Orders

3.45 The appellant, all respondents who have filed notice of objection under Rule 15 and any person who made intervener submissions under Rule 16 will be able to download from the portal a copy of the order sealed by the Registrar which records the Panel's decision.

3.46 The appellant must notify any person who was an intervener in the court below and who did not make submissions under rule 16 of the outcome of the permission to appeal decision (Rule 17(6)(b)).

Expedition

3.47 Once the application for permission to appeal has been issued, the Registry aims for a decision on permission to appeal within 20 weeks (excluding any oral hearing). In cases involving genuine urgency, which would usually involve the liberty of the subject, urgent medical intervention or the well-being of children (see for example paragraph 3.48), a request for expedition may be made under Rule 34. The request should be made in the application for permission to appeal. Please note that the Registrar and the Court will not be minded to grant any expedition application where there is no genuine case for urgency.

Expedited hearing of proceedings under the Hague Convention etc

3.48 The Convention on the Civil Aspects of International Child Abduction (the Hague Convention) deals with the wrongful removal and retention of children from their habitual country of residence. In the Court an expedited timetable applies if the Convention is engaged. The parties must therefore inform the Registrar that the proceedings fall under the Convention. The Court normally gives judgment within six weeks of the commencement of proceedings, but this can only be achieved with the fullest co-operation of the parties.

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

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

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

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

3.50 In order to achieve the above timetable, the Court will set aside or vary the time limits and practice directions that normally apply to applications and appeals. Abridged procedures and special rules for the production of documents are applied to meet the circumstances of each application and appeal. The following timetable for the production of documents is therefore indicative only:

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

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

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

d. the key documents (if required) and the main hearing bundle are filed within 17 days of the decision to grant permission to appeal (or, if the relevant day falls on a Saturday or Sunday, the following Monday).

Costs

3.51 For the costs associated with permission to appeal applications, see Practice Direction 13.

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

Withdrawal of application for permission to appeal

3.53 Withdrawal of an application for permission to appeal is dealt with in paragraph 8.8 of Practice Direction 8.

Leapfrog appeals

3.54 In certain cases an appeal lies direct to the Court (see Practice Direction 1). A certificate must first be obtained and the permission of the Supreme Court then given before the appeal may proceed.

3.55 An application for a judge's certificate for a leapfrog appeal may be made by any of the parties to any civil proceedings in the High Court before a single judge or before a Divisional Court. The application should be made immediately after the trial judge gives judgment in the proceedings or, if no such application is made, within 14 days from the date on which judgment was given. A certificate will be granted only if the relevant statutory conditions are fulfilled.

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

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

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

3.59 No appeal lies against the grant or refusal of a certificate, but if a certificate is refused the applicant may appeal to the Court of Appeal from the High Court's decision in the normal way, once the time for applying for a certificate has expired, in accordance with the relevant statutory provisions, see for example section 13(5) of the Administration of Justice Act 1960.

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

3.61 One copy of the judge's certificate must be filed with the application. The application should indicate under what provision the judge's leapfrog certificate was granted.

3.62 The following additional papers must be filed with the application:

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

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

c. a copy of the transcript of the judgment being appealed.

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

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

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

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

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

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

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

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

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

3.66 The appellant, all respondents who have filed notice of objection under Rule 15 and any person who made intervener submissions under Rule 16 can download a copy of the order sealed by the Registrar which records the Panel's decision.

3.67 If the Panel grants permission to bring a leapfrog appeal direct to the Court without imposing terms, no additional appeal from the decision of the judge lies to the Court of Appeal even if there are grounds which are not covered by the leapfrog certificate: see *Ceredigion County Council v Jones and others* [2007] UKHL 24. The appeal is brought in accordance with Practice Direction 4 and the usual requirements apply. However, an appeal does lie to the Court of Appeal from the judge's decision:

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

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

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

Habeas corpus

3.69 In criminal proceedings, an appeal against a refusal to grant habeas corpus lies from the High Court to the Court at the instance of the defendant or prosecutor with the permission either of the High Court or the Court. No certificate is required from the High Court stating that a point of law of general public importance is involved.

3.70 In civil proceedings, including family proceedings for release relating to a minor, an appeal against a refusal to grant habeas corpus lies from the Court of Appeal (Civil Division) to the Supreme Court with no requirement for permission.

Practice Direction 4: Appellants, Respondents and Interveners

Notice of intention to proceed

4.1 Where permission to appeal is granted by the Court, the application for permission to appeal will stand as the notice of appeal and the grounds of appeal are limited to those on which permission has been granted: Rule 19. The appellant must, within 14 days of the grant by the Court of permission to appeal, file notice under Rule 19(1)(c) that he or she wishes to proceed with the appeal and must pay the relevant fee. Where the appellant is a portal party the appellant will be able to log in to the case file from his or her account and the portal will offer the appellant the option of filing this notice and enable the appellant to enter the necessary information. If the respondent is a portal party, service of the notice of intention to proceed for this purpose will take place automatically, see Rule 8(1) and the Portal Practice Direction.

4.2 If notice of intention to proceed is not given in time, an application for an extension of time must be made before proceeding with giving the notice of intention to proceed.

4.3 Where permission to appeal to the Supreme Court has been granted by the court below or where there is an appeal to the Court as of right, an appellant must file a notice of appeal rather than filing a notice of intention to proceed. In some cases, the appellant has been granted permission to appeal by the court below but wishes to apply to the Court for permission to appeal on additional grounds, either grounds for which permission was refused by the court below or new grounds that have not been raised before. In that situation the appellant should file a notice of appeal under rule 20 in respect of the grounds for which permission was granted by the court below and also file a procedural application under rule 35 for permission to amend the notice of appeal to include the additional grounds. The procedure set out in rule 35(1) – (5) will then apply and the Court will determine whether permission to rely on the additional grounds should be granted.

Filing and issue of notice of appeal under Rule 20

4.4 Where permission to appeal has been granted by the court below or where there is an appeal as of right to the Court, a notice of appeal must be filed via the portal. For further information regarding the portal, see the Portal Practice Direction. The Court has also published guidance called “Electronic papers” available on the website. This explains the formatting requirements for documents to be uploaded to the portal. A party who is not legally represented and who does not wish to use the portal should contact the Registry for assistance. Parties may consult the Registry at any stage of preparation of the notice. Amendments to the grounds of appeal contained in the notice are allowed where the Registrar is satisfied that this will assist the Court and will not unfairly prejudice the respondents or cause undue delay.

4.5 The appellant must upload the documents listed in rule 20(4). The notice of appeal should also include both the neutral citation of the judgment appealed against, and the citation in any law report of the judgment in the court below under appeal, and subject matter catchwords for indexing (whether or not the case has been reported).

4.6 An appellant must clearly state in the notice and provide full details if he or she proposes to:

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

b. seek a declaration of incompatibility under the Human Rights Act 1998 or a strike down or incompatibility declarator under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024; or

c. ask the Court to depart from any assimilated case law or the appeal relates to a decision where the court appealed from departed from any assimilated case law.

4.7 The Supreme Court has not re-issued the House of Lords' Practice Statement of 26 July 1966 (Practice Statement (Judicial Precedent) [1966] 1 WLR 1234) which stated that the House of Lords would treat former decisions of the House as normally binding but that it would depart from a previous decision when it appeared right to do so. The Practice Statement is "part of the established jurisprudence relating to the conduct of appeals" and "has as much effect in [the Supreme] Court as it did before the Appellate Committee in the House of Lords": *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28 at paragraphs 24, 25.

Timing of notice of appeal under Rule 20

4.8 Subject to contrary provision made in any enactment, a notice of appeal under rule 20 must be filed within 42 days of the later of: (a) the order or decision of the court below against which the appellant appeals; or (b) the order or decision of the court below granting permission to appeal, where such an order or decision has been made (see rule 20). However, this time limit may be varied by the Court under Rule 6. For other relevant time limits see Practice Direction 2.

4.9 If the sealed order appealed from is not immediately available, the notice of appeal should be filed without delay and the order filed as soon as it is available. A draft copy of the order should be provided until the sealed copy is available.

Service of notice of appeal

4.10 Once the notice of appeal has been issued by the Registry, the appellant must serve a copy of the notice on every respondent and on any person who was an intervener in the court below. In accordance with Rule 21(2), service of the notice cannot be carried

out through the portal and parties must use one of the methods specified in Rule 8(3). Appellants must bear in mind that according to Rule 8(8) the notice must be served on the respondent within 7 days of being issued by the Court unless the Registrar has made a different direction. Further, the deemed date of service by first class post under the 2009 Rules has been removed so that the appellant must ensure that he or she uses a service method which enables the appellant to prove when the notice of appeal was served on the respondent. If the appellant uses a tracked delivery service, the appellant should consign the notice to the courier promptly after it is issued to make sure that delivery to the respondent will take place within 7 days following the issue of the notice by the Registry.

4.11 Once service has been carried out, the appellant must submit a declaration of service by completing the relevant pages on the portal. Alternatively, if the appellant is a non-portal party, the appellant must file a certificate of service in accordance with Rule 8(5).

Case name

4.12 See paragraph 2.14 of Practice Direction 2 for information regarding case titles.

Anonymity and reporting restrictions

4.13 In an appeal where permission is not needed from the Court, an appellant who files a notice of appeal under Rule 20 will be able to indicate whether an anonymity order is sought either for the appellant or for the opposing party to prevent the identification of that party. If the request for an anonymity order is made at the same time as the notice to appeal is filed, there is no need for the requesting party to apply separately for an anonymity order and no additional fee is payable. It is important that the Registry is alerted as early as possible that either or both of the parties requires anonymity since a summary of the case will be placed on the Court's website promptly after the notice of appeal is issued by the Registry. The request should also make clear whether the opposing party consents to the making of the order. If the opposing party objects to the making of the order, a summary of the reasons given for that objection should be included in the request. The parties should always inform the Registry if such an order has been made in the proceedings by a court below. In such cases the Registrar will then usually make a further order imposing reporting restrictions.

4.14 If an anonymity order is not requested at the time the notice of appeal is filed, an application for such an order must be made to the Court by the party seeking anonymity and any objections to the making of such an order should be made via the portal as soon as possible after filing the notice of appeal. In that situation, a separate application must be made by the person seeking anonymity and the appropriate fee must be paid.

4.15 In any appeal concerning children, the parties should consider whether it would be appropriate for the Court to make an order under section 39 of the Children and

Young Persons Act 1933 (reporting restrictions) (which was extended to Scotland by the Children and Young Persons (Scotland) Act 1963, s 57(3)).

4.16 Paragraphs 4.13 - 4.15 also apply to a request for an order under section 4 of the Contempt of Court Act 1981 (contemporary reports of proceedings).

Human Rights Act 1998

4.17 Where an appellant or a respondent seeks a declaration of incompatibility or seeks to challenge an act of a public authority under the Human Rights Act 1998, the appropriate section of the page on the portal must be completed. The appellant should set out briefly in the notice the arguments involved and state whether the point was taken below. The Crown has a right to be joined as a party to the appeal where a question of incompatibility is raised (see Rule 43 and Practice Direction 9).

Assimilated case law and references to the European Court

4.18 Rule 25 anticipates the coming into force of section 6 of the Retained EU Law (Revocation and Reform) Act 2023 ("REUL 2023"). That section will insert a new section 6C into the European Union (Withdrawal) Act 2018 ("the EU Withdrawal Act"). The existing provisions of the EU Withdrawal Act empower the Court to depart from assimilated case law, which includes any decisions of the Court of Justice of the European Union prior to Brexit, if certain criteria are met. When section 6C comes into force, the Court will come under a duty to notify the UK law officers and other officers specified in section 6C(2) that the Court is considering an argument made by a party that the Court should depart from assimilated case law. An officer notified by the Court under this provision can then give notice that such officers wish to be joined to the proceedings. As and when section 6 of REUL 2023 is commenced and some or all of sections 6A, 6B and 6C of the EU Withdrawal Act come into force, the Court will reissue Practice Direction 11 to give guidance as appropriate.

4.19 The fact that section 6C is not yet in force does not prevent the Law Officers from applying to intervene in proceedings in which the parties raise a point of assimilated law or in which the parties ask the Court to depart from assimilated law. The Law Officers can make an application under Rule 24 and should contact the Registry if they wish to do so.

4.20 Section 6D was inserted into the EU Withdrawal Act by section 8 of REUL 2023 and that provision was commenced as from 1 January 2024: see the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No.1) Regulations 2023 (SI 2023/1363). That provides for the making of "incompatibility orders" where the Court decides in the course of any proceedings that specified legislative provisions or enactments are incompatible with and subject to section 5(A2)(b) or section 7(1) of REUL 2023.

4.21 The Court's power to refer questions to the Court of Justice of the European Union has largely been removed as a result of Brexit. However, there are a few residual circumstances in which the Court still has power to refer a question to the Court in Luxembourg under (a) the agreement which governed the withdrawal of the United Kingdom from the European Union and (b) under the Protocol making arrangements for Ireland and Northern Ireland. If an appellant seeks a reference to the Court of Justice of the European Union, this should be stated clearly in the notice of appeal and special provisions apply: see Rule 45 and Practice Direction 11. The appellant must also notify the Registrar via the portal.

Extensions of time for notice of appeal

4.22 Where an appellant is unable to file a notice of appeal within the relevant time limit, an application for an extension of time must be made as part of the notice of appeal in the portal. The respondent's views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. A prospective application for an extension of time for filing the permission to appeal application cannot be made even if it becomes clear before the expiry of the 28 day time limit that it is not going to be possible to meet that deadline; the application for an extension of time to the date of filing should be made as part of the permission to appeal application. Respondents should bear in mind that under the Rules unnecessary disputes over procedural matters are discouraged. Respondents should not therefore oppose reasonable applications for extensions of time where an explanation is given.

4.23 A different procedure applies where the reason for the delay is that the appellant is waiting for a decision on an application for legal aid public funding. An appellant who has applied for public funding should notify the Court by logging on to the portal and clicking on the button "Ask a general question". This will enable the appellant to enter information about the case and the progress of the application for funding. This will in turn enable the Registry to monitor the position and granted extensions of time as appropriate: see Rule 6(3) and paragraph 2.10 of Practice Direction 2.

4.24 The application for an extension of time will be referred to the Registrar and, if it is granted, the appellant must comply with Rule 20 and the other requirements set out in this Practice Direction.

Fees

4.25 For the fees payable on filing a notice of appeal and on filing notice to proceed under Rule 19 see the guidance on fees on the Court's website and Practice Direction 2 paragraphs 2.26-2.31.

Acknowledgement by respondent

4.26 Each respondent who intends to participate in the appeal must, within 14 days after receipt of the notice of intention to proceed under Rule 19(2) or of the notice of appeal under Rule 21(2), file notice of intention to participate.

4.27 The notice must be filed via the portal with the prescribed fee. Respondents who are litigants in person and who do not wish to use the portal should contact the Registry which will assist them.

4.28 A respondent must within 7 days of filing the notice serve the notice on the appellant and any other respondent (Rule 22). If the respondent is a portal party, service for this purpose will take place automatically, see Rule 8(1) and the Portal Practice Direction. A respondent who does not give notice under Rule 22 will not be permitted to participate in the appeal and will not be given notice of its progress: Rule 22(5). An order for costs will not be made in favour of a respondent who has not given notice.

Security for costs

4.29 Orders for security for costs under Rule 39 will be sparingly made but the Court may, on the application of a respondent, order an appellant to give security for the costs of the appeal. Any order for security will specify the amount of that security and the manner in which, and the time within which, security must be given.

4.30 An application for security should be made in the portal as a procedural application. An order made under Rule 39 may require that payment of the judgment debt (and costs) in the court below is made instead of, or in addition to, the amount ordered by way of security for costs. Failure to provide security as required will result in the appeal being struck out by the Registrar although the appellant may apply to reinstate the appeal.

4.31 For payment of security for costs see paragraph 8.15 of Practice Direction 8.

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

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

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

c. a Minister or Government department.

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

Expedition

4.34 In cases involving the liberty of the subject, urgent medical intervention or the well-being of children (see paragraph 3.47 of Practice Direction 3), a request for

expedition may be made to the Registrar (see Rule 34). Wherever possible the views of all parties should be obtained before a request for an expedited hearing is made. Please note that the Registrar and the Court will not be minded to grant any expedition application where there is no genuine case for urgency.

Cross appeals

4.35 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 22(3)). A respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal except in cases where "leave is required from the Court of Session for an appeal from that court or… an appeal lies… as of right": Rule 23(1). Except in those cases, applications for permission to cross-appeal should be made by respondents via the portal. In determining whether a cross-appeal is or is not needed, the Court will apply the principles that were explained in *Wolff v Trinity Logistics* [2019] 1 WLR 3997 and *Braceurself Ltd v NHS England* [2023] EWCA Civ 837.

4.36 Where permission to cross-appeal is required, an application for permission to cross-appeal may only be filed after permission to appeal has been granted to the original applicant for permission to appeal. The application for permission to cross-appeal must be filed within 14 days of the respondent filing a notice of acknowledgement under Rule 22 The application for permission to cross-appeal must be made by opening a new case file in the portal; it cannot be made in the case file opened by the original appellant. See the Portal Practice Direction for more guidance.

4.37 Where permission to cross-appeal is granted by the Court, the application for permission to cross-appeal will stand as the notice of appeal and the cross-appellant must then give notice of intention to proceed and pay the prescribed fee and comply with Rule 19.

4.38 If permission to cross-appeal is not required, for example, because permission was granted by the court below, the notice of cross-appeal must be filed with the prescribed fee within 42 days of the grant by the Court of permission to appeal or the filing of the notice of appeal.

4.39 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.

4.40 A cross-appeal may be presented out of time in accordance with paragraph 4.22 above.

4.41 There must be a single statement of facts and issues, key documents bundle and main hearing bundle in respect of both the appeal and the cross-appeal. The original appellant remains responsible for their production and filing.

4.42 The parties should liaise with each other as to the best way to present arguments in the appeal and cross-appeal in their written cases. In many cases it will be possible and preferable for each side to file a single written case dealing with the grounds of the appeal and cross-appeal together. If, in order to do so, it is necessary for the written case to exceed the maximum page limit (as to which see Practice Direction 5.9), the parties should apply to the Court for an extension of the page limit rather than file two written cases.

4.43 In a cross-appeal, the case on the original appeal must be filed by the original appellant 8 weeks before the hearing. The cross-appellants' case for the cross-appeal and their response to the appellant's appeal must be filed 6 weeks before the hearing. The original appellants/cross-respondents may reply to the case for the cross-appeal in their case filed in the bundle.

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

Intervention

4.45 A person who is not a party to an appeal may apply in accordance with Rule 24 for permission to intervene in the appeal. This includes a person who made submissions at PTA stage under Rule 16; such persons are not automatically permitted to intervene in the appeal and must make an application if they wish to do so.

4.46 An application to intervene should be made on the portal and should state whether permission is sought for both oral and written interventions or for written intervention only. The application is made in a separate case file from the portal case file used for by the principal parties to the appeal but the case files will be linked by the Registry: see the Portal Practice Direction for further guidance. Before making the application, the applicant must send the proposed application to the appellants and respondents in the appeal and ask them whether they consent to the intervention or not. The application when filed with the Court must confirm that the other parties have been notified of the proposed intervention and must also record their response. The application should be filed with the prescribed fee. Where an application to intervene is made in several linked cases, one application and fee is sufficient and should be made in the portal against the lowest numerical case reference of the linked cases. Once the application is filed, it must then be served in its final form on the other parties to the appeal by non-portal service.

4.47 The application should explain the intervener's interest in the proceedings, and any prejudice which the intervener would suffer if the application were refused. It should

summarise the submissions to be advanced if permission is given and explain why those submissions will be useful to the Court and how they will differ from the submissions of the parties. Interventions will be allowed in writing only, unless compelling reasons are shown for the allowance of oral intervention. If permission is sought for oral submissions on behalf of the intervener, the application should explain why oral intervention is necessary in addition to written intervention. If an intervener wishes to support the submissions to the Court with a witness statement and exhibits, permission to do so must first be obtained from the Court. The applicant for intervention will not be given access to the portal case file at the time of drafting and filing an application to intervene. If necessary, the applicant for intervention should liaise with the parties if he or she needs to see documents which are not in the public domain to prepare the application.

4.48 Applications for permission to intervene should be filed at the earliest opportunity after permission to appeal is granted by the Court or after the notice of appeal has been issued by the Registry. The application should be made no later than 10 weeks before the hearing unless there are particular circumstances that prevent this. Failure to meet this deadline may increase the burden on the parties in preparing their cases and the hearing bundles and may delay the hearing of the appeal. The Court will wish to consider all the applications to intervene at one time and the Registrar will group applications together and refer them to members of the Court as a group. Strict adherence to the time limit for filing is therefore necessary.

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

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

> "2. It may however be of some assistance in future cases if I comment on the intervention by the Northern Ireland Human Rights Commission. In recent years the House has frequently been assisted by the submissions of statutory bodies and non-governmental organisations on questions of general public importance. Leave is given to such bodies to intervene and make submissions, usually in writing but sometimes orally from the bar, in the expectation that their fund of knowledge or particular point of view will enable them to provide the House with a more rounded picture than it would otherwise obtain. The House is grateful to such bodies for their help.
>
> 3. An intervention is however of no assistance if it merely repeats points which the appellant or respondent has already made. An intervener will have had sight of

their printed cases and, if it has nothing to add, should not add anything. It is not the role of an intervener to be an additional counsel for one of the parties. This is particularly important in the case of an oral intervention. I am bound to say that in this appeal the oral submissions on behalf of the NIHRC only repeated in rather more emphatic terms the points which had already been quite adequately argued by counsel for the appellant. In future, I hope that interveners will avoid unnecessarily taking up the time of the House in this way."

4.51 If oral intervention is allowed, the time allocated to an intervener will normally come out of the time allowed to the party with whose case the intervener's submissions are aligned. In considering applications to intervene, the Court will be mindful of the need to maintain a balance between the arguments before it, and the importance of the appearance, as well as the reality, of an equality of arms.

4.52 If permission to intervene is given, the intervener's separate portal file will be closed and the intervener will be added as a party to the case file for the appeal and, if necessary, the case file for the cross-appeal. Subject to any confidentiality restrictions in place, the intervener will at that stage have access to all the documents on the case file and to correspondence passing via the case communication channel on the portal.

4.53 The intervener's written submissions must be filed and served on the portal at least six weeks before the hearing. They should normally not exceed 20 pages of A4 size in size 12 font with 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left, inclusive of any supplementary documents, other than authorities. Permission should be sought if that limit is to be exceeded.

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

4.55 All counsel instructed on behalf of an intervener with permission to address the Court should attend the hearing unless specifically excused. Subject to the discretion of the Court, interveners bear their own costs and any additional costs to the appellants and respondents resulting from an intervention are costs in the appeal. Orders for costs "will not normally be made either in favour of or against interveners but such orders may be made if the Court considers it just to do so (in particular if an intervener has in substance acted as the sole or principal appellant or respondent)": Rule 53(3).

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

4.57 No permission to intervene is required for an intervention by the Crown under section 5 of the Human Rights Act 1998 or for an intervention by a person who has a right to intervene conferred by the legislation referred to in Rule 44 (Rule 24). However, apart from that, the guidance above applies to such interveners as it applies to interveners who have been granted permission unless the Court otherwise directs.

Intervention on assimilated case law by law officers

4.58 Rule 25 will come into operation when section 6C of the European Union (Withdrawal) Act 2018 (to be inserted by section 6 of the Retained EU Law (Revocation and Reform) Act 2023) is commenced. See paras 4.18 – 4.21 above and Practice Direction 11.

Specialist advisers and advocates to the Court

4.59 For a request for a specialist adviser or an advocate to the Court to be appointed in an appeal see paragraphs 8.27 - 8.29 of Practice Direction 8.

Practice Direction 5: Documents for the appeal hearing

Overview

5.1 The Supreme Court has moved to a system under which the vast majority of the documents filed are to be provided in electronic form only via the portal (see the Portal Practice Direction for further details). The only exception to this is the key document bundle, which is required for the appeal hearing and which must be made available both in electronic form and as hard copy (see paragraphs 5.20 - 5.22 below). The Court has published Guidance called "Electronic papers" on the Guidance section of the website. This gives litigants the up to date requirements for the presentation of documents for proceedings before the Court.

5.2 In most cases which are listed for a hearing, all parties to the appeal will have legal representation. This Practice Direction assumes that parties are represented and are therefore using the portal. The Registry will assist unrepresented litigant to find pro bono representation where possible. In the event that a party fails to find representation and does not wish to use the portal, that party should contact the Registry who will give appropriate instructions regarding filing and service of documents for the appeal.

5.3 The appellants must provide:

Document	***Via Portal***	***In hard copy?***
Statement of facts and issues	112 days after filing of the notice of intention to proceed or the issue of the notice of appeal	Not required
Written Case	No later than eight weeks before the hearing	Not required
Key documents bundle	No later than four weeks before the appeal hearing	Yes One for each member of the constitution plus one spare.
Main hearing Bundle	No later than four weeks before the appeal hearing	Not required

5.4 The respondents and interveners must provide:

Document	***Via Portal***	***In hard copy?***
Written Case	No later than six weeks before the hearing	Not required

Statements of Facts and Issues

5.5 The appellant must file a statement of the relevant facts and issues within 112 days after the filing of the notice of intention to proceed under Rule 19(1) or the issue of the notice of appeal under Rule 20(5) (Rule 27).

5.6 The statement of facts and issues must be a single document in electronic form. It is drafted initially by the appellant but its contents must be agreed with every respondent. The statement of facts and issues is a neutral document and is not to be used to argue a party's case. It is the professional duty of the parties' legal representatives to co-operate to produce the statement. The statement must set out the relevant facts and, if the parties cannot agree as to any matter, the statement should make clear what items are disputed. It is usually helpful for it to contain a chronology with a list of the key dates, which should be set out in an annex. This should incorporate the dates that were included in the chronology of proceedings filed under Rule 13(4)(e) or Rule 20(4)(e). The statement should provide the citations in each law report in which the judgments of the courts below in the proceedings have been reported and should state the duration of the proceedings below. It should be signed by counsel for all parties. Electronic signature is acceptable.

5.7 Appellants who are unable to complete the preparation of the statement within the time limit may apply to the Registrar for an extension of that time under Rule 6. Any application must be made via the portal as a procedural application and should provide good reason(s) why an extension is needed. The Registrar may grant an application for an extension of time, provided that it does not prejudice the preparation for the hearing or its proposed date. The time limits provided by the Rules are, however, generous and applicants for an extension of time must set out in some detail why they are unable to comply with any relevant time limit.

5.8 Respondents are expected not to withhold unreasonably their consent to an application for an extension of time. Appellants are advised to communicate the views of respondents to the Registry since, if they raise no objection, the application may be dealt with more speedily.

Appellants', Respondents' and Interveners' cases

5.9 The case is the statement of a party's argument in the appeal. The Court favours brevity and a case should be a concise summary of the submissions to be developed. A case must be in electronic form and should not (without permission of the Court) exceed 50 pages of A4 size and in most cases fewer than 50 pages will be sufficient. Cases in excess of 50 pages will not be accepted unless permission to file a longer case has been sought and obtained. Any such application should be made not less than 14 days before the case is due to be filed. The page limit includes footnotes, which should be brief and should not contain substantive argument. In addition to the page limit, the following formatting is required for written cases: Font size 12; 1.5 line spacing; margins of at least

2.54 cm top, bottom, right and left, numbered paragraphs; and signature and name of Counsel to appear at the end (an electronic signature is acceptable). Where there is both an appeal and a cross-appeal, the parties should liaise with each other as to how best to present the arguments. It is preferable for a single written case to be provided by each side dealing with all arguments to be heard by the Court.

5.10 The case should be confined to the heads of argument that counsel propose to submit at the hearing and should not repeat material contained in the statement of facts and issues. If either party is abandoning any point taken in the courts below, this should be made plain in that party's case. If the party intends to apply in the course of the hearing for permission to introduce a point in support of one of the grounds of appeal for which the party has permission which is a new point which was not argued below, this should also be indicated in the party's case and the Registrar informed.

5.11 If a party wishes to introduce fresh evidence in support of an argument before the Court, an application must be made by filing a procedural application in the Portal for permission to adduce the fresh evidence (see Practice Direction 7 for applications). The reasons in support of the grant of permission can be included either in the procedural application or in the written case. The party should make clear whether it is important for a decision to be taken on this before the hearing or whether it can be considered and determined as part of the hearing of the appeal.

5.12 If a party intends to invite the Court to depart from one of its own decisions or from a decision of the House of Lords, this intention must be clearly stated in a separate paragraph of that party's 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 party's case.

5.13 An intervener's case must supplement rather than repeat the submissions of the party whose case it is supporting. Interveners must liaise with that party to ensure there is no duplication. The intervener's case must also not invite the Court to consider or determine issues which are not going to be raised by one of the parties at the hearing. If the relevant party wishes to abandon a point, it is not open to an intervener to keep that point within the appeal (See Practice Direction 4, paragraph 4.53 for additional requirements).

5.14 Transcripts of unreported judgments should only be cited when they contain an authoritative statement of a relevant principle of law not to be found in a reported case or when they are necessary for the understanding of some other authority.

5.15 All cases must conclude with a numbered summary of the reasons upon which the argument is founded and must bear the signature of at least one counsel for each

party to the appeal who has appeared in the court below or who will be briefed for the hearing before the Court.

5.16 Parties whose interests in the appeal are passive (for example, stakeholders, trustees, executors, etc.) are not required to file a separate case but should ensure that their position is explained in one of the cases filed.

Filing and exchange of written cases

5.17 No later than eight weeks before the proposed date of the hearing, the appellants must upload their written cases on the portal.

5.18 No later than six weeks before the proposed date of the hearing, the respondents must upload their written case on to the portal, as must any other party filing a case (for example, an intervener or advocate to the Court).

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

The key documents bundle

5.20 Not later than 28 days before the date fixed for the hearing, the appellant must (i) send enough hard copies of the key documents bundle to the Registry to provide one to each Justice sitting and an additional copy for the Registry; and (ii) upload to the portal a single electronic file containing the key documents bundle (Rule 28). The parties will have been informed by the Registry of the number of copies required as part of the listing process: see Rule 26(3).

5.21 The key documents bundle must contain in the following order:

a. the agreed statement of facts and issues;

b. the appellants' and respondents' cases, with cross-references (in a footnote or in the body of the text) to the main hearing bundle;

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

d. the following orders and judgments

i. The order appealed against;

ii. The official transcript of the judgment of the court below;

iii. The final order(s) of all other courts below; and

iv. The official transcript of the final judgment(s) of all other courts below.

5.22 The hard copy of the key documents bundle:

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

b. should include tabs for each of the documents set out in paragraph 5.21, preferably with the name of the document on the tab;

c. should show on the front cover a list of the contents and the names and addresses of the solicitors for all parties, the short title and case ID number of the appeal;

d. must be paginated. Any pagination should accord with the pagination of the same document in the main hearing bundle, even if this means that the pagination through the key documents bundle is not consecutive.

The main hearing bundle

5.23 The appellant must prepare the main hearing bundle (Rule 29). This is a single electronic file containing:

a. the documents included in the key documents bundle in the order set out above;

b. all other documents which any party participating in the appeal wishes to place before the Court hearing the appeal;

c. the authorities that may be referred to during the hearing including an index of those authorities;

d. an index of the main hearing bundle.

5.24 The appellant must follow the electronic bundle guidelines when preparing the bundle (those guidelines can be found here https://www.supremecourt.uk/procedures/electronic-bundle-guidelines.html). The appellant must upload the main hearing bundle to the portal not later than 28 days before the date of the hearing.

Form and content of authorities

5.25 A joint set of authorities, jointly produced, should be compiled for the appeal. The authorities must be filed electronically only as part of the Main Hearing Bundle. The following paragraphs give guidance on the arrangement and order of the authorities but

where the parties consider that a different order or arrangement would be of greater assistance to the Court, that order or arrangement should be adopted.

5.26 The authorities should appear in alphabetical order and include an index. Authorities should (where appropriate) be divided into the categories in the following order: domestic legislation, EU legislation, domestic cases, Strasbourg and EU cases, foreign legislation and cases and academic material.

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

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

5.29 The Court has on numerous occasions criticised the over-proliferation of authorities. It should be understood that not every authority that is mentioned in the parties' printed cases need be included in the volumes of authorities. They should include only those cases that are likely to be referred to during the oral argument or which are less accessible because they have not been reported in the Law Reports.

5.30 Where online versions of textbooks or academic authorities are used, the front sheet or first page must be included so that the date of the relevant edition and other such information is provided.

5.31 If it becomes apparent (for example, during the hearing) that an authority is needed that has not been filed in advance, parties must file the authority electronically. Hard copies will also be required for the assistance of the Court if the authority is to be cited at once.

Respondents' and interveners' documents

5.32 Respondents and Interveners are discouraged from providing additional documents of their own; any documents which they wish to place before the Court for the appeal should be included in the main hearing bundle. Where it is necessary for a respondent or an intervener to place documents before the Court, they should be uploaded to the portal in advance of the hearing with an explanatory letter.

Availability of Documents on the Court's website and to the public

5.33 The statement of facts and issues and the parties' written cases will be published on the Court's website for each appeal or reference (Rule 42). This will usually occur no later than 7 days before the hearing of the appeal.

5.34 If a party objects to the publication of the document or wishes that only a redacted copy be published on the website, it must apply to the Registrar as soon as possible. This should ordinarily be done by completing the relevant information box at the point when the party uploads the document to the portal. A party can only object on the grounds that publication would be contrary to commercial confidentiality, national security or other public interest. The Registrar will inform the parties of the decision on the application.

5.35 In addition to those documents being published on the website, those documents and all other documents in the case are available to be inspected by the media and by members of the public on request. Where the Registrar has directed under Rule 42(3) that a published document should be withheld from publication on the website or should be published only in redacted form, the effect of that direction will be that the media or members of the public will not be given access to that document or will be given access only to the redacted version.

5.36 Where a party objects to the media or members of the public being given access to a document in respect of which there is no direction in place under Rule 42(3), the party should notify the court of that objection and explain the reasons for it. Such an application must be made as soon as possible after the document is provided to the Court. The Court will not always notify the parties when the media or member of the public apply to see the document and such a request may be made some time after the conclusion of the appeal. There may therefore not be an opportunity to object at that time.

Practice Direction 6: Listing, the appeal hearing and judgment

Fixing the hearing date

6.1 The Registry will contact the parties within 28 days of either the filing of the notice of intention to proceed under Rule 19(1)(c) or the issue of the notice of appeal under Rule 20(5) asking the parties to provide: (a) an estimate of the number of hours that the parties' respective counsel consider will be necessary for their oral submissions and (b) confirmation whether anyone attending the hearing for the parties requires reasonable adjustments to be made to ensure that the hearing is accessible to that person (Rule 26). Time estimates must be as accurate as possible since, subject to the Court's discretion, they are used as the basis for arranging the Court's list. Not more than two days are normally allowed for the hearing of an appeal. Estimates of more than two days must be fully explained in writing to the Registrar and may be referred to the presiding Justice.

6.2 Once the parties have responded, the Registrar will inform the parties of the period within which the hearing will take place and the number of Justices who will be sitting on the panel to hear the case. The parties must then provide the Registrar with an agreed list of dates within that period which are convenient for the parties. Parties are encouraged to offer agreed dates which are convenient to all counsel at an early stage. The sittings of the Court (or the 'law terms') are four in each year:

a. the Michaelmas sittings which begin on 1 October and end on 21 December;

b. the Hilary sittings which begin on 11 January and end on the Wednesday before Easter Sunday;

c. the Easter sittings which begin on the second Tuesday after Easter Sunday and end on the Friday before the spring holiday; and

d. the Trinity sittings which begin on the second Tuesday after the spring holiday and end on 31 July.

6.3 The 'spring holiday' means the bank holiday falling on the last Monday in May or any day appointed instead of that day under section 1(2) of the Banking and Financial Dealings Act 1971.

6.4 The Registrar will subsequently inform the parties of the date fixed for the hearing. Any hearing date given before the filing of the statement of facts and issues in accordance with Rule 27(1) is provisional and will be withdrawn if the statements are not filed on the deadline, unless an application for extension of time is made which gives good reasons and leaves sufficient time for the Justices to prepare for the hearing. Once the hearing date is fixed, the appellant and every respondent (and any intervener or advocate to the Court) must then sequentially exchange their respective written cases and file them in

accordance with Rule 27 and Practice Direction 5. The timetable for filing written cases is set out in Practice Direction 5.17 and 5.18.

6.5 Subject to any directions by the Court before or at the hearing, counsel are expected to confine their submissions to the time indicated in their estimates. Parties must communicate to the Registrar via the portal any request to amend the original estimate.

6.6 Counsel should agree an order of speeches and timetable for the hearing and submit it to the Registry via the portal at least 7 working days before the hearing.

Directions hearings

6.7 It is only in exceptional circumstances that a directions hearing will be necessary since most questions relating to the conduct of the appeal are resolved by cooperation between the parties and the Registry. Where the Court considers it to be appropriate, however, the Court may decide that a directions hearing should be held. A directions hearing will normally be held before 3 Justices. Any request for a directions hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

The hearing

6.8 The Registrar lists appeals taking into account the convenience of all the parties. Provisional dates are agreed with the parties well in advance of the hearing and every effort is made to keep to these dates. Parties should inform the Registry as early as possible of the names of counsel they have briefed.

6.9 The Court usually hears appeals on Mondays from 11am to 1pm and from 2pm to 4pm and on Tuesdays to Thursdays from 10.30am to 1pm and from 2pm to 4pm.

6.10 Only in wholly exceptional circumstances will the Court consider sitting in private. Any request for the Court to sit in private should be communicated to the Registrar via the portal using the public channel. The request should set out fully the reasons why it is made and the request together with any objections filed by the other parties will normally be referred to the presiding Justice.

6.11 No more than two counsel will be heard on behalf of a party. Speaking notes should not be submitted either in advance of or at the hearing: attention is drawn to the observations by Lord Hodge in *Harold Chang (Appellant) v The Hospital Administrator and others* [2023] UKPC 44, para 26.

6.12 The parties should take into account the Practice Note issued by the President of the Court on 7 March 2024 concerning the Court's aim of encouraging parties to give junior counsel opportunities to advance oral argument before it. In all suitable cases, the

Supreme Court expects consideration to be given to a speaking part for junior counsel. When parties provide counsel's agreed speaking times, the Supreme Court will also expect to receive confirmation, in instances where junior counsel are instructed but will not speak, that consideration has been given to whether junior counsel should have a speaking part.

6.13 If a party wishes to have a stenographer present at the hearing or to obtain a full transcript of the hearing, the Registrar must be notified not less than 7 days before the hearing. Any costs of the stenographer or of transcription must be borne by the party making such a request. Any request for breaks for the stenographer must be clearly notified to the Court in good time and this will come out of parties' allotted time.

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

6.15 It is usual practice for all Counsel in the case to communicate to the Registrar their wish to dispense with part or all of court dress. The Court will normally agree to such a request and barristers' robes are very rarely worn at the hearings.

6.16 All hearings before the Court are live streamed on the Court's website unless the Court has ordered that the hearing take place in private. The recording of the morning and afternoon sessions of the live stream are available to the public soon after the hearing and remain on the website to be viewed by anyone visiting the website. Counsel or those instructing them must ensure that their clients sitting in court are aware that they are visible to the public via the live stream and in the recording. Further, the Court welcomes many visitors to the Court as part of its outreach programme. During the course of a day's hearing, there may be several school groups and groups of students as well as individual tourists coming into the public benches of the court either because they have a particular interest in the appeal or because they wish to see the Court in session.

6.17 The President and the Justices of the Court have given permission for video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice and the recording and broadcasting is conducted in accordance with the protocol which has been agreed with representatives of the relevant broadcasting authorities. Excerpts from the live stream may also be broadcast on television if there is news coverage of the appeal. The protocol ensures that certain types of proceedings and some aspects of proceedings such as private discussions between parties and their advisers are not recorded, televised or filmed. It also regulates the use of extracts of proceedings and prevents their use in certain types of programmes (such as party political broadcasts) and in any form of advertising or publicity. By attending the

hearing, the parties and everyone attending on their behalf give their consent to being filmed and recorded.

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

6.19 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Court new circumstances which have arisen and which might affect the decision or order of the Court, application must be made without delay by filing a procedural application via the portal and paying the prescribed fee for permission to make new submissions. The application should indicate the circumstances and the submissions it is desired to make. This paragraph does not apply to submissions which were requested by the Court during the hearing or which the Court, at the hearing, directed the parties to file after the hearing. In those circumstances the parties should upload the submissions via the new document upload button in the portal case file and confirm this has been done in portal correspondence.

Applications for costs

6.20 Rule 53 deals with orders for costs. Costs are usually dealt with by the Court after the judgment has been handed down and on the basis of written submissions only. If counsel seek an order other than that costs should be awarded to the successful party, they may make written submissions in accordance with Rule 54 if the Court so directs. The Court may give a direction for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment.

6.21 Written submissions must be filed at the Registry by being uploaded to the portal. In exceptional cases the Court may convene a hearing for oral submissions after the filing of written submissions: Rule 54(2). See Practice Direction 13 for details about how costs are dealt with by the Court.

Judgment

6.22 All correspondence about judgments should be sent to the Court via the portal.

Conditions under which judgments are released in advance under embargo

6.23 The judgment of the Court may be made available to parties' legal teams before judgment is given. In releasing the judgment in advance of hand down, the Court gives permission for the contents to be disclosed to counsel, solicitors and in-house legal advisers in a client company, Government department or other body. The contents of the

judgment and the result of the appeal may be disclosed to the client parties themselves 24 hours before the judgment is to be given unless the Court or the Registrar directs otherwise. A direction will be given where there is reason to suppose that disclosure to the parties would not be in the public interest.

6.24 It is the duty of counsel to check the judgment for typographical errors and minor inaccuracies. In the case of apparent error or ambiguity in the judgment, counsel are requested to inform the Court as soon as possible. This should be done by via the portal, in line with the deadline provided. The purpose of disclosing the judgment is not to allow counsel to re-argue the case and attention is drawn to the opinions of Lord Hoffmann and Lord Hope in *R (Edwards) v Environment Agency* [2008] UKHL 22, [2008] 1WLR 1587.

6.25 Disclosure of the result of the appeal or any aspect of the judgment before the date and time that the judgment is handed down in open court is strictly prohibited. If such a breach of the embargo occurs, the President of the Court may refer the matter to the Attorney General to consider bringing an application for the committal of the offending person: see *HM Attorney General v Crosland* [2021] UKSC 15, [2021] 4 WLR 103. A breach of the embargo by a legal representative may also result in disciplinary action being taken by the legal representative's professional body. It is the duty of counsel and solicitors to ensure that their clients are made aware of the terms of the embargo under which the contents of the judgment are disclosed to them and that they are aware that any breach of those terms will be treated seriously by the Court and may be punished as a contempt of the Court.

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

Place and time of judgment

6.27 Judgments are normally handed down in open court on a day notified on the Court's website and to the parties' legal teams. One week's notice of the hand down date is normally given. If judgment is to be handed down on a Wednesday, the text of the judgment will normally be released (to parties' legal teams for corrections) on the previous Thursday. All corrections are to be submitted in line with the directions given by the Court.

6.28 The hand down is a short proceeding usually lasting no more than 15 minutes. It is normally attended by three Justices and usually takes place before the start of any proceedings in the Court that day. At the hand down, a Justice will make a short statement

summarising the issues in the appeal and the decision of the Court. The Justice does not read out the whole judgment. A press summary is also released at the same time as the judgment is handed down.

6.29 The parties themselves or counsel or agents for each party or group of parties who have filed a case may attend when judgment is handed down in open court, but the attendance of counsel is not required. Counsel will not be invited to address the Court, and it is not possible for the parties or counsel to make any oral applications at the hand down hearing.

6.30 The successful party must prepare a draft of the order giving effect to the Court's ruling and upload it to the portal. The Registrar and all the other parties who filed a case will receive notification and will be able to view the draft order in the case file. If parties have been able to agree the order for costs, the Registry should be informed. See Practice Direction 7 for draft and final orders.

Practice Direction 7: Procedural applications, documents and orders

Procedural applications

7.1 Procedural applications are governed by Rule 33. An application should be made as soon as it becomes apparent that an application is necessary or expedient.

7.2 An application must be made on the portal with the prescribed fee (unless the party is a litigant in person who has not signed up for the portal, in which case the litigant should complete and file the relevant form and pay the fee).

7.3 An application must state what order the applicant is seeking and, briefly, why the applicant is seeking the order: Rule 33(2). Certain applications (e.g. for security for costs) should be supported by written evidence. Although there may be no requirement to provide evidence in support, it should be borne in mind that, as a practical matter, the Court will often need to be satisfied by evidence of the facts that are relied on in support of or for opposing the application.

7.4 A party who wishes to oppose an application must, within 7 days after service, file notice of objection with the prescribed fee: Rule 33(4).

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

7.6 Applications will be dealt with without a hearing wherever possible. Unless the Registrar directs otherwise, contested procedural applications are referred to a Panel of Justices and may be decided with or without an oral hearing.

7.7 The application must clearly indicate whether the other parties have given their consent or refuse to consent to the application.

7.8 If the Panel of Justices orders an oral hearing, the parties may seek permission to adduce affidavits, witness statements and such other documents as they may wish, electronically only (via the portal). Authorities are not normally cited before the Panel.

Disposal of documents

7.9 All documents which are filed become the property of the Court. No documents submitted in connection with an application can be returned. For information about the publication of documents on the Court's website and the availability of documents to the media and the public see Rule 42 and Practice Direction 5.

Forms

7.10 Rule 5 provides for the forms which are to be used in the Supreme Court. Other than forms relating to references, it is only non-portal parties that are required to

complete forms. Portal parties instead complete the relevant pages on the portal (see the Portal Practice Direction). A non-portal party should contact the Registry to request the appropriate form for the application the party wishes to make.

Orders

Draft order

7.11 After hand down of the judgment in an appeal, the successful party should upload a draft order to the portal giving effect to the decision, so that the Registrar and all the other parties who filed a case will receive a notification and be able to view the draft order in the case file. The other parties must then, not later than 2 days after receipt of the portal notification, inform the Registry via the portal that they agree with the proposed draft or suggest amendments to it. The other parties will then be able to comment on those proposed amendments and make their own suggestions for amendment via the portal.

Final order

7.12 A copy of the sealed final order will be uploaded to the portal to be available to the parties.

Practice Direction 8: Miscellaneous matters

Bankruptcy or winding up

8.1 If a party to an appeal is adjudicated bankrupt or a corporate body that is ordered to be wound up, the party's solicitor must give immediate notice to the other parties and to the Registrar. The Registrar must also be provided with a certified copy of the bankruptcy or winding up order (rule 36). Portal parties must give notice via the portal using the correspondence function and can upload the certified copy to the portal. The bankrupt party (or his or her trustee in bankruptcy) or the liquidator must file an application to pursue the appeal. The application must be filed within 42 days of the date of giving notice to the Registry with the prescribed fee. The appeal cannot proceed until the application has been approved by the Court.

Death of a party

8.2 If a party to an application for permission to appeal dies and that party has no personal representative, immediate notice of the death must be given to the Registrar and to the other parties via the correspondence function in the portal. The Registrar may direct that the application proceeds in the absence of a person representing the estate of the deceased or may appoint a person to represent the deceased person's interest. Any application to substitute the new party must be filed via the portal, as a procedural application, with the prescribed fee within 28 days of the date of notice of death. It should explain the circumstances in which it is being filed.

8.3 If a party to an appeal dies before the hearing, immediate notice of the death must be given via the correspondence function on the portal. The appeal cannot proceed unless and until a new party has been appointed to represent the deceased person's interest.

8.4 An application to substitute the new party must be filed with the prescribed fee within 42 days of the date of notice of death (see Practice Direction 7 for information on procedural applications). It should explain the circumstances in which it is being filed.

8.5 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.

Settlement or other events depriving the appeal of practical significance

8.6 If an event occurs which compromises the subject matter of an appeal or deprives the appeal of practical significance to the parties, it is the duty of the parties (and their counsel and solicitors) to ensure that the appeal is withdrawn by consent or, if there is no agreement on that course, to notify the Registry.

8.7 Where notification is given under rule 36(1) and the parties have not withdrawn the appeal, the Court will consider whether there remains any ground of appeal that should be determined. If it considers that there is not, the Court will usually invite submissions from the parties as to: (a) whether an oral hearing should be held; or (b) whether a reasoned judgment should be delivered. The parties should note that the Court is unlikely to accede to a request for an oral hearing or a reasoned judgment on the substantive issues where the matter has become academic or where the only issue between the parties is as to costs. The Court may then either: (a) dispense with an oral hearing; or (b) make a final order without delivering or promulgating a judgment.

Withdrawal of applications for permission to appeal

8.8 An application for permission to appeal may be withdrawn by writing to the Registrar via the correspondence function on the portal, stating that the appellant wishes to withdraw the appeal and indicating whether the parties to the appeal have agreed about the appropriate order as to the costs of the application. The respondents must promptly notify the Registrar of their agreement to the withdrawal of the appeal and must confirm whether the costs have been agreed.

Withdrawal of Appeal

8.9 An appeal that has not been listed for hearing may be withdrawn by writing to the Registrar via the correspondence function on the Portal, stating that the appellant wishes to withdraw the appeal and indicating whether the parties to the appeal have agreed about the appropriate order as to the costs of the appeal. The nature of the agreement should be indicated. Where relevant, the correspondence should also indicate how any security for costs money lodged with the Registry should be disposed of. The respondents must notify the Registrar of their agreement to the withdrawal of the appeal and must confirm whether the costs have been agreed.

8.10 An appeal that has been listed for hearing may only be withdrawn by order of the Court on filing a procedural application via the portal and payment of the prescribed fee. An application for such an order should include submissions on costs and, where appropriate, indicate how any security for costs money lodged with the Registry should be disposed of. The respondents should be approached for their agreement before the filing of the application and confirmation of their consent should be included with the application.

Grouping or linking of appeals

8.11 Where there are multiple parties who wish to appeal the decision of the court below, they may make a single application for permission to appeal (or notice of appeal) where: (i) they wish to advance identical grounds of appeal; (ii) they are represented by the same lawyers; and (iii) there is no risk of conflict of interest between them.

8.12 In all other cases, each party must file his or her own application or notice. The Registrar or a Panel of Justices may direct that appeals from the same judgment of the court below or appeals from different judgments which raise the same or similar issues are heard either together or consecutively by the Court constituted by the same Justices and may give any consequential directions that appear appropriate. Each separate appeal will have its own case file on the portal but the cases will be linked by the Registry.

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

Exhibits

8.14 Parties who require exhibits to be available for inspection at the hearing must apply to the Registrar for permission via the portal, as a procedural application, with the prescribed fee before the hearing and before the exhibits are brought to the Court.

Fees and security for costs

8.15 Payments of fees may be made by credit or debit card via the portal. Payment may also be made via electronic transfer and details of the transfer must be filled in via the relevant page on the portal. Please note that payment by either method is required before finalising an application or submission via the portal. Details of the bank account for electronic transfer are found in the portal. Payment for security money must be paid into the 'UK Court Security Fund Account' via electronic transfer. Details of this bank account can be given on request.

New submissions

8.16 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Court new circumstances which have arisen and which might affect the decision or order of the Court, application must be made without delay by filing a procedural application via the portal and paying the prescribed fee for permission to make new submissions. The application should indicate the circumstances and the submissions it is desired to make. This paragraph does not apply to submissions which were requested by the Court during the hearing or which the Court, at the hearing, directed the parties to file after the hearing. In those circumstances the parties should upload the submissions via the new document upload button in the portal case file and confirm this has been done in portal correspondence.

Patents

8.17 This direction applies to any appeal direct from the High Court under sections 12 and 13 of the Administration of Justice Act 1969, from an order for the revocation of a

patent made under section 32 or section 61 of the Patents Act 1949 or under section 72 of the Patents Act 1977.

8.18 Notice of intention to file an appeal, with a copy of the notice of appeal, must be served on the Comptroller General, Intellectual Property Office who will become a portal party for the purposes of the appeal.

8.19 If at any time before the hearing of the appeal the respondents decide not to file an acknowledgement to oppose the appeal, they must without delay serve notice of their decision on the Comptroller and on the appellant. At the same time as serving such a notice on the Comptroller the respondents must upload to the portal a copy of the petition under section 32 of the 1949 Act or of the statements of case in the claim and the affidavits filed therein.

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

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

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

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

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

Public funding and legal aid

8.23 The Court does not provide public funding or legal aid. Application for public funding must be made in England and Wales to the Legal Aid Agency, in Scotland to the Scottish Legal Aid Board, and in Northern Ireland to the Legal Services Agency. A litigant can apply for waiver of the Court's fees under the "help with fees" scheme described in Practice Direction 2. A litigant who receives public funding or legal aid does not need to apply for help with fees as the Court fees will be funded.

8.24 A party to whom a public funding or legal aid certificate has been issued must as soon as possible thereafter upload a copy via the portal. Any emergency certificate and subsequent amendments and the authority for leading counsel must also be uploaded.

8.25 Provided the Registrar and the other parties have been notified, an application by an appellant for public funding or legal aid may result in the time limits in rules 13 and 20

being extended in accordance with rule 6(3) (see paragraph 3.14 of Practice Direction 3 and 4.23 of Practice Direction 4).

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

Specialist advisers and advocates to the Court

8.27 Any party to an appeal may apply by filing a procedural application via the portal and paying the prescribed fee for specialist advisers to attend the hearing: Rule 38. Such advisers provide assistance to the Court and are strictly independent of the parties to the appeal. For Nautical Assessors, see also Court of Judicature Act 1891 section 3.

8.28 A request for an advocate to the Court to be appointed in an appeal should be made in writing to the Registrar via the correspondence function in the Portal. Any request should indicate whether the other parties to the appeal support the request.

Stay of execution

8.29 Filing a notice of appeal or an application for permission to appeal does not in itself place a stay of execution on any order appealed from. A party seeking such a stay must apply to the court appealed from, not to the Court. The Court cannot stay an interlocutor of the Court of Session, see Court of Session Act 1988 section 41(2).

Enforcement of orders made by the Court

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

8.31 The CPR Part 23 application must be supported by the following:

a. details of the order which was the subject of the appeal to the Court;

b. details of the order of the Court, with a copy annexed; and

c. a copy of the certificate of the Registrar of the Court of the assessment of the costs of the appeal to the Court.

8.32 The order to make an order of the Court an order of the High Court should be in form no PF68, available on the Government's website.

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

Application for order that a solicitor has ceased to act

8.34 Where a party wishes to instruct a new solicitor in place of his or her current solicitor, the current solicitor should write to the Registry via the portal asking to come off the record. The party should upload a letter from the new solicitor confirming the handover. Using the "manage access" function on the portal, the current solicitor should specify the new accounts to be nominated as the accounts associated with that case file for that party in substitution for any accounts held by the current firm. The correspondence should demonstrate that the party has consented to the change. If the Registry substitutes the new accounts for the former accounts, that has the effect that the former solicitor is no longer a solicitor on the record for that party. There is no need to make a formal application or pay a fee.

8.35 Where a solicitor wishes to come off the record, but no new solicitor is being appointed to replace him or her at the same time, the solicitor must make an application to the Court and pay the appropriate fee, explaining the reasons for the application. Where such an application is made:

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

b. the application must be supported by evidence as to whether the client consents to the solicitor coming off the record or, if the solicitor has lost contact with the client, explaining the attempts to contact the party, and the party's most recent contact details.

8.36 Where the Registrar makes an order that a solicitor has ceased to act where no substitute solicitor is coming onto the record, a copy of the order must be served on every party to the proceedings and the order takes effect when it is served.

Practice Direction 9: The Human Rights Act 1998

Appeals involving declarations of incompatibility

9.1 Where an appellant or a respondent seeks a declaration of incompatibility under the Human Rights Act 1998, the appropriate section of the application for permission to appeal, notice of appeal, notice of objection and/or notice of acknowledgment must be completed and the provisions of the relevant Practice Direction must be complied with: see paragraph 3.4 of Practice Direction 3. The appropriate section of the page on the portal must be completed: see paragraph 4.17 of Practice Direction 4.

9.2 The Crown has the right to intervene in any appeal where the Court is considering whether to declare that a provision of primary or subordinate legislation is incompatible with a Convention right: see Rule 43 and paragraph 4.57 of Practice Direction 4. In any appeal where the Court is considering, or is being asked to consider, whether to make, uphold or reverse such a declaration, the Registrar must notify the appropriate Law Officer(s) if the Crown (through a Minister, or other person defined in Section 5(2) of Human Rights Act 1998) is not already a party to the appeal: Rule 43(1).

9.3 The Registrar notifies:

a. in appeals from England or from Wales, the Attorney-General for England & Wales;

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

c. in appeals from Northern Ireland, the Advocate General for Northern Ireland.

9.4 If the person notified wishes to intervene in the proceedings, the person must within 21 days of receiving such notice, or such extended period as the Registrar may allow, become a portal party and give notice that the Crown intends to intervene and join the appeal; and confirm the identity of the Minister or other person who is to be joined as a party to the appeal (sections 5(2) and 9(5) of the Human Rights Act 1998). To ensure that the proceedings are conducted properly, where the Crown intends to intervene in the appeal, the appropriate Minister should notify the Court so that he or she can be added to the portal case file. The Minister should notify the Court whether or not he or she was joined to the proceedings in the court below.

9.5 Once joined to the appeal, the case for the Minister or other person must be filed in accordance with paragraphs 5.4, 5.9-5.19 of Practice Direction 5.

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

Other Human Rights Act appeals

9.7 Where an appellant or a respondent seeks to challenge an act of a public authority under the Human Rights Act 1998, the appropriate section of the application for permission to appeal, notice of appeal, notice of objection and/or notice of acknowledgment must be completed and the provisions of the relevant Practice Direction must be complied with: see paragraph 4.17 of Practice Direction 4.

9.8 Where an issue under the Human Rights Act is raised in respect of a judicial act the Registrar notifies the Crown through the Treasury Solicitor as agent for the Lord Chancellor (see sections 7, 9(3) and 9(4) of the Human Rights Act 1998).

9.9 Section 288AA of the Criminal Procedure (Scotland) Act 1995 (inserted by the Scotland Act 2012) provides that an appeal lies to the Court against a determination in criminal proceedings by a court of two or more judges of the High Court for the purpose of determining any compatibility issue. A compatibility issue for this purpose includes a question arising in criminal proceedings as (a) to whether a public authority has acted or proposes to act in a way which is made unlawful by section 6(1) of the Human Rights Act 1998 or (b) whether an Act of the Scottish Parliament or any provision of such an Act is incompatible with any of the Convention rights. The appellant in such an appeal should contact the Registry at an early stage to discuss appropriate directions for the conduct of the appeal.

Practice Direction 10: Devolution jurisdiction and compatibility issues and questions

General note

10.1 The Court has jurisdiction to hear and determine questions relating to the competence and functions of the legislative and executive authorities established in Scotland, Northern Ireland and Wales by the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006 respectively, whether or not the issue arises in proceedings. These questions are generally referred to in the relevant legislation as "devolution issues".

10.2 The Court also has jurisdiction to hear and determine "**compatibility issues**", as defined by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995. These are questions which have arisen in Scottish criminal proceedings as to whether a public authority has acted or proposes to act in a way which is made unlawful by section 6(1) of the Human Rights Act 1998, or as to whether an Act of the Scottish Parliament is incompatible with rights under the European Convention on Human Rights. In such cases, the powers of the Court are exercisable only for the purpose of determining that issue: section 288ZB(6) of the Criminal Procedure (Scotland) Act 1995.

10.3 Following the enactment of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the UNCRC Incorporation Act"), the Court has jurisdiction to hear and determine questions about whether Scottish legislation or the acts or proposed acts of certain Scottish public authorities are compatible with the United Nations Convention on the Rights of the Child. Such questions are referred to as "**compatibility questions**", unless the question arises in criminal proceedings, in which case they are referred to as "**UNCRC compatibility issues**" as defined by section 288AB(1) of the Criminal Procedure (Scotland) Act 1995. In determining a UNCRC compatibility issue, the powers of the Court are exercisable only for the purpose of determining that issue: section 288AB(8) of the Criminal Procedure (Scotland) Act 1995. See also the Act of Sederunt (Proceedings for Determination of Compatibility Questions Rules) 2024 (SI 2024/197).

10.4 The Court can also be asked to scrutinise Bills of the Scottish Parliament (under sections 32A or 33 of the Scotland Act 1998), Bills of the Northern Ireland Assembly (under section 11 of the Northern Ireland Act 1998) and Bills of Senedd Cymru (under sections 111B and 112 of the Government of Wales Act 2006). The Court may be asked to scrutinise Bills on the basis of legislative competence: ie whether the legislature has the competence to pass the Bill. For the Scottish Parliament and Senedd Cymru, the Court may also be asked to scrutinise whether a Bill relates to protected subject-matter, which would require a super-majority for the Bill to be passed.

Procedure on a reference or appeal

10.5 This Practice Direction summarises the legislation which empowers courts, tribunals and law officers to make references to the Court. However, parties to a proposed reference or appeal must consider carefully the statutory power they wish to exercise to ensure they are eligible to make the reference or pursue the appeal. They must comply fully with any time limits set by the provisions in the legislation and notify all those who are required by that legislation to be notified.

10.6 Questions of the kind referred to in paragraphs above can reach the Court by four routes:

a. By way of an appeal against the determination of a devolution issue, compatibility issue, compatibility question or UNCRC compatibility issue by certain appellate courts of England and Wales, Scotland and Northern Ireland;

b. By way of a reference of a devolution issue, compatibility issue, compatibility question or UNCRC compatibility issue by certain appellate courts. In certain contexts, law officers may also require courts and tribunals to refer to the Court devolution issues and compatibility questions which have arisen in proceedings before the appellate court;

c. By way of a direct reference by a law officer of a devolution issue or compatibility question where the devolution issue or compatibility question is not the subject of proceedings;

d. By way of a reference of a question by a law officer about a Bill passed by a devolved legislature.

10.7 Rule 44 provides in general for appeals or references under the Court's devolution jurisdiction to be dealt with in accordance with the Rules. But the Court will give special directions as and when necessary and in particular as to cases which reach the Court by routes (b), (c) and (d) above.

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

Route (a): Appeals to the Court

10.9 Permission is required for all appeals under the Court's devolution jurisdiction except for:

a. appeals against a determination of a devolution issue or compatibility question by the Inner House of the Court of Session on a reference from a lower court or tribunal (see paragraph 12 of Schedule 6 to the Scotland Act 1998, paragraph 30 of Schedule 10 of the Northern Ireland Act 1998, paragraph 20 of Schedule 9 to the Government of Wales Act 2006 and section 35(4) of the UNCRC Incorporation Act);

b. appeals by the Lord Advocate or the Advocate General for Scotland against a determination of a compatibility issue by two or more judges of the High Court of Justiciary on a reference from a court which has been required to refer the issue to the High Court by the Lord Advocate or Advocate General for Scotland (see section 288AA of the Criminal Procedure (Scotland) Act 1995);

c. appeals by the Lord Advocate against a determination of a UNCRC compatibility issue by two or more judges of the High Court of Justiciary on reference from a court which has been required to refer the issue to the High Court by the Lord Advocate (see section 288AC of the Criminal Procedure (Scotland) Act 1995).

10.10 Part 2 of the Rules applies to applications for permission to appeal whether the issue is the principal issue in the appeal or one of a number of proposed grounds of appeal raising a range of issues. The Practice Directions covering applications for permission to appeal and the obligations of appellants, respondents and interveners apply to these appeals with any necessary modifications.

10.11 Permission to appeal to the Court may be sought only if permission to appeal has been applied for and refused by the court below.

10.12 Where permission is sought to appeal the determination of a compatibility issue, UNCRC compatibility issue, or devolution issue under the Scotland Act 1998 by the High Court of Justiciary, the application must be made within 28 days of the date on which the High Court of Justiciary refused permission or within such longer period as the Court considers equitable having regard to all the circumstances: see sections 288AA(8) and 288AC(7) of the Criminal Procedure (Scotland) Act 1995 and paragraph 13B of Schedule 6 to the Scotland Act 1998.

10.13 The guidance in this section of the Practice Direction applies, with necessary modifications, to applications for permission to cross-appeal as they apply to applications for permission to appeal. For the procedure in cases where permission to appeal is not required, see paragraphs 10.15 onwards below.

10.14 An application for permission to appeal must briefly set out the facts and points of law involved in the appeal. It should conclude a summary of the reasons why permission to appeal should be granted. The application should not normally be accompanied by supporting documents except the order or interlocutor appealed from,

the judgment(s) appealed from and, if separate, the order or interlocutor of the court below refusing permission to appeal to the Court.

10.15 Rules 20 and 21 and the following paragraphs apply to a person who has been granted permission to appeal and in cases where permission to appeal is not required.

10.16 A person who wishes to proceed with an appeal to the Court must file a notice of appeal within 42 days of the date on which the order or interlocutor appealed from was made or permission to appeal was granted, as the case may be.

10.17 The appellant must also serve the notice of appeal by non-portal service on any law officer who is not already a party and who has a potential interest in the proceedings. The appellant must also inform the Registry which law officers, if any, have been so notified and what response they have made. Any law officer who is so served may participate in the proceedings on the appeal in the Court if within 14 days of service he or she notifies the Registrar that he or she wishes to be joined as a party. Where possible, a law officer who wishes to be joined in the proceedings should become a portal party and participate in the proceedings via the portal. If this is not possible, the law officer should contact the Registry to seek directions as to how he or she can take part in the appeal. Any law officer who gives notice of his or her wish to be joined will become a respondent to the proceedings without needing to apply separately to be joined.

Route (b): References from other courts and tribunals

10.18 Where proceedings such as an appeal are taking place before a court or tribunal and one of the parties raises a devolution issue, compatibility issue, compatibility question or UNCRC compatibility issue as an issue in those proceedings, the court or tribunal before which the proceedings are being conducted may refer that issue to the Court under one of the following provisions:

a. Certain appellate courts may refer a devolution issue arising in proceedings before them to the Court. A reference can be made under paragraphs 10, 11, 22 and 30 of Schedule 6 to the Scotland Act 1998, paragraphs 9, 19, 28, and 29 of Schedule 10 to the Northern Ireland Act 1998 or paragraphs 10, 18, 19 and 27 of Schedule 9 to the Government of Wales Act 2006.

b. Certain law officers may require a court or tribunal to refer to the Court a devolution issue arising in proceedings to which they are a party. A reference can be made under paragraph 33 of Schedule 6 to the Scotland Act 1998, paragraph 33 of Schedule 10 to the Northern Ireland Act 1998, or paragraph 29 of Schedule 9 to the Government of Wales Act 2006.

c. A court consisting of two or more judges of the High Court of Justiciary may refer a compatibility issue to the Court, and in certain cases may be required to do so by the Lord Advocate or the Advocate General for Scotland. This is dealt

with by section 288ZB(3), (4) and (5) of the Criminal Procedure (Scotland) Act 1995.

d. A court consisting of two or more judges of the High Court of Justiciary may refer a UNCRC compatibility issue to the Court, and in certain cases may be required to do so by the Lord Advocate. This is dealt with by section 288AB(5), (6) and (7) of the Criminal Procedure (Scotland) Act 1995.

e. The Inner House of the Court of Session may refer any compatibility question which arises in proceedings before it to the Court pursuant to section 35(3) of the UNCRC Incorporation Act.

f. The Lord Advocate may require a court or tribunal to refer to the Court a compatibility question which has arisen in proceedings to which the Lord Advocate is a party under section 36 of the UNCRC Incorporation Act.

10.19 A reference by a court or tribunal is made by the appropriate officer of the court or tribunal completing and sending an electronic copy of the Reference Form 1 (Court) to the Court. The reference must be accompanied by electronic copies of all judgments and orders already given in the proceedings which relate to the making of the reference, including copies of any interlocutors and any notes attaching to such interlocutors. The referring court or tribunal may choose to make the reference via the portal and become a portal party for this purpose. The referring court will then open the case file for the reference as if it were an appellant and may then file the Reference Form 1 (Court) via the portal and upload the relevant documents. However, this is not mandatory and in many references the referring court or tribunal will take no further active role in the reference, leaving it to the parties to the proceedings in that court or tribunal to make submissions to the Court on the legal issues raised. If the referring court or tribunal sends the reference and accompanying documents to the Court outside the portal, the Registry will open a case file for the reference on the portal.

10.20 The referring court or tribunal must serve a copy of the Reference Form 1 (Court) and the accompanying documents on the parties. The Rules provide for initiating process to be served by non-portal means even where all the prospective parties have accounts on the portal: see rule 14(2) and rule 21(2). Similarly, the reference should be served by the court or tribunal by non-portal service on the parties to the proceedings before it in which the reference is made.

10.21 The referring court must also serve by non-portal service any law officer who is not already a party and has a potential interest in the proceedings. Any such law officer who wishes to participate may do so by filing a completed Reference Form 3 (Court). They must serve that form on (a) the parties to the proceedings, (b) the court or tribunal making the reference and serving the form and (c) on any other law officer with a potential interest in the proceedings who is not already a party. If possible, the law officer should

participate in the proceedings as a portal party and should then file and serve documents via the portal.

10.22 The court or tribunal must confirm with the Registry that all relevant persons have been served or notified.

10.23 Every party to the proceedings in the referring court or tribunal must within 14 days of service of the Reference Form 1 (Court) notify the Registrar as to whether he or she intends to participate in the reference to the Court or not. A party who does not intend to participate in the reference does not need to become a portal party and should simply notify the Registry, the referring court or tribunal and the other parties by electronic means. That party will then not be able to access the case file and will not be notified by the Court of the progress of the reference.

10.24 Any party who does wish to participate in the reference should become a portal party and file a completed Reference Form 3 (Court). Any law officer who is already a party to the proceedings in the referring court or tribunal automatically becomes a respondent to the proceedings and should, if he or she wishes to take part in the proceedings, do so as a portal party.

10.25 Once the identity of the active parties to the reference to the Court becomes clear, the Registry will liaise with those parties to determine which party or parties will take the lead as regards compliance with rules 26 (listing of the appeal), 27 (documents for appeal hearing), 28 (key documents bundle) and 29 (The main hearing bundle). The parties to the reference should therefore inform the Registry as soon as possible which parties will be making written and oral submissions on the legal issues. It is the responsibility of the parties and the referring court or tribunal to ensure that both sides of the argument on the legal issues will be presented to the Court.

10.26 Unless the Court directs otherwise, once a final judgment has been given on a reference from a court or tribunal, the proceedings are regarded as having been remitted to the court or tribunal from which the reference came without further order. This is subject to the disposal of any outstanding issues as to the costs of the reference.

Route (c): Direct reference by a law officer

10.27 The following paragraphs concern references by a law officer directly to the Court under one of the following provisions:

a. direct references of a devolution issue which is not the subject of proceedings to the Court under paragraph 34 of Schedule 6 to the Scotland Act 1998, paragraph 34 of Schedule 10 to the Northern Ireland Act 1998 or paragraph 30 of Schedule 9 to the Government of Wales Act 2006;

b. direct references by the Lord Advocate of a compatibility question which is not the subject of proceedings under section 37 of the UNCRC Incorporation Act 2024.

This does not include cases where a law officer has required a court or tribunal to make a reference to the Court, which are dealt with under route (b).

10.28 Where possible, the law officer making the reference should become a portal party and perform the same role as an appellant in an appeal. If it is not possible for the law officer to participate as a portal party, he or she should contact the Registry for further directions. The following paragraphs assume that the law officer is a portal party in a reference under Route (c).

10.29 A direct reference under route (c) is made by the referring law officer:

a. completing and filing Reference Form 1 (Law Officer) via the portal, and

b. in the case of a direct reference of a devolution issue, serving by non-portal service a copy of the Reference Form 1 (Law Officer) on any other law officer who has a potential interest in the issue or question referred, or

c. in the case of a direct reference of a compatibility question, serving by non-portal service a copy of the Reference Form 1 (Law Officer) on the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights,

d. and in either case, confirming through portal correspondence that all relevant persons have been served.

10.30 Any person served with a copy of the reference under paragraph 10.29 above may participate in proceedings as a party by completing and filing a Reference Form 3 (Law Officer). That person must become a portal party in order to take part in the reference and must file the form via the portal. The person must then serve the form by non-portal service on any other law officer with a potential interest in the proceedings who is not already a party.

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

Route (d): References of a question by a law officer about a Bill

10.32 The following paragraphs apply to references under sections 32A or 33 of the Scotland Act 1998, section 11 of the Northern Ireland Act 1998 or sections 111B or 112 of the Government of Wales Act 2006.

10.33 Where possible, the law officer making the reference should become a portal party and perform the same role as an appellant in an appeal. If it is not possible for the law officer to participate as a portal party, he or she should contact the Registry for further directions. The following paragraphs assume that the law officer is a portal party in a reference under Route (d).

10.34 A reference of a question by a law officer is made by:

a. completing and filing Reference Form 1 (Law Officer) via the portal,

b. serving by non-portal means a copy on any other law officer who has a potential interest in the proceedings and,

c. confirming through portal correspondence that all relevant persons have been served,

within any time limits specified by the relevant statute.

10.35 The reference should state the question to be determined with respect to the proposed Bill to which the reference relates. It should also make clear whether the reference applies to the whole Bill or to a provision of it. The reference should have annexed to it a copy of the Bill to which it relates.

10.36 The law officer making the reference must, within 7 days of filing the reference, also notify the relevant Assembly or Parliament which passed the Bill of the making of the reference and, in the case of a Bill passed by the Northern Ireland Assembly, the relevant officer must also notify the Office of the First Minister and Deputy First Minister.

10.37 Any law officer (other than the one making the reference) who wishes to participate in the proceedings must within 7 days of service of the reference give notice to the Registrar by filing Reference Form 3 (Law Officer) and serving the form by non-portal means on any other law officer with a potential interest in the proceedings who is not already a party. Where possible, a law officer who wishes to be joined in the proceedings should become a portal party and participate in the proceedings via the portal. If this is not possible, the law officer should contact the Registry to seek directions as to how he or she can take part in the appeal. Any law officer who gives notice of his or her wish to be joined by filing Reference Form 3 (Law Officer) will become a respondent to the proceedings without needing to apply separately to be joined.

10.38 The law officer making the reference must, within 14 days of filing the reference, file a case with respect to the question referred. The referring law officer's case should

include a copy of any statement made in relation to the Bill in accordance with the relevant statute and any relevant extracts from the Official Report of proceedings in the Parliament or Assembly.

10.39 If any other law officer who is participating in the proceedings wishes to file a case with respect to the question referred, he or she must do so within 14 days of giving notice under paragraph 10.37.

Exercise of the Court's powers – retrospective effect of orders and declarators

Devolution issues

10.40 Under section 102 of the Scotland Act 1998, section 81 of the Northern Ireland Act 1998 and section 153 of the Government of Wales Act 2006, the Court has a power to make an order which removes or limits the retrospective effect of its decision, or which suspends the effect of its decision for any period and on conditions, in certain circumstances (for example, where it decides that an Act of one of the devolved legislatures is outside its legislative competence). However, where the decision relates to a compatibility issue, the power to make such an order is exercisable by the High Court of Justiciary instead of the Supreme Court.

10.41 If the Court is considering whether to exercise its power under those sections, it will order notice or intimation to be given to the persons required under the relevant section if they are not already a party to proceedings.

10.42 Any person served notice or intimation under paragraph 10.41 who wishes at that stage to participate in the proceedings should, where possible, become a portal party in order to take part in the proceedings. Any person who is so served may participate in the proceedings in the Court if within 7 days of service he or she notifies the Registrar that he or she wishes to be joined as a party. Where possible, that person should become a portal party and participate in the proceedings via the portal. If this is not possible, the person should contact the Registry to seek directions as to how he or she can take part. Any person who gives notice of his or her wish to be joined will become a respondent to the proceedings without needing to apply separately to be joined.

10.43 If it is considered likely that the Court will need to address whether to exercise its power under these sections in proceedings, parties (and any court, tribunal or law officer making a reference) must state this in the application for permission to appeal, or in the Reference Form 1 or Reference Form 3.

UNCRC Incorporation Act declarators

10.44 If the Court is considering whether to make a strike down declarator or incompatibility declarator under sections 25(5) or 26(2) of the UNCRC Incorporation Act, it will first give intimation to the Lord Advocate, the Commissioner for Children and Young

People in Scotland and the Scottish Commission for Human Rights (unless that person is already a party to the proceedings).

10.45 Any person given intimation under paragraph 10.44 who wishes to participate in the proceedings so far as the proceedings relate to the making of a strike down declarator or an incompatibility declarator should, where possible, become a portal party in order to take part in the proceedings. That person must within 7 days of service give notice to the Registrar by notifying the Registrar that he or she wishes to be joined as a party. Any such person who gives notice of his or her wish to be joined will become a respondent to the proceedings without needing to apply separately to be joined.

10.46 If it is considered likely that the Court will need to address whether to make a strike down declarator or incompatibility declarator in proceedings, parties (and any court, tribunal or law officer making a reference) must state this in his or her application for permission to appeal, or in his or her Reference Form 1 or Reference Form 3.

10.47 If the Court decides to exercise the power under section 25 of the UNCRC Incorporation Act to make a strike down declarator, the Court may under section 25(5) make an order suspending the effect of a strike down declarator for any period and on any conditions to allow the incompatibility to be remedied. Where that decision relates to a UNCRC compatibility issue, however, the power to make such an order is exercisable by the High Court of Justiciary instead of the Court: section 25(9) of the UNCRC Incorporation Act.

Practice Direction 11: Assimilated law and the EU Withdrawal Act 2018

Overview

11.1 Many appeals before the Court continue to raise issues about the interpretation of legal instruments adopted by the institutions of the European Union and the case law of the Court of Justice of the European Union ("CJEU"). That is likely to be the case for some time into the future although the status of those instruments and that case law has changed as a result of Brexit.

11.2 The regime transposing EU law into domestic law is set out in the European (Withdrawal) Act 2018 ("the EU Withdrawal Act") as amended by the European Union (Withdrawal Agreement) Act 2020, the Retained EU Law (Revocation and Reform) Act 2023 ("REUL 2023") and other enactments. The EU law incorporated into domestic law was referred to as 'retained EU Law' and now, following REUL 2023, is referred to as 'assimilated law'.

11.3 The Rules apply to appeals raising points on assimilated case law as they apply to any other appeals save that the term "assimilated case law" is defined in section 6(7) of the EU Withdrawal Act as amended by section 5(1) of the REUL Act 2023.

11.4 The power of the Court to make references under article 267 of the Treaty on the Functioning of the European Union was removed by section 6(1)(b) of the EU Withdrawal Act. However, there is a limited power for the Court to make references under sections 7A and 7C of that Act pursuant to certain provisions of the EU-UK Withdrawal Agreement and the Ireland/Northern Ireland Protocol. That is considered in paragraphs 11.10 – 11.15 below.

Section 6 of REUL 2023

11.5 Section 6 of REUL 2023 provides for various amendments to section 6 of the EU Withdrawal Act in particular by the insertion of sections 6A, 6B and 6C into that Act. In summary:

- **Section 6A** empowers certain courts or tribunals to refer to the Court one or more points of law arising on assimilated case law in proceedings before it, if the referring court is bound by that law, the point of law is of general public importance and the reference concerns assimilated case law of the Court. If the Court accepts the reference it will then decide that point of law and the referring court will then apply that decision to the proceedings in which the point arises.
- **Section 6B** empowers a UK law officer and certain other officers in Scotland Wales and Northern Ireland to refer to the Court a point of law concerning assimilated case law of the Court where the point arose in proceedings but those proceedings have concluded without the point being referred under

section 6A. The Court must accept the reference but the decision on the point of law does not affect the outcome of the concluded proceedings.

- **Section 6C** is a more general provision requiring notice to be given to each UK law officer and certain other officers in Scotland, Wales and Northern Ireland where the Court is considering any argument made by a party to proceedings that the Court should depart from assimilated case law. Those officers are entitled to be joined as parties to the proceedings on giving notice to the Court if the argument relates to legislation within their jurisdiction.

11.6 At the time that the new Rules were drafted, it was thought that the amendments and new sections set out in section 6 of REUL 2023 would be brought into effect as from 1 October 2024. The Rules were drafted on that basis:

- **Rules 46, 47 and 49** were drafted to implement section 6A of the EU Withdrawal Act describing the procedure for the making, acceptance and hearing of a reference by a court or tribunal.
- **Rule 48 and 49** were drafted to implement section 6B of the EU Withdrawal Act describing the procedure for the making and hearing of a reference by one of the law officers.
- **Rule 25** was drafted to implement section 6C of the EU Withdrawal Act entitling the law officers to be notified of and to intervene in proceedings where a party was arguing that the Court should depart from assimilated case law.

11.7 Following the finalisation of the Rules a decision was taken by Ministers that section 6 of REUL should not be commenced and so sections 6A, 6B and 6C have not been inserted into the EU Withdrawal Act: see the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) (Revocation) Regulations 2024 (SI 2024/976).

11.8 Rules 25, and 46 to 49 are not therefore currently in operation but await the commencement of section 6 of REUL 2023.

11.9 Section 6D was inserted into the Withdrawal Act 2018 by section 8 of REUL 2023 and that provision was commenced as from 1 January 2024: see the Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 1) Regulations 2023 (SI 2023/1363). That provides for the making of "incompatibility orders" where the Court decides in the course of any proceedings that assimilate legislation is compatible with a domestic enactment, or that a domestic enactment is incompatible with assimilated direct legislation.

References to the CJEU

11.10 The limited remaining power of the Court to refer questions to the CJEU is set out in rule 45.

11.11 In this Practice Direction -

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

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

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

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

11.14 Under Article 12(4), the CJEU has jurisdiction to give preliminary rulings on questions concerning the provisions of EU law made applicable by the second subparagraph of Article 12(2), Article 5, and Articles 7-10 of the Ireland/Northern Ireland Protocol.

11.15 In general, the procedure which the Court will follow when a request is made by a party for a question to be referred to the CJEU is the procedure under the former Practice Direction 11. The parties should, however, be prepared to address the Court on the issue of what test the Court should apply when deciding whether to make a reference to the CJEU.

Practice Direction 12: Criminal proceedings

Introduction

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

Rights of appeal

12.2 The right of appeal to the Supreme Court is regulated by statute and subject to statutory restrictions. The principal statutes for criminal appeals (as amended in most cases by section 40 of, and Schedule 9 to, the Constitutional Reform Act 2005) are:

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

12.3 Every applicant for permission to appeal must comply with the statutory requirements before the application can be considered by the Court.

England and Wales and Northern Ireland

12.4 An appeal to the Supreme Court may only be brought with the permission of the court below or, if refused by that court, with the permission of the Supreme Court. Subject to paragraphs 12.10 - 12.12, in criminal matters such permission may not be granted unless the court below has issued the certificate referred to in paragraph 12.8.

12.5 Subject to paragraphs 12.4 and 12.6, an application for permission to appeal to the Supreme Court in a criminal matter may be made by either the defendant or the prosecutor, as follows:

a. from any decision of the Court of Appeal Criminal Division in England and Wales on an appeal to that court (Criminal Appeal Act 1968 s33(1) (as amended); Criminal Justice Act 2003, Part 9);

b. from any decision of the Courts-Martial Appeal Court on an appeal to that court (Courts-Martial (Appeals) Act 1968 s39(1));

c. from any decision of the Court of Appeal in Northern Ireland on an appeal to that court by a person convicted on indictment (Judicature (Northern Ireland) Act 1978 s 40(1)(b); Criminal Appeal (Northern Ireland) Act 1980 s 31(1) (as amended));

d. from any decision of the Court of Appeal in Northern Ireland in a criminal cause or matter on a case stated by a county court or magistrates' court (Judicature (Northern Ireland) Act 1978 s 41(1)(b));

e. from any decision of the High Court of Justice in England and Wales in a criminal cause or matter (Administration of Justice Act 1960 s 1(1)(a) (as amended); Extradition Act 2003 ss 32, 114);

f. from any decision of the High Court of Justice in Northern Ireland in a criminal cause or matter (Judicature (Northern Ireland) Act 1978 s 41(1)(a); Extradition Act 2003 ss 32, 114).

Scotland

12.6 No appeal lies to the Court from criminal proceedings in Scotland except where an appeal concerns a devolution issue, compatibility issue, compatibility question or UNCRC compatibility issue as defined in paragraph 1 of Schedule 6 to the Scotland Act 1998, sections 288ZA and 288AB of the Criminal Procedure (Scotland) Act 1995, and section 31 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. For further detail see Rule 44 and Practice Direction 10 (Devolution jurisdiction and compatibility issues and questions).

Criminal contempt of court cases

12.7 In cases involving criminal contempt of court, an appeal lies to the Supreme Court at the instance of the defendant only and, in respect of an application for committal or attachment, at the instance of the applicant from any decision of the Court of Appeal Criminal Division, the Courts-Martial Appeal Court or the High Court (Administration of Justice Act 1960 s 13; Judicature (Northern Ireland) Act 1978 s 44). For appeals in cases involving civil contempt of court see paragraph 1.16 of Practice Direction 1

Applications for permission

Certificate of point of law

12.8 Subject to paragraphs 12.10 - 12.12, permission to appeal to the Supreme Court in a criminal matter may only be granted if it is certified by the court below that a point of law of general public importance is involved in the decision of that court, and it appears to that court or to the Supreme Court that the point is one that ought to be considered

by the Supreme Court (Criminal Appeal Act 1968 s 33(2); Administration of Justice Act 1960 s 1(2); Courts-Martial (Appeals) Act 1968 s 39(2); Judicature (Northern Ireland) Act 1978 s 41(2); Criminal Appeal (Northern Ireland) Act 1980 s 31(2); Extradition Act 2003 ss 32, 114; Proceeds of Crime Act (Appeals under Part 4) Order 2003, SI 2003/458.

12.9 An application for permission to appeal without the required certificate may not be filed except as provided by paragraphs 12.10 - 12.12.

12.10 A certificate is not required for an appeal from a decision of the High Court in England and Wales or of the High Court in Northern Ireland on a criminal application for habeas corpus (section 15(3) of the Administration of Justice Act 1960; Judicature (Northern Ireland) Act 1978).

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

12.12 A certificate is not required in contempt of court cases where the decision of the court below was not a decision on appeal (section 13(4) of the Administration of Justice Act 1960; section 44(4) of the Judicature (Northern Ireland) Act 1978.

12.13 For the avoidance of doubt, in cases where the court below has not certified a point of law of general public importance, the Supreme Court has no jurisdiction to consider the appeal (see *Gelberg v Miller* [1961] 1 WLR 459, and *Jones v DPP* [1962] AC 635).

Permission to appeal in judicial review: criminal matters

12.14 There is no appeal to the Court of Appeal from a refusal by a Divisional Court to grant permission to apply for judicial review in a criminal case (section 18(1)(a) of the Supreme Court Act 1981) and the Court has no jurisdiction to hear an appeal against a refusal by the Divisional Court of permission to apply for judicial review in a criminal case (sections 1(1) & (2) of the Administration of Justice Act 1960 s 1(1) & (2)) and the decisions of the House of Lords in *In Re Poh* [1983] 1 WLR 2 and *R (Eastaway*) v Secretary of State for Trade and Industry [2000] 1 WLR 2222). If a Divisional Court refuses permission to apply to it for judicial review in a criminal matter, there is no further remedy in the domestic courts. The only circumstances in which an application may be made to the Supreme Court for permission to appeal from a Divisional Court in a criminal judicial matter are when the Divisional Court certifies that a point of law of general public importance arises from its decision.

Time Limits

Time within which to apply for permission to appeal

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

12.16 An application to the Supreme Court for permission to appeal is made in accordance with Rule 12 and Practice Direction 3. An application for permission to appeal to the Supreme Court:

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

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

must be made within 28 days beginning with the date on which the application for permission was refused by the court below (and not the following day) (section 34(1) of the Criminal Appeal Act 1968; section 2(1) of the Administration of Justice Act 1960 section). This date is not necessarily that on which the point of law was certified. Where the time prescribed expires on a Saturday, Sunday, bank holiday or other day on which the Registry is closed, the application is accepted as being in time if it is received on the next day on which the Registry is open.

12.17 An application for permission to appeal must be made within 14 days if made under one of the following provisions:

a. sections 32(5), 114(5) of the Extradition Act 2003;

b. sections 33, 44 and 66 of the Proceeds of Crime Act 2002 (see Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 (SI 2003 No 82), Part 3, Article 12);

c. sections 183, 193 and 214 of the Proceeds of Crime Act 2002 (see Proceeds of Crime Act 2002 (Appeals under Part 4) Order 2003 (SI 2003 No 458), Part 3, Article 11).

A 14 day time limit also applies to an application to refer a case the Attorney General's Reference procedure under section 36(5) of the Criminal Justice Act 1988: see Criminal Justice Act 1988, Sch 3 para 4.

Extensions of time to file application for permission

12.18 Subject to paragraph 12.19 below, the Supreme Court or the court below may, on application made at any time by the defendant and in certain limited circumstances the

prosecutor[1] extend the time within which application for permission to appeal to the Supreme Court may be made to the Supreme Court or to that court.[2] Such an application to the Supreme Court is incorporated in the application for permission itself and should set out briefly the reason(s) why the application is being presented outside the statutory period.

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

Public funding and legal aid

12.20 Paragraph 8.23 of Practice Direction 8 applies to appeals in criminal proceedings. In criminal proceedings, depending on the route of appeal, application should be made to the court appealed from or, in Northern Ireland, to the Legal Services Agency.

12.21 A copy of the order appealed from must be submitted by the appellant with the notification of the application for funding. The period within which the application for permission to appeal or notice of appeal (as the case may be) must be filed may then be extended under the rule. An extension may not be granted to an appellant under the Extradition Act 2003 (see sections 32 and 114).

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

Application for Permission to Appeal

Form of Application

12.23 The provisions of Practice Direction 3 govern how to apply for permission to appeal.

Case title

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

12.25 Subject to paragraphs 12.10 - 12.12, the Registry cannot issue any application for permission to appeal that is not accompanied by the certificate from the court below

[1] Criminal Appeal Act 1968, ss 33(1B), 34(2)

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

required by statute, certifying a point of law of general public importance (see paragraph 12.8 above).

Service

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

Fees

12.27 No fee is payable by either party at any stage of an application for permission to appeal or appeal in a criminal matter except that the normal fees are payable when an application is made for the assessment of a bill of costs.

Appeals once permission is granted

Time Limits

12.28 Where the Court grants permission to appeal, the appellant must, within 14 days of the grant, file notice under this rule of an intention to proceed with the appeal: see Rule 19. Where permission to appeal has been granted by the court below or where there is an appeal as of right to the Court a notice of appeal must be filed in accordance with Rules 20 and 21.

12.29 Appeals under the Extradition Act 2003 must be filed within 28 days of the grant of permission, starting with the day on which permission is granted. The time for doing so may not be extended: see sections 32 and 114 of the Extradition Act 2003.

Security for Costs

12.30 No security for costs is required in criminal appeals.

Statement of Facts and Issues

12.31 The provisions of Practice Direction 5 apply to appeals in criminal proceedings: see paragraphs 5.5-5.8 regarding the statement of facts and issues. But it is not the practice in criminal appeals to require the consent of the respondents to applications for extension of time.

12.32 In any appeal under the Criminal Appeal Act 1968, the statement of facts and issues must state clearly whether any grounds of appeal have been left undetermined by the Court of Appeal (see also paragraph 12.34).

Appellants' and Respondents' Cases

12.33 Paragraphs 5.9 – 5.16 of Practice Direction 5 regarding the statement of facts and issues apply to appeals in criminal proceedings.

12.34 In any appeal under the Criminal Appeal Act 1968 in which grounds of appeal have been left undetermined by the Court of Appeal (see paragraph 12.32), each party should include in its case submissions on the merits of those grounds and on how the party would seek to have them disposed of by the Court.

Key documents and main hearing bundles

12.35 Paragraphs 5.20 -5.32 of Practice Direction 5 regarding the key documents and main hearing bundles apply to appeals in criminal proceedings.

12.36 The Registrar may direct either of the parties to produce additional hard copy sets of the key documents bundle for the use of victims/complainants attending the hearing or their families. The Registrar will give directions as appropriate.

The hearing of the appeal

Bail

12.37 The Supreme Court does not grant bail. Applications for bail should be made to the court below. Where bail is granted to a party to an appeal to the Court, the Registrar should be notified via the correspondence function in the Portal.

12.38 The attendance of a party to an appeal who is in custody is not normally required or permitted. Where the attendance of a party in custody is required, his or her solicitors will be informed by the Registrar in writing via the correspondence function in the portal. The Supreme Court building does not provide a secure means by which someone who is being held in custody can enter the Supreme Court building. Further, there is no secure accommodation in the building for holding a party in custody during adjournments of the hearing. If it is necessary for a person in custody to be brought securely to the hearing and to be held in secure accommodation during the course of a hearing, the Court may arrange to sit in the Royal Courts of Justice. The parties should notify the Registry as soon as possible if this is likely to arise.

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

Exhibits

12.40 Parties who require exhibits to be available for inspection at the hearing must apply via the portal using a Procedural application to the Registrar for permission for the exhibits to be uploaded via the portal before the hearing.

Interpretation and translations in proceedings in the Supreme Court

12.41 If it will be necessary to provide translations or interpretation at any stage during the proceedings, the solicitors to any applicant or respondent who is a suspected, accused or convicted person in the context of the proceedings should notify the Registry via the correspondence function in the portal upon, or as soon as they have notice of, the filing of an application for permission to appeal.

Victims' Code of Practice

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

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

12.44 In giving effect to paragraph 12.43 the Registrar may consult the Treasury Solicitor, the Court of Appeal Criminal Division and other relevant persons to obtain any necessary information.

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

12.46 Victims may attend the hearing of an appeal or the handing down of judgment. The Registry arranges such attendance and provides case papers to enable the victim to understand the different stages in the proceedings.

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

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

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

Practice Direction 13: Costs

Orders for costs

13.1 Following the hand down of the judgment at the end of an appeal, the Court will make an order disposing of the appeal under rule 32. The Court will usually also make an order that one party pays all or some of the costs of the other party to the proceedings. Costs are in the discretion of the Court and it "may make such orders as it considers just in respect of the costs of any appeal, application for permission to appeal, or other application to or proceeding before the Court": rule 53(1). References in this Practice Direction to "costs" and "bills of costs" include expenses and accounts of expenses in appeals from Scotland.

13.2 This Practice Direction assumes that:

a. all parties are legally represented and are therefore using the portal. A party who is a litigant in person who has not signed up for the portal should contact the Registry to be provided with the relevant forms to be completed and filed if the litigant wishes to make a claim for his or her costs.

b. all parties to the proceedings are privately funded. Litigants in receipt of legal aid who are publicly funded in terms of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will usually have their costs assessed by the relevant legal aid agency in their jurisdiction. Although this Practice Direction provides some guidance for legally aided litigants (see section 18 below), they should consult their legal representative for further details. Similarly, privately funded litigants whose opponent is publicly funded should consult their legal representative for guidance on the potential for recovery of their own costs from the relevant legal aid fund and for their potential liability to the relevant legal aid fund for the legally aided litigant's costs.

13.3 The general principle applied by the Court is that the unsuccessful party will be ordered to pay the costs incurred by the successful party in conducting the appeal before the Court. Further, if the Court allows the appeal, it may also reverse the costs order made by the court below if that costs order reflected the result in that court which has now been overturned by the decision of the Court. The Court may therefore order the unsuccessful party to pay the successful party's costs incurred in the case at one or more courts below as well as the costs incurred in the proceedings before the Court itself.

13.4 Following the hand down of the judgment, the parties should upload to the portal a draft of the order that they propose that Court should make, having regard to the outcome of the case. The same order may deal both with the outcome of the case and any consequential orders and also with the costs of the appeal and the costs incurred in the proceedings in the courts below. Costs payable by one party to the opposing party are ordered by the Court to be assessed on the standard basis or on the indemnity basis

in accordance with rules 57 and 58 of the Rules or the equivalent bases that apply in Scotland and Northern Ireland.

13.5 The draft order uploaded should be agreed by all parties if possible. If the parties are not agreed as to who should pay the costs of which other party or as to whether the costs should be awarded on the standard or indemnity basis, the draft order should propose a timetable for the parties to file with the Court and serve on the other parties their submissions as to the appropriate order to be made. If the receiving party seeks an order that the costs be paid on the indemnity basis, that must be made clear in the draft order and reasons provided. See further paras 13.16 onwards below.

13.6 The parties' submissions as to costs will be considered by the panel of Justices who determined the proceedings.

Costs capping orders and protective costs orders in public interest proceedings

13.7 In the exercise of its discretion the Court may, on application by a party, make an order at an early stage in the proceedings which will set a limit in advance on that party's potential liability to pay the costs of the other party if the applicant party is unsuccessful in the appeal in whole or in part and is ultimately ordered to pay the winning party's costs.

13.8 An appellant which wishes to limit its potential liability for the costs that one or more respondents incurs in the appeal before the Court must apply for such an order at the time it applies for permission to appeal under rule 13 or at the time it files its notice of appeal under rule 20, as the case may be. A respondent which wishes to limit its potential liability to pay the costs of one or more appellants must apply for a costs limiting order no later than when serving notice of intention to participate under rule 22.

13.9 The grant of an order limiting the liability for costs of one party to the appeal does not automatically limit the liability for costs of the opposing party; each party must make a separate application if the party wants to limit its potential liability to pay costs to the opposing party.

13.10 Where the Court considers an application for a costs cap in respect of costs to be incurred in the appeal before the Court, the Court will have regard to the factors listed in the Civil Procedure Rules ("the CPR"), see particularly CPR 3.19, CPR 46.26 (proceedings in the High Court), CPR 52.19 or CPR 52.19A (proceedings in the Court of Appeal) and in section 88, 89 and 90 of the Criminal Justice and Courts Act 2015 as appropriate.

13.11 Where the outcome of the appeal leads the Court to revisit the costs orders made by the High Court and/or the Court of Appeal, the Court will have regard to any costs capping orders made by those courts and to the provisions of CPR 3.19, CPR 46.26 or as the case may be CPR 52.19 or CPR 52.19A or sections 88, 89 and 90 of the Criminal Justice and Courts Act 2015.

Assessment of costs

13.12 After the first stage in which the panel of Justices decides which party will pay costs to the other and on what basis, the second stage is to determine any dispute between the parties as to the amount of those costs which the paying party must pay to the receiving party. This stage is referred to as the assessment of costs. In many cases the parties are able to agree both who should pay whose costs and what the amount payable will be. However, where the parties are not agreed, the receiving party can apply to the Court for a detailed assessment of costs.

13.13 Detailed assessments of costs in the Court are conducted by Costs Officers appointed by the President: see Part 8 of the Rules. One Costs Officer will be a costs judge of the Senior Courts Costs Office and the second may be the Registrar.

13.14 The assessment of costs is governed by the relevant provisions of the Rules supplemented by this and the other Practice Directions. To the extent that the Rules and Practice Directions do not cover the situation, the Rules and the Practice Directions which supplement Parts 44 to 47 of the CPR are applied by analogy at the discretion of the Costs Officers, with appropriate modifications for appeals from Scotland and Northern Ireland. The legal principles applied are those also applicable to assessments between parties in the High Court and Court of Appeal in England and Wales[1].

The bill of costs

13.15 A bill of costs setting out each item of costs which the applicant considers the paying party should pay may be filed via the portal for assessment where costs are payable by a party under an order for costs made by the Court.

Basis of Assessment

13.16 The Court will not allow costs which have been unreasonably incurred or which are unreasonable in amount. If the Court has awarded costs on the standard basis of assessment, the Court will only allow costs which are proportionate to the matters in issue and will resolve any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

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

a. the sums in issue in the proceedings;

[1] *Kuwait Airways Corporation v Iraqi Airways Company and others*: Appeal Committee, 102nd Report (2001-02), paragraph 16, HL Paper 155.

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

c. the complexity of the litigation;

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

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

f. any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.

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

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

13.19 Detailed assessment hearings are conducted in public.

13.20 See paragraph 13.47 onwards for the Costs Officers' discretion as to what to allow.

Pro Bono Costs Orders

England and Wales

13.21 The general principle as to liability for costs before courts in England and Wales is that the successful party should be paid his or her costs by the unsuccessful party but that the receiving party can only claim costs to cover legal fees and disbursements that the party has actually incurred ("the indemnity principle"). Where the successful party is represented by lawyers acting free of charge, the application of the indemnity principle would mean that the paying party has to pay little or no costs. Section 194B of the Legal Services Act 2007 provides, in summary, that where a receiving party was represented free of charge, the paying party can be ordered to make a payment to a prescribed charity in lieu of paying the costs that the party would have been ordered to pay if the successful party had not been represented pro bono. The charity prescribed for this purpose is the Access to Justice Foundation: see the Legal Services Act 2007 (Prescribed Charity) Order 2008 (SI 2008/2680). Such an order is referred to as a pro bono costs order.

13.22 Where an order is sought under section 194B(3) of the Legal Services Act 2007 the party who has pro bono representation must prepare, file and serve via the portal a statement of the sum equivalent to the costs that party would have claimed for that legal representation had it not been provided free of charge. A pro bono costs order must specify that the costs payable under it are to be paid to the prescribed charity and the Registry must send a copy of the costs order to the prescribed charity.

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

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

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

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

VAT is not recoverable under a pro bono costs order.

Scotland

13.24 Section 9 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 makes provision similar to section 194B of the Legal Services Act 1007 but has not been brought into force.

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

13.25 Where an application for permission to appeal is refused, the Court will not usually award the potential respondent its costs of considering the application for permission where:

a. the respondent making the application for costs did not file a notice of objection to the application for permission; or

b. the application for costs is made by one of two or more parties and it cannot be demonstrated that the person seeking costs had an interest in the application for permission to appeal that required separate representation.

13.26 Where the respondent has filed a notice of objection to the application for permission, and the application for permission is refused, the respondent may apply for an award of costs. Such an application must be filed via the portal. The costs that may be claimed include the reasonable costs of preparing and filing respondent's objections and attending the client, counsel or other parties.

13.27 If an application for permission to appeal is dismissed after an oral hearing, the costs of the hearing are allowable in addition to the costs at paragraph 13.26.

13.28 Where the application for permission to appeal is successful, all parties' costs become costs in the appeal unless the Court orders otherwise.

Counsel's fees

13.29 The general rule is that a fee for one junior counsel is allowed for preparing an application for permission to appeal or a notice of objection.

13.30 A fee will be allowed in respect of an application for permission to appeal for King's Counsel instead of or in addition to junior counsel (a) if this is held to be necessary because of the difficulty or complexity of the case or other good reason; or (b) if a legal aid provider has given the appropriate authorisation.

Full appeal hearing

13.31 Generally, where the appeal proceeds to a full hearing, the costs of one King's Counsel and one junior will be allowed. If the costs of more counsel are claimed, the party must provide a reasoned justification for the claim and the Court will determine whether the additional costs should be awarded. The request and reasons must be provided to the Court no later than the date on which the receiving party files its bill of costs.

Filing claim for costs

Filing claim for costs and points of dispute

13.32 Where a claim for costs is made, the bill of costs must be filed via the portal within three months of the date of the relevant costs order made by the Court and must be served via the portal on the other parties.

13.33 All documents must be filed or uploaded via the portal as follows:

a. the bill of costs which lists all the costs incurred with the final sum of which the applicant seeks payment;

b. counsel's fee notes (which must be receipted except in the case of legal aid bills); and,

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

13.34 Other papers on which the parties intend to rely must be filed in consultation with the costs section of the Registry. If the assessment proceeds to a hearing, any further documents which the Costs Officers need to pre-read must be filed electronically (via the portal) at least 7 days before the hearing.

13.35 Points of dispute under rule 55 should be filed via the portal within 21 days of the filing of the bill of costs. The receiving party may within 14 days from the filing of the

points of dispute respond to the points if the party thinks it appropriate to do so. Any request for an extension of time to file points of dispute or replies must be made within the relevant time period or via the portal: see similarly section 7 below on extensions of time.

Default costs certificate

13.36 Where the paying party does not file points of dispute within 21 days of being served with the claim for costs and bill of costs (or within such other period as may be fixed by the Registrar), the receiving party may apply for a default costs certificate: see rule 55(4). Such a certificate will normally certify all the costs claimed in the bill of costs.

13.37 The paying party may apply to set aside a default costs certificate. If the Costs Officer is satisfied that the receiving party was not entitled to the default costs certificate, the certificate will be set aside. In other circumstances, the Costs Officer may set aside the default costs certificate where the party seeking to set the certificate aside has acted promptly in making the application and where there is a good reason for the claim for costs to go forward to a detailed assessment.

13.38 The paying party applying to set aside a default costs certificate must upload to the portal a draft of the points of dispute that they will file if the certificate is set aside.

Fees

13.39 The fee payable on filing a bill of costs is 4% of the amount claimed. The amount claimed for this purpose includes the VAT payable on legal fees and disbursements but does not include the 4% fee payable on filing the bill of costs. Where a bill of costs is agreed, agreement must be notified to the Court by email as soon as possible. The Court fees provided for by the Supreme Court Fees Order 2024 (SI 2024/148) are set out in guidance on the Court's website.

Extension of Time and Filing Out of Time

13.40 Any application for an extension of the three-month period for filing a claim for costs should be agreed with all parties, if possible. If such an extension is agreed by the parties that should be made clear in the application.

13.41 An application to file a claim for costs out of time made after the expiry of the three month period must be made via the portal. In deciding whether to grant an application the Registrar takes into account all the circumstances, including: (a) the interests of the administration of justice; (b) whether the failure to file in time was intentional; (c) whether there is a good explanation for the failure to file in time; (d) the effect which the delay has had on each party; (e) the effect which the granting of an extension of time would have on each party; and (f) whether the paying party agrees to the extension.

13.42 See Practice Direction 7 for applications.

Provisional Assessment

13.43 A provisional assessment (carried out without a hearing on the information provided by the parties) is conducted where one of the parties requests such an assessment (see rule 49(5)) or where the costs claimed are £75,000 or less.

13.44 A provisional assessment is usually carried out by a single Costs Officer. The outcome of the provisional assessment will then be sent to the parties. If a party is dissatisfied with the result, representations must be filed within 14 days of receipt of the assessed bill. If points of disagreement cannot be resolved in correspondence, a detailed assessment will be carried out.

13.45 A detailed assessment in these circumstances proceeds on the basis of the original claim for costs and any points of dispute and replies, any of which may be amended in light of the provisional assessment.

Detailed Assessment

13.46 The Registrar may, at the request of a party or if the circumstances justify it, direct that a detailed assessment be carried out without a hearing. If the detailed assessment requires an oral hearing, the Registrar will give 14 days' notice to the parties of the date and time of the detailed assessment. Parties may be represented by their legal representative (including but not limited to a solicitor, costs lawyer or costs draftsperson, or counsel). The receiving party or the party's legal representative must attend the detailed assessment hearing.

Costs Officers' Discretion

13.47 The Costs Officers have discretion as to the amount of costs to allow. In exercising this discretion, they bear in mind the terms "reasonably incurred" and "reasonable in amount" in rule 58 of the Rules. The factors they consider include: (a) to what extent an item assisted the Court in determining the appeal; (b) the length of a hearing; (c) the complexity of the issues as indicated by the judgments delivered by the Court; and (d) the general level of fees sought and allowed in the lower courts.

13.48 In respect of the costs of an application for permission to appeal, a major consideration is whether the application gave rise to a point of public importance.

13.49 The Costs Officers will reduce or disallow claims in respect of documents provided by a party where those documents were excessive, inadequate or proved unhelpful to the Court.

Review of Costs Officers' Decision

Application for a review

13.50 Any party to an assessment who is dissatisfied with all or part of a decision of the Costs Officers may apply in accordance with rule 60 for that decision to be reviewed by a single Justice. The application must be made via the portal. For applications see Practice Direction 7.

13.51 An application may be made only on a question of principle and not in respect of the amount allowed on any item. Any application must be made within 14 days of the end of the detailed assessment or such longer period as may be fixed by the Court. An application for a review must include written submissions stating concisely the grounds of the objections and must be filed via the portal. A party who objects to the application may, within 14 days of filing or such longer period as may be fixed by the Court, file a notice of objection in via the portal.

Referral to a Single Justice

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

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

Referral to Panel of Justices

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

Assessment Certificates

Civil

13.55 When the final amount of the costs to be paid has been determined, an assessment certificate for the costs allowed will be sent to the receiving party, except in the case of respondents whose costs can be wholly satisfied from money deposited as security for costs (see rules 39 and 61).

Criminal

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

Courts-Martial

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

Criminal (Northern Ireland)

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

Interest

13.59 Interest is payable on costs assessed between the parties and on costs in favour of successful unassisted parties. The rate of interest is in accordance with the provisions of the Judgments Act 1838, as amended, and interest accrues from the day on which the costs order of the Court is made or such other date as the Court may specify unless the Costs Officers exercise their discretion to vary the period for which interest is allowed.

Guidelines on Fees Allowed

Solicitors

13.60 The Court adopts the guideline rates issued by the Master of the Rolls in England and Wales and similar guideline rates in Scotland and Northern Ireland. The rates are set out on the Gov.uk website under Solicitors' guideline hourly rates. Those rates will be the starting point for any summary assessment and may, at the Costs Officer's discretion, be used as the starting point for a detailed assessment. These are consolidated figures that include a mark-up for care and attention. An application must be completed via the portal using a consolidated figure for the hourly rate. If a rate is charged that exceeds the guideline rate an explanation must be given under the heading 'Fee earners and hourly rates' in the application.

13.61 Where solicitors have charge of producing large documents such as the main hearing bundle, it will not usually be appropriate for a higher grade rate to be applied. Time spent photocopying is not recoverable (although the cost of photocopying is).

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

13.63 Short, routine letters, emails and telephone calls are allowed at one tenth of the hourly rate at the Costs Officer's discretion. An allowance of one tenth of the hourly rate for each document uploaded to the portal is also made at the Cost Officer's discretion.

Counsel

13.64 The Senior Courts Costs Office has not offered any guideline fees for counsel since 2009. A working party authorised by the Civil Justice Council is currently considering whether such guidelines are feasible. We have removed the guideline counsel fees, in their entirety, from this Practice Direction and they will be updated if any new guideline rates are available. In the meantime, parties should note that the role performed by counsel in the Court is a clearly defined one, and parties should be careful to control costs particularly at the stage of applying for permission to appeal.

13.65 Counsel's fees are assessed in respect of each item of work counsel has undertaken. It is essential that this approach is reflected by those completing a costs application. Whilst it may be helpful to know the hourly rate charged by counsel, it should be borne in mind that counsel's fees, and in particular counsel's brief fees, are not assessed only by reference to time allowed at an hourly rate. The Costs Officers will have regard to the criteria listed in CPR rule 44.4(3) when assessment costs as appropriate.

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

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

13.68 The Costs Officers exercise discretion in instances where junior counsel has undertaken most of the work on a particular item or where junior counsel presents some of the oral submissions to the Court in accordance with the Practice Note issued by the President of the Court on 7 March 2024: see Practice Direction 6.12.

Conditional Fee Arrangements

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

13.70 In England and Wales conditional fee agreements are sanctioned by the Courts and Legal Services Act 1990, as amended, and may properly be made by parties to appeals before the Court. However, the circumstances in which a costs order can require a paying party to pay the success fee payable by the receiving party (over and above the fees payable on success) under his or her conditional fee agreement with the legal representative are now very limited: see section 58A of the Courts and Legal Services Act 1990.

Costs of Litigants in Person

13.71 The amount allowed to a litigant in person may not exceed the loss actually sustained or, where no loss has been sustained, £19 for each hour reasonably spent. This is subject in either case to a maximum for any particular item of two thirds of the sum

which in the opinion of the Costs Officer would have been allowed for that item if the litigant had been represented by a solicitor. The two thirds limit does not apply to out-of-pocket expenses which would be disbursements if incurred by a solicitor. (For further information see CPR 46.5 and paragraph 3 of Practice Direction 46 which supplements it.)

17. Fees for drafting costs claim

13.72 By way of guidance for smaller claims for costs, particularly in relation to applications for permission to appeal, the following sums are usually justified for completing a costs application via the Portal:

Amount of bill	***Amount allowed***
Bills assessed at up to £2,000 (excluding VAT)	£300
Bills assessed at £2,001 to £5,000 (excluding VAT)	£500
Bills assessed at £5,001 to £10,000 (excluding VAT)	£700

13.73 For a larger bill the amount allowed for time reasonably spent in drafting the bill is calculated as a multiple of the relevant hourly rate for a Grade D fee-earner (unless a claim for a higher grade is justified).

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

13.75 Counsel may not claim a brief fee for attending detailed assessment on their own behalf but may do so if briefed in respect of the entire bill.

Legally aided parties

England and Wales

13.76 The Court may be asked to assess costs where:

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

b. an Appeal Panel or the Court orders a determination of the costs payable by a legal aid provider to appellants, respondents or other persons in accordance with the relevant statutory provisions;

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

13.77 The hourly rates payable by the LAA are fixed by statutory instrument, but the relevant regulations may incorporate provisions for enhancement. It is open to the Court on assessment to make findings, for example on whether items of costs claimed against the LAA have been reasonably incurred or whether the amount of time claimed for particular items of work is reasonable.

13.78 Any costs ordered to be paid by a legally aided party must not exceed the amount which is reasonable for that party to pay having regard to all the circumstances including the financial resources of all the parties to the proceedings; their conduct in connection with the dispute to which the proceedings relate.

13.79 Costs which were incurred by one party during a period when another party was legally aided, and which are not recoverable from the publicly funded party only because of section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, may, in certain circumstances, be payable by the legal aid provider itself. Regulations made under section 26 of the LASPO provide a code governing orders for costs against legally aided parties and against the Lord Chancellor or legal aid provider.

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

13.81 Within 21 days of being served with a bill of costs to which section 26 of LASPO applies, a party who is or was legally aided during any period covered by the bill must respond by filing in the Registry a statement of resources and serving a copy of it on the receiving party and, where relevant, on the Lord Chancellor or the legal aid provider.

13.82 The Court will send any applications for an order that the costs be paid by the Lord Chancellor or LAA to the Lord Chancellor or LAA as appropriate and the costs will be determined on assessment by a Costs Officer.

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

Scotland and Northern Ireland

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